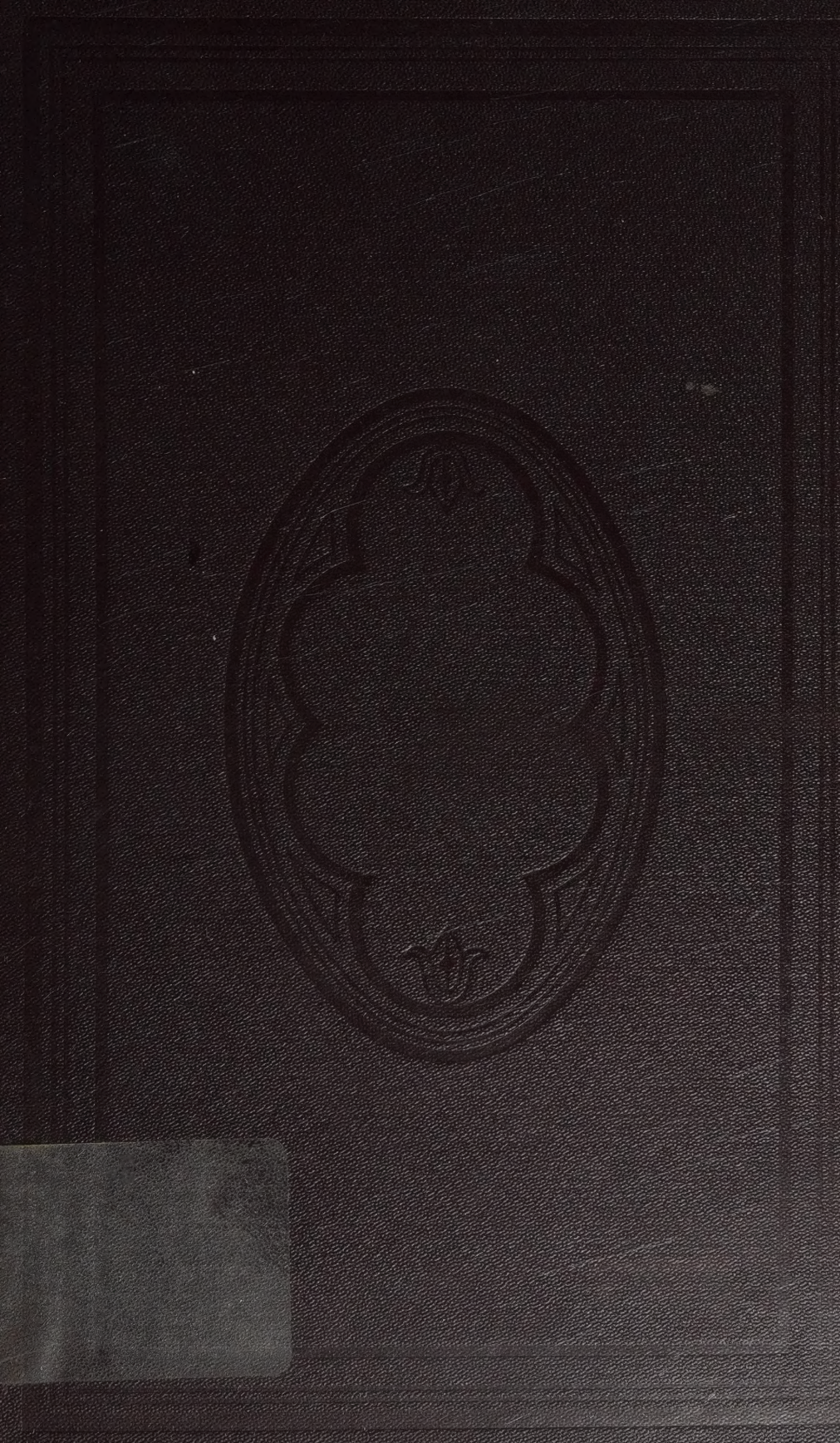


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DEBATES

IN THE

MASSACHUSETTS CONSTITUTIONAL CONVENTION

1917–1918

VOLUME III

CHAPTERS XVII TO LXI

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DEBATES

XVII.

ABSENTEE VOTING.

Messrs. Roland D. Sawyer of Ware, Herbert Parker of Lancaster, Charles O. Bailey of Newbury and David I. Walsh of Fitchburg presented resolutions numbered, respectively, 42, 58, 125 and 289, which were referred to the committee on Suffrage.

On the 17th of July the committee reported that Resolution No. 58, presented by Mr. Parker of Lancaster, ought to be adopted as follows:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to provide by law for voting by qualified voters of the Commonwealth who are absent from the city or town of which they are inhabitants at the time of an election, in the choice of any officer to be elected or upon any question to be voted on at that election.

On the 18th of September the resolution was discharged from the Committee of the Whole without debate and it was considered by the Convention on the following day.

Mr. Lincoln Bryant of Milton moved that the resolution be amended by inserting after the word "Commonwealth", the words "in the military or naval service of the United States or Commonwealth of Massachusetts".

This amendment was withdrawn.

Mr. Herbert A. Kenny of Boston moved that the resolution be amended by inserting after the word "Commonwealth", the words "and for all persons who have taken out their first naturalization papers in time of war".

This amendment was rejected.

Mr. E. Philip Finn of Chelsea moved that the resolution be amended by inserting before the word "elected", the words "nominated or".

This amendment was rejected.

Mr. Joseph F. O'Connell of Boston moved that the resolution be amended by adding at the end thereof the following words:

The General Court may pass any law in addition to the foregoing provisions if any shall in practice be found necessary in order more fully to carry into effect the purpose thereof.

This amendment was withdrawn.

On Wednesday, the 26th day of September, the committee on Form and Phraseology reported that the resolution ought to be adopted in the following form:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

The General Court shall have power to provide by law for voting by qualified voters of the Commonwealth who, at the time of an election, are absent from the city or town of which they are inhabitants in the choice of any officer to be elected or upon any question to be voted on at such election.

Mr. Albert E. Pillsbury of Wellesley moved that the new draft be amended by striking out the words "General Court", and inserting in place thereof the word "Legislature".

This amendment was rejected.

Mr. Pillsbury also moved that the new draft be amended by striking out the words "to be voted on", and inserting in place thereof the word "submitted".

This amendment was adopted.

The resolution, as amended, was passed to be engrossed Wednesday, September 26, and on Friday, September 28, the Convention voted to refer it to the people.

It was ratified and adopted by the people Tuesday, November 6, 1917, by a vote of 231,905 to 76,709.

THE DEBATE.

Mr. Bryant of Milton: There seemed to be a good many dangers in connection with giving a wide open power to the Legislature to send commissions all over the United States or Europe for anybody to register his vote upon. It never has been constitutional in our State, as I understand it; and if the report which I read is accurate, I think that only two States extend the privilege beyond those persons who are actually engaged in military or naval service. There are a large number of States which do provide that men in the army or navy may have the privilege of voting. I think the privilege should be limited to that. And for that reason I have offered this amendment.

Mr. Creed of Boston: I should like to ask the gentleman who has last spoken: Will he not trust the Legislature to regulate that matter? I believe he is an opponent of the I. and R.

Mr. Harriman of New Bedford: The gentleman's amendment at the present time may seem to fit the occasion, but there are thousands of workers in this Commonwealth who are serving for the welfare of the people as well as those who are in military service, — the train men, building trades men, commercial travelers, and many others; and, to my mind, there should be no exemption made. I state to you, Mr. President, and to this Convention, that it is wrong to pick out any particular class of citizens and give them preference for all time over any other class of citizens. To have this just and right, and to have it as it should be, I am in favor of it as reported by the committee. It should include all the citizens of the Commonwealth. Realizing as I do the duty that goes with serving the Commonwealth and serving our country, let me tell you, sir, that there is just as much honor in serving it in civil life as there is in military life, — no more and no less. I trust, sir, that the amendment will not be adopted.

Mr. Buttrick of Lancaster: I should like to suggest to the gentleman who has moved this amendment (Mr. Bryant) that he withdraw it at the present time. Let this resolution take a reading to-day; then he can offer his amendment at its next stage.

I understand, sir, that there are some other members of this Convention who may desire to offer amendments; and it would seem wise that they be offered now and then we take all the amendments up at one reading.

I wonder if the gentleman from Milton will do that.

Mr. Bryant: I will accept the suggestion of the last speaker, and ask to have my amendment printed with the privilege of offering it at a later stage.

Mr. Sawyer of Ware: I think we might as well vote on this amendment now, and vote it down. This is not a war measure alone, as the amendment of the gentleman from Milton would make it. Why, Mr. President, both political parties have endorsed this proposition before the war began. It was set forth in the inaugural of Governor Walsh, and I am not sure but by Governor McCall also; commercial travelers have been coming here asking for a constitutional amendment of this sort for years, and not only the commercial travelers but the railroad workmen, many of whom are forced by their runs, — engineers, firemen, trainmen, and men of that character, — who are forced by their runs to go out into other States and lose their vote. There has been an increasing sentiment on Beacon Hill for a number of years for such a proposition as this.

Now the question is brought before us whether we want to narrow it down to just a war measure. That is playing with the matter; that is dodging the issue. Let us vote down this amendment now, and show that we want what the people want.

Mr. Creamer of Lynn: I hope this amendment will not prevail. As a member for over twenty-five years of the leading commercial travelers' organization in this country I happen to know that there is a desire on the part of traveling salesmen, and has been for years, that something of this kind should be adopted. There is not a council of the United Commercial Travelers in America in this State but what would be unanimously in favor of this, and has so gone on record in the past.

Mr. Webster of Haverhill: Unless I am laboring under a grave misapprehension in the premises, this amendment is entirely unnecessary, because already we have voted to provide means for the voting of soldiers and sailors. Did we not send a commission down to the Texas border for them a few years ago, to take the vote down there?

Mr. Aylward of Cambridge: As a member of the committee I do not wish to oppose the suggestion of the gentleman from Lancaster (Mr. Buttrick). I desire to say, however, that the question of exempting soldiers, or making this measure apply specially to soldiers, was not considered by the committee. Nobody appeared before the committee on that ground; but several appeared for the purpose of showing the necessity which there was for such a measure for various bodies of voters of the Commonwealth, — not only commercial travelers, but railroad trainmen, comprising I have forgotten how many hundred men. As a matter of fact, there was quite an opinion among the committee that the act should be extended; and I expect, — the committee expect, — to receive amendments from members of the Convention to extend this act further; rather than to limit it, to extend it to people who are unable on account of sickness to vote. But the committee did not take that position; they believed that the resolution of the gentleman from Lancaster (Mr. Parker) was a proper measure at this time.

Mr. Kneil of Westfield: I trust the amendment proposed will not prevail. This is a question, at which fortunately we have arrived,

in which there is no partizanship, no sectional feeling, — one of those questions, of which I hope there will be many more before the Convention closes its deliberations, where simply cold reason and wise judgment should apply. It is a relief from combat of partizanship and from bias, whether from section or party, to have a matter where we can settle the question before the Convention in calm deliberation and wise exercise of our reason. Nor will it take very long. The proposition is a very simple one. It is also a proposition calling for immediate action. We ought to do something, gentlemen. We have passed the anti-sectarian proposition. Let us pass another matter which we can settle in the course of, it seems to me, an hour's debate, and add to our record, already halting, of achieved things.

The proposition is one providing that the Legislature may have an increase of a certain power it now has. Under the United States Constitution the Legislature now may prescribe the manner, way, and terms in which the votes of absentees, — in which the votes of anybody, — may be polled and counted, with reference to Presidential electors, members of the United States Senate and members of the United States House of Representatives. The Legislature now can do any one of those three things in any way, shape or manner that it pleases under the United States Constitution. And it has done so, particularly in 1916 when it gave the right to the soldiers who were on the Mexican border to vote for those three classes of officers. But the Legislature lacks power to give to the voter who is absent the right to vote for State and municipal officers. It may be possible that under the power of the Legislature to create cities and municipalities it may prescribe as to those who vote in municipal and city elections; but that is doubtful, to say the least. It stands therefore thus: Under the United States Constitution the Legislature may provide for absentee voting for Presidential electors, for Senators, and for Representatives of Congress; but beyond that it cannot provide. Now, that is the power which it is asked should be provided. What further power should the Legislature have? That is a matter for you and me to consider. Should it extend to the right to vote for State officers? I say "Yes." It should go so far as the Legislature in its wisdom sees fit to grant the right, — by giving the general right to vote, or the right to vote for certain officers. That we lack; that, I think, we should give.

Now, to whom should the right be given? There comes the important question. It is the opinion of the committee on Suffrage that there should be a line drawn as to those who should have the right to vote, and who are not present at the polls when election day comes. Where should the line be drawn? The committee draws the very plain, straight line of absence from the town or city where they have the right to vote.

Suggestions are made, — possibly may be advanced; they were made to our committee, — that that right to vote should go beyond the line of absence from the town or municipality where persons have a right to vote. The committee thought it was ill advised, — it could not say it was wrong. It would be practically impossible to draw a safe line, except we stop at the point of being absent from the town or city where the person has a right to vote. That is drawn in the proposition submitted by the committee to the Convention, — that the Legislature may provide for voting of absentees from the town, the

place where they have the right to vote. We stopped there because we said that was the only safe line, practical line, at which to draw it.

That includes this: It includes all our sailors and soldiers wherever they are, on the fields of France or wherever in service they may be. That is taken care of; the Legislature would have power to do that. It provides also for any person who, by reason of employment or occupation, necessarily has to be away from home on the day when the election comes. It provides that commercial travelers, railroad trainmen, fishermen, business men off on a predetermined journey, anybody who can show as a matter of fact, — the Legislature will prescribe the details, — anybody who can show as a matter of fact that he has got to be away from the town or the municipality where the election is held can cast his vote in such way as the Legislature provides.

The only remaining question is: Shall it be extended to other people than those absent from the place of voting? The committee said "No." We might enter on dangerous ground there. We define a certain zone where the fact can be determined easily. For the person who seeks to vote as the Legislature may prescribe, — by mail, by declaration beforehand, any one of a dozen ways, the Legislature may say, — the question is: "Was he present or absent from the town where he is entitled to vote?" That is simply ascertained; very easily determined. To go further than that, and say that a man who was at home but by reason of sickness or disability could not vote, might vote on a doctor's certificate, we said was going too far.

The proposition seems simple, it seems wise and well to extend the power that the United States Constitution provides; to extend it to soldiers and sailors and those who are necessarily, imperatively absent for a predetermined cause. That is enough. Stop there. That is provided for by the resolution submitted here. [Applause.]

Mr. Cusick of Boston: I hope that the amendment to limit the scope of this resolution will not prevail. My reasons for that are these: Many of the problems that confront the people of this State may be settled right in the future if we can do something to induce a larger proportion of the electorate to assume their civic responsibilities. I believe we shall do a good thing here if we give to the voter every convenience that is possible to induce him to vote. Then I say, members of the Convention, after you give the voter every convenience, if there is any possible way I should like to see such an amendment and such a law placed upon the statute-books as would *compel* every member of the electorate to assume his civic responsibilities.

I think, sir, this resolution is a great step in the right direction, and I hope that it will not be limited by the amendment, and that the original resolution will prevail. [Applause.]

Mr. Herbert A. Kenny of Boston offered the amendment printed at the beginning of the chapter.

Mr. Herbert A. Kenny of Boston: I wish to call the attention of the Convention to what I think are two very good resolutions, — No. 128 and No. 287. The last-named resolution has been presented by Mr. Scigliano of Boston, who, I may say, is the leading Italian citizen of our city. Now, there is a great demand in this seaport city, at least, that foreigners coming to our shores can be better assimilated if they are given the right to vote upon the taking out of their

first naturalization papers. It does seem to me that the foreigners who have come here and who have taken out their first naturalization papers, and who have enlisted in the United States army and navy, surely ought to have the right to vote. In time of peace it may be rather straining the Constitution of Massachusetts to ask for such a drastic course of giving the vote to those citizens who have taken out their first naturalization papers; but here is a time of war, when we need every man for Europe. When there is a decided drawback on account of the reluctance of a great many citizens to enlist, we find that the Italians and other foreign races are enlisting very heavily, answering the call to the colors. Now, the majority of these foreigners have taken out their first naturalization papers, and where they have signified their intention, where they have conformed to the dictates, you may say, of what is contained in document No. 287, — Mr. Scigliano's resolution, — it seems to me that those citizens, those foreigners fighting for their country, with their first naturalization papers, should be allowed the right to vote. [Applause.]

Mr. Anderson of Brookline: I should like to point out the effect of this amendment if it had been part of our law during the past three years. It might permit a large number of Germans now serving in the German army to vote in American elections. [Applause.]

Mr. William S. Kinney of Boston: I hope, sir, that the proposition embodied in document No. 58 will pass, without the adoption of either of the proposed amendments. That document, sir, and the proposition contained therein, has been designed by the committee, and reported by the committee, to meet a real evil. Economic conditions are such that many worthy citizens of the Commonwealth find it impossible to be at the polling-place near their domiciles on election day. It is proper that provision be made that all citizens of the Commonwealth who are placed in this position be given an opportunity to express their views.

As originally drawn, the document is sufficiently comprehensive to include soldiers and sailors, and therefore no exception need be made for their benefit; but the amendment of the gentleman from Milton (Mr. Bryant) would have the effect of confining it to that class only. I believe that such a limitation is not within the spirit nor the proper scope of the proposition.

The last amendment proposed brings in an entirely new subject; it brings in a subject which is not proper and which did not have the approval of the committee who heard it, namely, the extension of the suffrage to persons who are not citizens of the Commonwealth. Whatever may be the merits of that latter proposition, they can be discussed by this Convention when the report of the committee on document No. 287 is reached. There is no need, no emergency, no reason for this Convention to express its views on that proposition to-day. There is an urgent need that the Convention act speedily on the proposition of absentee voting, in order that the proposition may be speedily presented to the voters of the Commonwealth, and perhaps a special session of the Legislature called to enact the legislation which will accord the soldiers and sailors of the Commonwealth engaged in National service an opportunity to vote.

Therefore, Mr. President, I hope that the original proposition will be passed, and that both these amendments will be rejected.

Mr. Parker of Lancaster: I hope, Mr. President, that the consideration of the several amendments proposed to the report of the committee presented in the form of the resolution now before us will not lead the Convention, even momentarily, to disregard what I conceive to be, and to have been, the primary reason for the consideration and the adoption of the resolution now before us. I suppose, sir, that the insistent cause for the presentation of this resolution, the imperative requirement that we act upon it now, is to meet a condition which would be deplorable, as it would be insufferable, if our fellow-citizens of this Commonwealth, now abroad in the service of State and Nation, should be deprived, by reason of the sacrifices that they have so willingly made, of the dearest right and duty of citizens, to exercise their franchises in the participation of the government of their Commonwealth.

Mr. Herbert A. Kenny: Do I understand the gentleman to deny the suffrage to the foreigner in this country who has taken out his first papers, who may sacrifice his life for the honor of the country? Does he wish to deny him the pleasures of citizenship?

Mr. Parker: I should deny to no man the rights of citizenship, when he had attained to those rights. [Applause.] Nor, sir, would I be heard for a moment to question or to disparage either the valor or the patriotism of many men not yet fully entitled to the rights of our citizenship, but having plainly shown that they have the qualities which later will ripen into the fullest consummation of citizenship.

Mr. Newton of Everett: Will the gentleman allow me also to call his attention to the fact that only ten per cent of those who take out first papers ever complete their papers?

Mr. Parker: I accept, Mr. President, the statement of my honorable friend as the absolute truth. I always am enlightened by my honorable friend.

I was about to add, Mr. President and gentlemen, but one further word with respect to this resolution, which I hope may be adopted in the form submitted by the committee. I would not belittle the great proposition presented by the suggestion that we are merely to take measures to see to it that the Legislature, by wise and carefully drawn enactments, may preserve to our fellow-citizens in the military and naval service their franchise rights. Surely we would suffer no condition to continue that might result in imposing a penalty upon our fellow-citizens by reason of the sacrifice that they have made for us and for their Nation.

I trust, therefore, sir, that, responsive to a sentiment that I know is unanimous in this Convention and unanimous in the Commonwealth, we shall promptly deal with this resolution, to the end that our soldiers and sailors may have this tie to their Commonwealth from which they are separated by this valorous service.

Let us not be delayed in accomplishing that result by the consideration of any lesser things. I would oppose, Mr. President, modestly presenting my own views, the amendment which would limit the operation of this constitutional amendment solely to those who are present in the military or naval service of the Commonwealth or Nation. Because it has come to my knowledge, confirming my observation of many years, that there are a great number of our fellow-citizens whose occupational duties are such, in connection with transportation facilities or the operation of public service, — quasi public

service, — corporations, as to compel their absence from the places of their residence upon the days of the primaries or the election; and I believe it to be impossible, upon such information as I have, to arrange a substitution in these employments, or the substitution of different employees, which will not leave some object to the present necessity of absence from their polling-places on the day of the election.

I should hope therefore that the measure as reported by the committee might be adopted in the form that it is now presented. The Legislature will then have full power to provide by carefully drafted enactments, measures that shall relieve first this grave situation to which I have adverted, and secondly, and in addition merely, the difficulties of these occupational duties which do now of necessity deprive many of our citizens of their right to the franchise.

I am opposed, sir, to any amendment which would invite legislation, looking to the possibility of casting the vote by reason of alleged illness or physical infirmity. It might be, it always would be, a difficult and confusing question of fact. While I have no doubt that the Legislature would have adequate intelligence to make provision so far as possible to eliminate this confusion or prevent the possibility of fraud, still I feel we would be entering upon a dangerous field by suggesting that any cause except absence for service for State or Nation, absence from home by reason of the necessity of occupational employment, should be suggested as a ground for casting the ballot other than as now required, where we go in the presence of each other and solemnly discharge, not a privilege, or exercise a privilege, but solemnly discharge a duty.

I hope, therefore, sir, that the measure as reported by the committee may stand, unimpaired by amendments. [Applause.]

Mr. Barnes of Weymouth. Mr. President, quite likely the members of this Convention already have reached the conclusion, — due to the persuasive statements made by the last speaker, as well as his predecessors, — that this resolution should be adopted without either of the amendments that have been offered. And that action, Mr. President, I trust will be taken by this Convention.

Although it may be that we have arrived at that conclusion, Mr. President, I cannot permit the debate to close without calling to your attention the appeal of a very large number of sober, honest, industrious citizens in this Commonwealth who, by reason of their employment, are deprived year after year of the privilege of exercising their rights as citizens and of the privilege of casting their vote. I refer, Mr. President, to the railroad trainmen who are engaged in the transportation industry in this Commonwealth. It is because I happen to know something about the difficulties of their casting their vote that I have taken the opportunity of calling this matter more specifically to the attention of the Convention than has hitherto been done.

The necessity of maintaining railroad schedules, and the operation of trains which must go on throughout the twenty-four hours of the day, prevent leaves of absence for all but a few of the trainmen in order that they may vote, and the very large number of them are deprived of the opportunity for voting. There is no solution, Mr. President, for that situation, except something after the fashion provided in this amendment. The men themselves recognize that those schedules must be maintained. Train crews of many lines and many runs, leaving

Boston in the afternoon do not return to their homes until twenty-four hours or forty-eight hours later; so that in a great many cases they are absent during the whole of election day. In many other cases they are required to leave their homes early in the morning, before the polls are open, and cannot return at night until after the polls are closed. So that for those reasons, Mr. President, — for the necessity of maintaining the train schedules and service, — they have no opportunity to cast their ballots.

Several of the representatives of the trainmen's organization have spoken to me about this matter on various occasions, and I know that they are deeply interested in having some such resolution as this adopted that will permit them to exercise their rights of citizenship.

As has been pointed out so well, Mr. President, this resolution is simply an enabling amendment giving the Legislature power to pass an act, and one with adequate safeguards and with proper and adequate machinery to have this matter carried out and to permit those men to vote.

For those reasons, Mr. President, — for the reasons that the other cases, those engaged in war, those engaged in other commercial pursuits, are deprived likewise of their right of suffrage, and for the particular and compelling reason to my mind, that so many of our citizens who are engaged in the transportation industry are deprived of their right of suffrage, — I trust, sir, that this resolution may be adopted by this Convention without either of the amendments that have been suggested, to the end that we may provide as full an opportunity as possible for every citizen in this Commonwealth to exercise his right of suffrage.

Mr. E. Philip Finn of Chelsea offered the amendment printed at the beginning of the chapter.

Mr. Finn: I just want to say that I believe this proposed amendment to the Constitution as reported by the committee, should be adopted without being amended as has been proposed. My amendment is in the nature of a perfecting amendment. It is the intention of the framers of this measure that the Legislature shall have the right to decide how this privilege shall be exercised, and when. For that reason I include the words "nominated or", so as to let the Legislature be free and unhampered.

I only offer it, as I say, as a perfecting amendment, and hope it will prevail.

Mr. Buttrick of Lancaster: As a member of the committee on Suffrage having charge of this matter, I wish to say that the committee are opposed to any amendments at the present time. We do not believe that this ought to be limited, restricted, or extended beyond the provisions of the resolution which is now before the Convention.

Mr. Knotts of Somerville: I desire to say just a word, because to me there is a very clear-cut analogy concerning the principle that has been so forcibly presented here, between the votes of the soldiers and sailors on the one hand and such citizens as trainmen and traveling salesmen on the other. The situation in its inwardness is this: The reason that we are saying here, I think almost unanimously, that the absent soldiers and sailors should not be deprived of their enfranchisement at an election is because the State or the Nation has extended

its own hand and removed these men, for the time, out of their place in the body politic. Therefore, the argument is, in its reality, that as far as we are able to do so, we should provide a way for these men, being thus removed from home, to exercise their right of citizenship.

Now, Mr. President, we also have an industrial situation, or rather an industrial system, and by that system, through no fault of their own, men are removed from their places in the body politic and deprived of their rightful votes. The system of industry which is doing that, which removes these men, is also in the interest of the public good. The sacrifices of the soldiers and sailors are more spectacular, and they are more impressive, but for the common good, these men, removed from the voting booth by the system of industry, are toiling and sacrificing. Therefore, it seems to me that the analogy is a perfect one, and that is why I desire to lift up my voice here, as feeble as it may be, against any amendment that will in any degree narrow or limit this resolution. [Applause.]

The debate was continued after the noon recess.

Mr. NEWTON of Everett: As a member of the committee on Suffrage I desire to take a few moments to explain this proposed constitutional amendment and the reasons for it, and to speak in regard to the suggested amendments. The situation that confronts the Commonwealth of Massachusetts is this: Under the Constitution of the United States provision can be made by the Legislature for the voting of qualified voters absent from the Commonwealth, for President of the United States or Congressman or any United States officer, but, strange to say, under our Constitution the same provisions cannot be made for the elective officers of the Commonwealth of Massachusetts. That is, a voter undoubtedly could be given the right by the General Court to vote for a Representative if he were not present upon election day because the Constitution simply provides that a Representative to the General Court shall be elected by written ballot, but a Senator cannot be elected except by a person who is present and voting at a meeting regularly and duly called for that purpose. Likewise a Governor of the Commonwealth cannot be voted for unless the party voting is present at the proper place to vote.

Now, the Legislature was troubled by this situation and has been trying for some years to have that cleared up so that it could have a right to provide that people who were absent from their community and absent from their State on public business should have the privilege of voting for Governor and State officers and Senators and Representatives, as well as having the privilege to vote for President and Representatives to Congress. Therefore I find that the public are somewhat embarrassed because they have not clearly in mind that for years the Legislature by statute has provided for soldiers and sailors voting who were absent from the Commonwealth, for President or for a Representative to Congress, while it could not provide constitutionally for their voting for the Governor or for their local Representatives and Senators.

Now, I assume that we all accept it as a fact that a great number of voters, because of their vocations, are prevented from voting on election day, our election days coming always on Tuesday, as you know, the first Tuesday after the first Monday of November, and

there has been a very strong demand made by the traveling men and salesmen, by railroad men, by other men who, because of their vocations, are kept away from voting, or are put to tremendous expense to come home and vote on a particular election day. Therefore the committee felt that the Convention would be justified in so changing the Constitution that the Legislature could enact laws so that men who were absolutely and unquestionably detained or kept away from their city or their town on election day should have the right to vote. That includes of course the soldiers, the traveling men, and the laboring man who may be kept away, or the railroad man who is kept away, and we drew the amendment with that idea, making it just as broad as we could make it, but not at the same time making it so broad that it would open the door that might lead to fraud and wrong when attempts were made to make it easier for the person who was at home to vote. In other words, the committee did not believe that the person who was at home should be given any privilege beyond that which he now has, namely, to go to the polls and vote, but that if a person was detained by his vocation away from the community, that he ought to have the right, if the Legislature saw fit to give him that right, to cast his ballot for State officers as well as for United States officers.

Now, with that, unless there is some question that worries someone, I should like to call attention to the amendments that have been offered and the reasons why we think those amendments should not be adopted.

Mr. E. W. Curtis of Boston: I should like to ask the gentlemen representing the committee if it is the committee's intention to limit absentee voting merely to the State officers?

Mr. Newton: By no means. This amendment is broad enough so that the Legislature can provide for absentee voting at any election either local, district, county or State, but it does not provide, — and this ought to be clear in your minds, — it does not provide that the Legislature can make provision to allow a person who is at home on election day to vote.

Now, in regard to the amendments. One amendment offered by the gentleman from Chelsea (Mr. Finn), Mr. President, suggests a constitutional provision in regard to nominations to office. Well, of course that is not a constitutional question. I do not assume that I need to make any other statement than that. The Legislature makes provision for primaries and nominations, and they have a right to do it, and they can make any provision they have a mind to, but there is no constitutional question here at all, and therefore this is not an amendment that we should adopt.

Second, there is a proposal by the gentleman from Boston (Mr. Herbert A. Kenny) in regard to allowing aliens to vote. Such a proposal is now before the Committee of the Whole, on which our committee have reported adversely. A word is to be said against that, and will be said at the time that question is brought up, but I want to call your attention simply to this: Under the law to-day a man may take out first papers, and he then has seven years to complete those papers, and the records of the United States Court here in Boston show that in the Massachusetts district alone only 15 per cent of all the people who take out first papers complete their naturalization. If you should put

this in here and the Legislature saw fit to enact legislation, you would practically give an alien seven years to vote, Mr. Chairman, while he might never become a citizen, and I assume this Convention would not want to take that responsibility upon its shoulders to-day.

Third, the records of the United States government as far as they can be compiled show that only 10 per cent of all the aliens who take out first papers ever complete their citizenship, and I leave it to the Convention whether, under those conditions, it would want to run the risk of putting such a proposition as was suggested by the gentleman from Boston into this constitutional amendment. The third amendment is suggested by the gentleman from Milton, — that absentee voting should be limited wholly to those in the military and naval service of the United States or of the Commonwealth. Well, of course I think that is too narrow a field to consider. There is no more reason why a man who, by his vocation, is kept away from the community should not have the right to vote than a person who is kept away by the exigencies of the military service, and I assume that the Convention will not at this time think that it ought to make such a discrimination as that, especially in view of the fact that there has been such a great demand all over the Commonwealth that men who cannot or are unable, because of their particular business, to be present in their community on election day should not be deprived of that right, and it is on that ground that the committee has reported this resolution. The resolution itself has been submitted to the Attorney-General and received his approval, and as far as we are able to say it is in conformity with constitutional requirements.

Mr. Joseph F. O'Connell of Boston offered the amendment cited at the beginning of the chapter.

Mr. O'Connell of Boston: I have offered that amendment which I hope the committee may be able to accept. I have taken it practically from a similar section of the Constitution of the State of Maine which provides for absentee voting. I have been impelled to do it after hearing the debate this morning, because I recall my father, who fought in the Union navy in the civil war, having told me how many thousands of Irish immigrants who came to this country shortly before and during the time of the civil war secured their citizenship in this country by enlisting in the Union army and navy and helping to preserve this great Republic. Whilst I have been unable to summon the exact law just at this moment, I do know that many thousands of Irish exiles came to this country after the civil war broke out and enlisted in the northern armies. They did this on the invitation of Congress which wisely had passed a law giving them the rights of citizenship after service in the army and navy and an honorable discharge. The honorable discharge might come in a day, it might come in a week. Anyway it presents to me an element that ought to be covered in a law of this kind, and I think that the suggestions of the gentleman from Boston (Mr. Herbert A. Kenny) along that line would be covered by such a saving clause as I advocate at this time. If thousands of aliens go into the army and they are ready to sacrifice their lives as they already have demonstrated they are willing to do by enlisting, certainly they ought to be given all the rights of our citizenship, and the right to vote ought to be conferred

upon them. If the National government speaking through Congress already has given them that right in a general way, it would seem as though the Commonwealth of Massachusetts ought to be willing to coöperate by making a provision in its own Constitution that these men may enjoy, as they would in other States of the Union, all the rights of citizenship. Therefore, I would urge upon the committee that it accept this amendment which I have offered simply for the purpose of perfecting the constitutional amendment suggested and recommended by it, and which I am sure will be adopted gladly by the people of this Commonwealth.

Mr. Buttrick of Lancaster: The committee I believe will not be unanimously in favor of the amendment offered by the gentleman from Boston (Mr. O'Connell), because we do not believe it necessary, we do not believe it proper and we do not believe it expedient.

Mr. O'Connell: May I ask the gentleman from Lancaster if the committee in writing this law took into consideration the National law in reference to the subject?

Mr. Buttrick: The committee in writing this resolution took into consideration conditions which existed in Massachusetts, and they took further into consideration the legislation which has been enacted in various other States in reference to absentee voting. We believe that conditions which exist in Massachusetts should govern a Massachusetts amendment to the Constitution, and that is why we reported this resolution.

Mr. Whipple of Brookline: May I ask the gentleman who last spoke what there is in the conditions in Massachusetts which persuaded the committee that this amendment would not be acceptable; if he can state briefly and specifically the conditions in Massachusetts that differ from those in other States or in the United States?

Mr. Buttrick: I do not know, sir, that conditions exist in Massachusetts that are any different from conditions that exist in other States. That is something which is not particularly material at the present time. As I stated before, we took into consideration conditions which existed in Massachusetts, and if the gentleman from Brookline will take the trouble to take document No. 23, which emanates from the commission to compile information for this Convention, entitled "Absentee Voting", and read from page seven to the top of page nine down to what is called No. 3, I think that he will find therein plenty of argument why this resolution should pass, and I do not believe, sir, that this resolution should be encumbered with any amendments which might mean something that the resolution itself does not mean. The resolution is perfectly plain. There cannot be any ifs or ands about it. It provides for certain specific things, and those are the things that the committee felt, after hearing the entire evidence, — and in fact there was not any opposition to it presented at all, — after hearing the entire evidence the committee felt, and they feel now, that this resolution is the one that ought to be submitted to the people.

Mr. Kneil of Westfield: May I add in additional answer to the gentleman from Brookline that the committee has felt, at least I did, that this extraordinary right of absentee voting granted to soldiers and sailors is not a reward for patriotism and an incentive to performance of patriotic duty, but is to be granted on the sole ground

that they are citizens. They are regarded in the province of this measure and in the contemplation of the committee as persons qualified to vote who, in obedience to a great supreme obligation, are unavoidably absent from the Commonwealth and on their return will resume their duties; and meanwhile they are citizens, unavoidably, magnificently, heroically, splendidly absent from the Commonwealth, who have their rights of suffrage retained to them. We hope after an absence not too long prolonged they will come back to perform in person their duties to the State, municipality and the Nation where they left them off, when they went away to carry our banners on the fields of France. [Applause.]

Mr. O'Connell of Boston: I have just had a word with the gentleman from Everett (Mr. Newton), a member of the committee in charge of this proposed amendment, about the amendment I have suggested, and after consultation with him we both believe it would be better to withdraw my amendment at the present time. I should like unanimous consent to withdraw it, with the privilege of presenting it at the next meeting of the committee. In the meantime I should like to call the committee's attention to the Act of Congress passed on July 17th, 1862, which may be found in the Revised Statutes of the United States, Section 2166, on page 379, which covers the subject as I have considered it in my amendment.

Mr. Bryant of Milton: At the request of the gentleman in charge of this measure I once more ask leave to withdraw my amendment. Since I have heard the discussion I shall make that request.

The amendments moved by Mr. Herbert A. Kenny of Boston and by Mr. E. Philip Finn of Chelsea were severally rejected. The resolution was ordered to a second reading.

The resolution was ordered to a third reading Friday, September 21.

The committee on Form and Phraseology reported, Wednesday, September 26, the new draft cited at the beginning of the chapter.

Mr. Pillsbury of Wellesley: My attention is attracted to a slight verbal change here which I think, in the universal judgment, would improve the language of the resolution, and I call the attention of the committee, rather than the Convention, to it in the first instance, for an expression of their judgment. In the eighth line, "or upon any question to be voted on at such election," the phraseology is a little awkward, and I suggest that we strike out the words "to be voted on" and insert in place thereof the word "submitted," so that it shall read "the choice of any officer to be elected or upon any question submitted at such election." I move that amendment.

Mr. Buttrick of Lancaster: I should like to hear from the chairman of the committee on Form and Phraseology, who has had more experience in these matters than I have, whether or not he agrees with that suggestion.

Mr. Loring of Beverly: Not having had any time to consider it, I would say it seems to me that the change is the same in substance.

Mr. Anderson of Brookline: Growing out of the consideration I have just had to give to reports of my own committee on Public Affairs, I direct attention to the use of the term "General Court," and to the possible complication which will arise when we have the I. and R. I take the universal desire to have been that if there are

to be exceptions to the enacting of I. and R. legislation they ought to be stated in the I. and R. provision of the Constitution. It certainly would raise a serious question if this Convention should report a new method of legislating through the I. and R., and at the same time should provide new grants of legislative power expressly limiting them to the General Court or to the Legislature. I have heard, by the way, from some source that we were going to abandon the phrase "General Court," and substitute "Legislature." I therefore suggest that the committee consider whether instead of the words "General Court" we should not substitute "Commonwealth." "The Commonwealth shall have power to provide by law," or perhaps this: "The Commonwealth may by statute duly enacted provide, etc." I have had to meet that problem in the reports of my own committee and it seems to me it ought to be met generally.

Mr. Pillsbury: It does not make the slightest legal difference, in this or any other measure, whether "General Court" or "Legislature" is used, the fact being that in the present Constitution one is used about as often as the other. Both are used there as interchangeable and synonymous, as undoubtedly they are. But a committee of this Convention has reported in favor of striking out the words "General Court" wherever they occur in the Constitution and substituting the more modern and more accurate and appropriate term, — "Legislature." So that it would be permissible, to say the least, to use the word "Legislature" in this and all other measures in the present state of things, but it makes no legal difference. It is suggested to me that I move this amendment. I should prefer to leave it to the committee on Form and Phraseology, but for the sake of getting it before the Convention, I move the substitution of the word "Legislature" for the words "General Court."

Mr. Anderson: I wish the gentleman from Wellesley would state his view as to whether there ought to be limitation of this kind in case the I. and R. form of legislation goes through, — whether we should not get there a foundation for unnecessary doubt and very likely litigation, — whether all our legislation, or grant of power to the Legislature, ought not to be so phrased that any statute duly enacted shall be operative.

Mr. Pillsbury: Without time for consideration, Mr. President, for this is a new question to me, I see no present occasion for any further change in the pending resolution.

Mr. Loring: As I understand Mr. Anderson's suggestion, it is that the word "Commonwealth" be substituted for "General Court" in the first line of the resolution. That would be a change of substance and not a change merely of phraseology. That is, the power is now given to the General Court to provide by law for qualifying voters. Mr. Anderson's amendment goes farther. It would provide not only that the General Court might provide by law for voting, but that it might be done by the initiative and referendum, if such a measure passed, and that would be a change in the substance of the law and not in phraseology merely.

As for substituting "Legislature" for "General Court," if the Convention will remember that matter was laid on the table with the idea of waiting until we got further along in this Convention and found out whether the Constitution would be codified or not. If the

Constitution is to be codified then it would be well to change "General Court" to "Legislature" wherever it occurs. Otherwise, as "Legislature" occurs only once I believe in the Constitution at present, it would be better to keep "General Court," as that is used more often and generally in the Constitution at present, and we do not want to increase the variation. So unless the whole Constitution is codified the words "General Court" should remain as they are, but if the Constitution is codified then we should change this resolution as well as the others which refer to the "Legislature," which I suppose could be done by substituting, by separate amendments.

The amendment moved by Mr. Pillsbury of Wellesley, — to strike out the words "to be voted on", and insert in place thereof the word "submitted", — was adopted.

The amendment moved by the same gentleman, — to strike out the words "General Court", and insert in place thereof the word "Legislature", — was rejected.

Mr. McAnarney of Quincy (addressing Mr. Parker of Lancaster, who had spoken on the general proposition to submit to the people at the coming State election certain amendments which had been passed by the Convention): If it be, as it apparently is, the wish of this Convention that the absentee voting resolution as an emergency measure go to the people at the November election, and if that resolution be adopted by the people, and if in the coming January or spring the Legislature passes a law providing for absentee voting, do you not think it fair and right, and does it not ring true to your own sense of justice, that the men in the navy or in the army of our country who are fighting our fight should not be disenfranchised by reason of their sacrifice? Do you not think it right and fair and better to hold in abeyance these other amendments, and wait until these men can avail themselves of an absentee voting law, and then, sir, as voters of this Commonwealth, say whether they favor or oppose any of the proposed amendments?

Mr. Parker: I dare believe, sir, that there is no one of my colleagues in this Convention who holds in graver thought our duty and the duty of all the people of this Commonwealth to see to it that those of our kinsmen who are fellow-citizens, who are absent, offering their lives for our Commonwealth, for us, and for our Constitution, should have every consideration extended to them, and every safeguard of their suffrage and citizen rights. I say unquestionably, in answer to my friend's inquiry, sir, that no radical change in the body of our constitutional law should be acted upon by the people until these absent citizens of ours should have opportunity to express their will.

Sir, I would deplore it beyond any phrase of regret if these men who are absent, gone under the colors, under the pledge to sustain our law and Constitution, should return to find that for which they had gone forth to fight had been changed, impaired, weakened, or altered, in their absence. I would have them return to their same Commonwealth and to her institutions as they knew them when they went.

The measures which I would urge, or believe, rather, must be submitted to the people when finally acted upon here, are those which I view either as emergency measures, such as the absentee voting resolution clearly is, or those which I view rather as dealing with adminis-

trative functions of our law as distinct from the radical, fundamental, institutional principles of our law.

Mr. ANDERSON of Newton: Will you allow me to talk about the soldiers? I am anxious to talk about them. Nobody is more grateful to these men who are taking their lives in their hands to save Liberty than I am. The only reason I am here is because I believe in liberty, because I believe in religious liberty; and these men who fight for liberty and democracy have my most earnest and my strongest support. Now, the gentleman from Boston in the second division asked whether we would like to have our soldiers receive letters during all the next year, — I understood him, — from their relatives and friends on both sides of this question, showing how the State was all divided in reference to it, for another year. My friends, that is just what I do not want. I believe the soldiers do not want to see any such sort of a campaign through a whole year in this State; that if they had the right to vote to-day and vote here in this Convention they would say: "Put this thing on the ballot this fall and get through with it just as quickly as you can, because it is a treaty of peace conceived in the largest spirit." And so I ask the members of this Convention to vote for the amendment of my friend from Boston, — the distinguished District Attorney.

If, Mr. President, I have not at least evidently attempted fully and frankly to answer my friend's inquiry, I desire that he should further interrogate me.

Mr. MCANARNEY: I thank the gentleman for admitting everything that it seems to me he was in fact compelled to admit by virtue of his innate fairness, and admitting enough, it seems to me, to justify my position that these amendments should not be submitted to the voters at this time. [Applause.]

Mr. PARKER: I should be very glad if that be so, for I would subordinate every other consideration which I have urged to the sure protection of every suffrage right of our soldiers and seamen, our sons, — deserving far better of our Nation and Commonwealth than we who in our security here protect ourselves by the artillery of talk, while our friends may be dying under the projectiles of war. I yield everything, sir, to the proposition that the rights of our absentee citizens shall be preserved.

The new draft, as amended, was then passed to be engrossed, and on Friday, the 28th of September, the Convention voted to refer it to the people.

It was ratified and adopted by the people Tuesday, November 6, 1917, by a vote of 231,905 to 76,709.

XVIII.

COMPULSORY VOTING.

Mr. James T. Barrett of Cambridge presented the following resolution (No. 282):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have authority to provide for compulsory voting at elections.

The committee on Suffrage reported that the resolution ought NOT to be adopted.

When it was reached on the calendar Wednesday, July 10, 1918, it was rejected without debate.

On the following day the rejection of the measure was reconsidered, by a call of the yeas and nays, by a vote of 114 to 83. By another call of the yeas and nays, rejection, as had been recommended by the committee on Suffrage, was negatived, by a vote of 82 to 140; and, accordingly, the resolution was placed in the Orders of the Day for a second reading.

The resolution (No. 282) was read a second time Thursday, August 1.

Mr. Albert Bushnell Hart of Cambridge moved that the resolution (No. 282) be amended by adding at the end thereof the words ", but nothing in this article shall be deemed to authorize disfranchisement as a penalty for the omission to vote".

This amendment, as amended, was rejected.

Mr. Allan G. Buttrick of Lancaster moved that the above amendment be amended by inserting before the word "disfranchisement", the word "permanent".

This amendment was adopted, by a vote of 75 to 49.

Mr. Ezra W. Clark of Brockton moved that the resolution (No. 282) be amended by adding at the end thereof the words "or to encourage such voting".

This amendment was rejected.

Mr. Albert H. Washburn of Middleborough moved that the resolution be amended by adding at the end thereof the words ", but the right of secret voting shall be preserved".

This amendment was adopted.

The resolution, as amended, was ordered to a third reading Thursday, August 1, by a call of the yeas and nays, by a vote of 108 to 96.

It was read a third time and passed to be engrossed Tuesday, August 13, by a call of the yeas and nays, by a vote of 96 to 90.

The resolution was rejected Thursday, August 15, by a call of the yeas and nays, by a vote of 104 to 106.

At the next session, Tuesday, August 20, the Convention, by a vote of 127 to 67, reconsidered the vote by which the resolution had been rejected and, on

the recurring question, it was voted, by a call of the yeas and nays, by a vote of 148 to 96, to submit it to the people.

The proposal was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 134,138 to 128,403.

THE DEBATE.

Mr. SMITH of Provincetown: I move that the Convention reconsider its action taken yesterday in regard to document No. 282, with regard to compulsory voting, whereby it was rejected.

I am placed in rather an embarrassing position. This is the second time in my life that I have moved a reconsideration. I assure you now there is no sordid motive in this movement of mine to-day. I feel that this question has been agitated from one end of this State to the other. By whom? By the men whom you find at the polls every election day. That being the case, is there any reason why we should not give them an opportunity to say whether they will give the Legislature the power to incorporate into our Constitution a provision that the General Court shall have authority to provide for compulsory voting? Is there anything very dangerous about that? Are there any principles involved there that we cannot understand? I have been here, like many members of this Convention, and heard these questions that have been argued *pro* and *con* by the best talent that we have in this State; and when they got through the factions could not come together, and how do you suppose the laymen could tell how we should vote?

This question is one that is going out to the men who are doing your work on election day, to settle by Yes or No. The principle involved there is: Are they satisfied to do all the work that is being done on election days and let the slackers remain at home? We have had one important question settled here, as far as the Convention goes, and that is the initiative and referendum. Now, it is fair to presume that the men in the Convention, the members of the Convention in favor of the initiative and referendum, were honest.

It is fair to presume that they were honest and believed that the initiative and referendum would prove a great boon to this Commonwealth in settling a great many difficult problems. Do you suppose for one moment that those men who voted in favor of and worked for the initiative and referendum would believe in it for one minute unless they thought and were willing that all the voters should go to the polls and vote? They do not desire nor want to leave the questions to part of the voters. They want all these questions left to all of the voters. On the other hand, there are those who are opposing the initiative and referendum; I am sure I did, and will continue to. But, nevertheless, we want anything that is referred to the people referred to all the people and not a part. When the Convention is composed of these two factions I do not see how they can let a question of this kind go by and not give the electorate an opportunity to say whether they desire to have these people, or the habitual absentees from the polls, do their duty.

I hope this question will be reconsidered, and my purpose in making this motion in behalf of the people of this Commonwealth, on a question with which they are familiar, and on a question that has been

talked about from one end of the State to the other, so that they will think they have had some consideration. Yesterday when we got geared up to high speed and ran down through a page of the calendar, a lot of stuff was disposed of. Nobody could tell what was going on, really. Nobody realized that this important question, one that the people have sent in here, was being put out of court without any consideration whatever. If this reconsideration prevails the people of this Commonwealth will know that this matter has received a little attention. I do hope that we shall give them an opportunity to go on record in regard to this subject next fall. I do not see any reason why we should have any fear. Can there be any fear connected with this? These men who have managed the ship of State, who have run here every year, — I have been one of them, — why in heaven's name cannot we allow them to say whether you can call on these reserves and bring them up to the polls and do their part of the duty? There is nothing harmful in that matter. There is no boomerang coming out of it. You see the underlying principle is that every man shall do his duty, and his duty is not done until he goes, if he is registered, and votes.

I hope that the Convention now, this morning, in its lucid moments, will allow this matter to be reconsidered; and then my hopes reach a little further, — that it finally may find its resting place on the ballot next fall. [Applause.]

Mr. Knotts of Somerville: I think this matter ought to be reconsidered. Yesterday, sitting in my seat, I did not attempt to make any protest when this matter was in the process of being rejected, and the reason that I did not arise to say anything was because I noticed that there were four or five dissenters on the committee in regard to this matter. They said nothing. I do not know where these dissenters are to-day. That being the case, that these men dissented from the majority report of the committee and said nothing, I think it a wise thing that the Convention give us the opportunity for reconsideration.

Mr. Buttrick of Lancaster: There were two resolutions referred to the committee on Suffrage, Resolution No. 41 and Resolution No. 282. Resolution No. 41 was presented by the gentleman from Quincy who sits in the third division (Mr. McAnarney), Resolution No. 282 by the gentleman from Cambridge who sits in the fourth division (Mr. Barrett). These resolutions were given a hearing, and the arguments that were presented were so convincing to a minority of the committee on Suffrage that when the vote was taken, although the majority voted that the same ought to be rejected, there were several dissenters. When the matter came up yesterday I was not in the chamber, and if I had been I should have tried to have said a few words in favor of the resolution and against rejection. I dislike of course to ask reconsideration of any matter; perhaps it was my own fault that I was not here, — it probably was. I did not realize that the Convention would get into high gear so quickly. When it did it speeded up and got away from us. When I got back in here I found the matter had been disposed of and a lot of other matters with it.

I had hoped, sir, that the gentleman from Quincy who sits in the third division (Mr. McAnarney) would enlighten the House in regard to compulsory voting, as he enlightened the committee. It was a

most able presentation; in fact, I think the ablest presentation of any subject that was presented to our committee. And he did impress our committee to such an extent that quite a number of us felt that it was a matter that ought to be discussed carefully in the Convention. It is an important matter, — a very important matter, — one that ought to receive a great deal of consideration.

For that reason, sir, I rise at this time to ask the Convention to give us a reconsideration, that we may discuss the matter. Then if the Convention thinks that it ought not to pass and ought not to go on the ballot, well and good. We will accept that judgment, as we have to accept the judgment on the reconsideration.

Mr. O'Connell of Boston: May I ask the gentleman from Lancaster (Mr. Buttrick) a question before he yields? I should like to know if he considers the question of compulsory voting as important as the matter of equitable representation that was just refused reconsideration. It seems to me that the one that was refused reconsideration before is the basic principle, and this the subsidiary matter; and if the Convention refuses reconsideration of the principal matter, on which all voting is based, the other might very well be relegated in the same way. I want to know if in his judgment this question is not of less importance than the other.

Mr. Buttrick: I consider the question which is now before the Convention to be one of the most important matters that has been brought before this Convention during either of its sessions, — much more important, sir, than the question of whether or not the county commissioners shall apportion the representation or whether it shall be done by the Attorney-General and the Secretary of the Commonwealth.

Mr. Morrill of Haverhill: I have no objection to reconsideration provided it is for the purpose of discussing the merits of the resolution; but if the motive behind the demand is only that the advocates of the amendment may secure another opportunity to vote upon it, then I object to it. Under the present system many voters knowing, more or less consciously, that their votes probably will not result in representation for themselves, have become so discouraged at conditions that they refuse to come out and vote. I quote from a speech delivered in Congress on January 13, 1914, by Senator Owen and printed as United States Senate Document No. 359, Sixty-third Congress, second session. It refers to a State election in Massachusetts and is therefore very apt:

> At the State election in 1913 in Massachusetts Mr. Walsh, who was elected Governor, received only 183,267 votes, or less than 40 per cent of the total vote; and it may well have been that nearly all of the other 60 per cent preferred any one of the other candidates to Mr. Walsh. In three of the last four Boston city elections the same can be said of the successful candidate for mayor. In the autumn of 1909 a mayor of Salem, Massachusetts, was elected by 24 per cent of the voters, and in the opinion of a prominent Salem lawyer each and every one of the five unsuccessful candidates was, by a strong majority, preferred to the winner. The splitting of the vote which causes this injustice is frequently brought about by design. . . .
>
> The knowledge or the feeling that something is wrong with the system, combined, perhaps, with the other demands upon his time, keeps him (the voter) from registering or from voting. In mayoralty elections in large cities the actual vote cast probably does not average more than 70 per cent of the registered voters or 60 per cent of those qualified to register.
>
> It is clear, therefore, that our usual plurality system, first, may not elect the

candidate desired by a majority of those who vote; secondly, may discourage desirable candidacy; thirdly, may induce voters to express other than their real opinions; and, fourthly, discourages many from registering and voting.

The solution of the problem created by the voter who remains away from the polls lies not in punishing him but in giving him representation, even though he be of a minority. The adoption of the system known as proportional representation is, some of us believe, the solution for this problem, and also it offers a remedy for the gerrymandering evil. Proportional representation would give to each party or group of independent voters a voice in public affairs in exact ratio to the vote cast for its candidates. What is there that is wrong about that? Should not equality and justice prevail in a republic?

Here are some of the faults of the present system: Political parties in the Legislature are not represented in proportion to their voting strength in the State. Minorities in every district are absolutely disfranchised. Why should they, — what incentive have they to come out and vote? Even a party that polls a majority of the votes in the State is not sure of a majority in the Legislature, a fact that has been demonstrated repeatedly here in Massachusetts. A minority of the voters may secure a majority of the members, as it did in Great Britain in 1886, when the Home Rule question would have been settled had the Liberal party, — which indorsed that issue and cast more popular votes than any other party, — received the proportion of representatives to which the votes cast justly entitled it.

For members of the House of Commons the Liberals (Home Rule) polled 2,103,954 votes and secured but 283 seats, instead of 339 to which equitable representation would have entitled them. The Conservatives (Unionists) received 2,049,137 votes and obtained 387 seats, or 104 more seats than the majority party. Equitable representation would have given them but 331, or 8 less than the larger party. This is a world-wide problem. What chance for representation have Republicans in the South or Democrats in Vermont had?

Mr. Newton of Everett: Of all the motions that have been before this Convention for reconsideration, this, it seems to me, has the least merit. Yesterday when it was reached in the calendar it was passed. When it was reached in its order all the members, or nearly all of them, were here in their seats. The parties who put in Nos. 41 and 282 were both in their seats. They did not see fit to discuss it. They evidently were satisfied with the report of the committee. And this Convention of course will be satisfied as to the merits of the case when they realize that, no matter whether we give constitutional power to the Legislature or not to compel people to go to the polls, we cannot compel them to vote. On the merits of the case it seemed without merit to the committee. On the merits of reconsideration it must seem without merit to this Convention, when they consider that either one of these gentlemen had an opportunity yesterday, if he saw fit, to discuss it.

Mr. Aylward of Cambridge: I am very much surprised at my friend from Lancaster (Mr. Buttrick) making this motion.

Mr. Buttrick: I desire to call the attention of the member from Cambridge (Mr. Aylward) to the fact that I did not make the motion to reconsider. Had the motion not been made by my friend from

Provincetown (Mr. Smith), I probably would not have made it; but inasmuch as it was made, I saw fit to support it.

Mr. AYLWARD: I acknowledge my error. I am surprised that he supported this motion, because if I am correctly informed he is one of the men in this Convention who are very much displeased at the long delay, or the long time that this Convention is occupying. One reason he gave for reconsideration; namely, that the gentleman from Quincy (Mr. McAnarney) was vitally interested in this matter and had made an able presentation of the question before the committee. I can reinforce what the gentleman from Everett (Mr. Newton) has said, not only was the gentleman from Quincy (Mr. McAnarney) in his seat yesterday and at various times when this measure was passed by him up to yesterday, but he had ceased to take that interest in it which would provoke a discussion, feeling that although he had the same views at present that he expressed before the committee, there was no utility in presenting them here and further delaying the work of the Convention.

Mr. WEBSTER of Haverhill: As the member in charge of this matter I wish to say that if it is the sense of the Convention that the sentiment in favor of this matter deserves discussion I personally have no objection. I say this in order that it may not be thought that I am trying to escape the toil of debate upon the matter. Personally the proposition is repugnant to me. The eloquent gentleman from Quincy (Mr. McAnarney), when he came before our committee, in his very opening words said that one's attitude toward this question would depend upon whether he regarded the exercise of the franchise as a duty or a privilege. I, sir, most certainly, regard it as a privilege, one bought with the blood of beloved fathers and safeguarded by the wisdom of generations, a privilege into which we enter as the climax of our citizenship, and which is withdrawn from the criminal. I have not accustomed myself, sir, to personify the franchise as a strong man armed, "the front of Mars, with horrid, bristling crest," swaying the sword of compulsion above our cowering heads. Rather would I conceive its apotheosis as a gracious woman akin to that goddess whose features are made familiar by our coinage and like her for whose sake Ilion crumbled in lamented fires, clothed with beauty as with a garment. Heaven forbid that she should be compelled to the rude embraces of the undeserving. [Laughter.] I certainly feel strongly in a personal way upon this matter. Nevertheless, if any member feels that the cloture has been applied to him, I for one will acquiesce cheerfully in the motion to reconsider. [Applause.]

Mr. CLARK of Brockton: I arise primarily to say that my taste is quite different from that of the honorable delegate from Haverhill (Mr. Webster), who has just taken his seat. I believe there is merit in his proposition, perhaps not recognized fully by any of us as yet, and I believe it went into the discard yesterday chiefly from lack of consideration, by that tidal wave that swept over the docket and carried with it something like a dozen of these resolutions. Now, under the present conditions frequently not more than 25 to 30 per cent of the legal voters in any voting precinct attend the primaries. What is the result? It is this: That the man with an abundance of money at his command gets out two-thirds of that 25 or 30 per cent, and the

candidate equally worthy, equally able and perhaps equally honest, is left, because he has not the means to hire the automobiles to send his agents throughout the district and gather in that 25 or 30 per cent who will go out. It is a disadvantage to the man of small means. Now, I am not quite in favor of this resolution as it reads, but I hope that reconsideration will prevail, that this Convention may consider a proposition that interests large numbers of the people of this Commonwealth who have looked forward to this Convention that it might do something for them. It might be amended something after the following language: That it is expedient that the Constitution of the Commonwealth be so amended as to require or encourage the voters, — leaving a latitude with the Legislature. I believe this proposition is worthy of consideration, and when properly modified that it should go into the Constitution of the Commonwealth of Massachusetts. I most sincerely hope and trust that this Convention will vote at this time to reconsider, instead of throwing it absolutely into the discard.

Mr. Morrill: When I concluded my remarks I was quoting at random from the publication issued by the Massachusetts Proportional Representation League, and to show further why people refrain from voting I will quote other facts from it:

> In many districts it is a foregone conclusion that the Republican candidate will win, and therefore Democrats have little satisfaction in voting. In others the success of the Democratic candidate is equally certain, and Republican voters are discouraged in their turn. As to the smaller parties, there is very seldom a chance of electing their candidates in any district.
>
> What inducement have they to come out in great numbers?
>
> This mainly accounts for the widespread lack of interest in elections, and for the large number of voters who mark only the head of the ticket.

To show other inequalities that exist in Massachusetts, I will quote from the 1912 presidential vote. But first permit me to say that the Republicans, with less than 36 per cent of the average vote cast for the State ticket that year, were placed in power in the Legislature with an overwhelming but insecure and uncourageous majority of the 1913 Legislature. In the House of Representatives of that year the Republicans had 38 more members than all the other parties added together, yet they were the second party as shown by the votes cast, either for President, for Governor or for the State ticket as a whole. For President the Democrats received 274,315 votes, the Republicans 156,139, the Progressives 142,375, and yet this third party, the Progressives, obtained but five members of the House, while the Republicans, with less than 14,000 more votes than the Progressives had, obtained 139 members. Gerrymandering in the past, together with basing representation upon small districts, — rather than from large districts or from the State at large, — furnishes the reason.

Mr. Linke of West Springfield: I rise to a point of order.

The President: The member will state his point of order.

Mr. Linke: My point of order is that we are supposed to be talking on reconsideration of the question, and not proportional representation.

The President: The member will confine his remarks to the matter under consideration. The question is on reconsideration.

Mr. Morrill: I am showing why we should not reconsider this resolution, because if we should I do not know but there might be a chance to pass it. I am showing why the people stay away from the polls, people who we are all agreed we should like to see express their opinions. But none of us is desirous that the large number of citizens who possess no political opinions should be forced to the polls through fear of punishment and thus complicate to infinitude a situation already complicated and menacing. We want an expression of all the intelligent opinion we can get; the less of the unintelligent opinion we get the better will be our situation and the easier will be the solution of those of our problems which can be solved by political action. At present, representation is based on arbitrary geographical lines rather than upon common opinions of government. Voters having a common point of view cannot now unite successfully. They find that out; at least some of them are conscious of it and others are not, but all realize that there is some reason for their vote being rendered ineffective, — that there is some reason why, after going to the polls year after year, they repeatedly fail to obtain representation. Becoming discouraged they say: "What is the use of voting?" Some become anarchists, some become syndicalists, some adopt various other ideas; but the plain fact is that all have lost faith in political government. We desire to restore that confidence, to the end that this government shall be really one of, for and by the people.

The rejection of the resolution was reconsidered, by a call of the yeas and nays, by a vote of 114 to 83.

Mr. Barrett of Cambridge: I move that the debate on this measure be postponed until Tuesday next, and that it be placed first in the Orders of the Day.

Mr. Luce of Waltham: I feel like a ditto mark. The necessity of repeating arguments, however, seems to be unavoidable. We started out to cross every bridge as we came to it. As a result we have gone through our program with unprecedented rapidity, and yet I think with equal justice and without hardship to anybody. I trust we shall continue with this policy.

Mr. Smith of Provincetown: I think it is unwise to postpone action on this matter now. There is not a great deal more to be said on it, unless they want to continue the length of this Convention. Every member of the Convention has got his mind made up. Let us go to it now and settle it. I hope postponement will not prevail.

Mr. Barrett: My reason for asking postponement is that some members of the Convention, who are very much interested in this measure, are unavoidably absent. One in particular said he desired to have this postponed until Monday, and it was at his request solely that I made the motion. The matter has not been discussed, as the previous speaker has said, and I believe that the proper time will be next Tuesday, when members will have a chance to deliberate and become more conversant with its merits. Two members of the committee on Suffrage who have dissented from the report of the committee are unavoidably absent today, and that is the reason I made the motion to postpone until Tuesday next. I hope it will prevail.

The Convention refused, by a vote of 39 to 96, to postpone the consideration of the measure.

Mr. Linke of West Springfield: I believe the purpose of the maker of the motion to reconsider on this question has been or, in a short time, will be fully satisfied, and with that in mind I move the previous question.

Mr. Buttrick of Lancaster: I dislike to take up the time of the Convention in any of these matters; but inasmuch as the Convention, by a very large majority, has reconsidered its action of yesterday, and inasmuch as some of the members of this Convention consider this an important matter, it would seem to be unwise at this time to order the previous question. I shall not take up the time of the Convention in a long discussion of this matter. What I have to say in relation to its merits can be said in a very few minutes; but there are several other men here who I understand desire to talk upon the subject, and if the previous question is ordered it seems to me that it will be a little bit unfair.

Mr. Knotts of Somerville: I simply stand amazed in this Convention that any member of this Convention would take the floor after we have secured a reconsideration and make that motion. All I have to say further is that while I might admire the delegate's nerve I have very little respect for his judgment.

Mr. Webster of Haverhill: I certainly hope that the previous question will not carry at this time. After having taken the time to reconsider this, let us have whatever discussion members may feel to be necessary to clear the situation, and understand each other's views before we take action.

The Convention refused to order the main question.

Mr. Smith of Provincetown: I do not propose to tire this body with any lengthy remarks. I expect the subject now under consideration has been talked over. I know it has outside the Convention, and now without having any preliminaries we will go right at it and try to strike the nail right on the head.

The gentleman in this division, — I think he is chairman of the committee on Suffrage, — when he made the statement to this Convention that they had ample opportunity to consider it, and that they were all in here when this question was up yesterday, is absolutely wrong; and if he has come to his conclusion in regard to the merits of compulsory voting by the same reasoning that he made his argument, why, I think compulsory voting has got a help instead of a set-back. When he puts up this argument: How are you going to have them all vote? — why, that was brought up here yesterday out in the reading-room. It is that same old saw: You can lead a horse to water, but you cannot make him drink. Of course you cannot make him drink; but he knows, and I know, and any other man who knows anything about animals knows that if you lead him the next time and the next time, finally he will drink your tub dry. He will frighten you, he will drink so much. And so it is with a man going into the booth. He will not vote, but he will come out and he will feel sheepish. He will look around. He will talk with other men. He will find that they are familiar with the questions and the matters and the men that are going to be voted on. He will scratch his head and wonder what is the matter. What will be the matter? He has not voted. He will go again, and he will come out and will feel worse than he did the

first time. Finally, the third time and last, he will find it is impossible for a man to stultify his conscience to such a degree that he cannot mingle with the public and indulge in conversation with them because he has not done his duty; and that man will become the most enthusiastic man for this very same principle of compulsory voting, and the only thing that he will feel bad about then will be that there are not more opportunities to vote, — the same as the horse will drink more water.

This is an educational matter. Let us use righteous judgment. Is there any member of this Convention who has any duty to perform who is not going to give it some thought, is not going to reason and think it over? Of course there is not. So you will find that when these men find it obligatory on them to go and vote they are going to give this question thought, and they will study it over, and they will talk it over in the market-places and in the grocery stores and with the folks at home, and the result is they get more light and are better able to vote. How is it with the younger men who are coming on here, — thousands and thousands of them? When they are put on the registered list what will they do? They will come on more familiar than you and I were when we went on. Why? Because they know that they are going to be obliged to vote.

The gentleman in the first division tells about swinging the sword around, driving men into the booth to vote. We do not hesitate in times of war to send men over across to fight our battles, and they go. We have passed an act in the Legislature that made it impossible mostly, unless a man put up a pretty reasonable excuse, for him to be excused on a jury. No revolver and no sword there, — nothing of the kind. They respect it, and by so doing I think the lawyers in this body will bear me out that the personnel of the jury has been very much improved by that act. I know in our own town when any active business man's name was on the jury list you would find him at our annual town-meeting, and when the jury list was read over he would be the first man to get up and ask to be excused, and he always would be excused. Then there would be some other fellow get up and desire to have his name put on the jury list, and it would go on. You would not take his judgment on a yellow dog, but that was the kind of men a good many times that went on your juries. By making it compulsory, however, for men to go on juries, your juries have been improved. How is it about the law that prohibits people from spitting on a sidewalk? They live up to it. Now and then one man thoughtlessly breaks the law, or some do it intentionally, but there is no revolver and no sword, no necessity of it. If a man is living up to the law the best he knows how, and is willing to do it, that is all there is to it, and that is all there will be in this case.

We have our corrupt practice act. It has been altered, amended, changed, cut off, elongated, and everything has been done to it that could be done, and now it is not satisfactory to anybody, more especially the man who is running for office. I believe that if compulsory voting is put onto our statute-books in this State it will reduce corrupt practices to the minimum. Any man who has made it a business for years and years to be at the polls on election day knows what it means when they are getting down toward the last hour. You go and look over the voting list, and you see three or four or half a dozen

names. You say to yourself: "Well, they are not here," and you pull out and go after them. You go to the home. Well, they are on the roof shingling, they are on the beach, they are out in the garden, or they are somewhere. Well, you will find them, and after you find them the first thing you have got to do is to commend them upon what they are doing, — stealing another man's cucumbers, or something else. When you think you have got them into a proper frame of mind you will pop the question. "No, I ain't going." "Why not?" After arguing with them for a time you may get them to go and you may not. But you go home that night when you get through, whether your party wins or whether it loses, and you think: "Well, I never will get into this scrape another election day;" but you do. The same men go year after year and do this work, while the slackers sit right back and laugh and say they are not interested.

And there is another proposition. You all have heard it. I have heard it. A man finds some fault with the administration, with the Governor or some lower official, and says: "I don't care anything about him. I did not vote for him. He is not my Governor." "He is not my Senator." "He is not my Representative." Now, that is not so. He is every man's Governor in the State. He is every man's Senator or Representative. Do not give the voter an opportunity to say that, but let him know that by his remaining at home and habitually keeping away from the polls he acquiesces in the action of those who do vote, and the consequence is the men who are elected are his Governors. They are all our own Governors.

I feel as if there were a great many here who wanted to speak on this question, and I hope their speeches will be brief and be right to the point. Then we can settle this question, which will be satisfactory to the public. I am very much pleased to think this Convention has reconsidered this proposition, if for no other purpose than that the people of this Commonwealth can see that there is one question that has come right direct from them. While you may call it simple and plain and a minor question, I think it is one of the most important questions we have, that men should go and do their duty, because they are the beginning, they are the embryo, of all law, and that is where this proposition should receive close attention. I am glad we have had a roll-call, because I want it to go down, — not now, but handed down to generations, — so that when the children of the parents, and their children, look back on the men of this Convention they can say: "My grandfather did so and so. He voted for" or "He did not vote for compulsory voting. That was in the time when they thought that every man should do his duty."

I hope that this resolution will be adopted.

Mr. KNOTTS of Somerville: I greatly appreciate the action of the Convention in voting to reconsider this resolution. The thing that ought to be pointed out here is a thing with which this body is abundantly familiar, a situation that now exists in every community upon election day. Had I thought that this resolution would be reconsidered this morning, it would have been easy to have brought here ample figures which would have been comprehensive, touching all of the various communities of this State, which would bring forcibly before us the vast number of stay-at-homes on the days of election. I am sure that every member of this Convention has knowledge of this, even having

taken part in the attempt to arouse the public interest in an election. I have a very brilliant friend who has arisen again and again in the body to which he belongs and said: "It is not *ig*norance that bothers me, it is *ignor*ance," and again and again upon the day of election vast numbers of our citizens simply ignore the day of election; they ignore their duty.

I cannot agree with that eloquent member in the first division (Mr. Webster), — and we are sorry in this part of the Chamber that we cannot always see the brilliant sparks that rise from his literary anvil, — that voting is a mere privilege. I have been referring to it as a duty.

I desire, also, to point out the great opportunity that exists for corrupt practices in elections. Have any of you gentlemen ever taken an automobile when you were running for election to office, or sent your friends with automobiles, to bring to the polls the stay-at-homes? Is it not true that the man who can provide the largest number of friends and supporters and automobiles and carriages has a great advantage? It seems to me that there is opportunity for a vast amount of corruption as this matter now stands in regard to voting.

I now want to place this whole debate upon what I conceive to be a fundamental principle, and where it belongs. In a democracy like ours, where men on all sides are appropriating the blessings of democracy, accepting them as though they were matters of fact to which they are entitled. men who are utterly oblivious of how those blessings ever were achieved and secured ought to accept also the responsibilities of democracy. I believe this to be the fundamental principle upon which this whole matter rests. I am utterly opposed to that class of citizens in our community who live in their good homes upon our good streets, take advantage of all of our institutions, send their children to our schools, accept the privileges of our libraries, accept the protection of the police force and of the fire department, live there snugly and in comfort and appropriate all of the blessings of the community, and yet never lift their finger, never contribute so much as a hair's weight to carry the responsibilities of the community. I believe, gentlemen, that there ought to be something done to make men who accept the blessings of democracy also assume the burdens of democracy, and that is why I am in favor of compulsory voting.

I have asked one or two gentlemen here to tell me what their real opposition to this compulsory measure is, and they have said to me: "Too many men would vote who are unintelligent, and who do not understand the issues, and who do not know what they are voting for." Now, gentlemen, I want to turn that about and look at it from the practical point of view of a man who is running for office. What does he say? Does he make any objections to an unintelligent voter? A man who stands now as a candidate for public office, — whoever heard of him rising anywhere and saying that certain men ought not to vote because they were unintelligent? What does he do? He says: "Get every last man out, no matter how ignorant he is, no matter what kind of a character he is." That is the practical point of view of a man who is running for public office.

And then, again, who are the voters who stay away from the polls, and who are the people who can be brought most easily to the polls? If you refer to the statistics you will find that it is the Back Bay

of Boston that refuses to come out to the polls, and it is not what some of you would call ignorant men in other portions of the city. The politicians and the candidates for office get every last ignorant voter out, and they get him out easily; but it is a difficult proposition to get some enlightened man, some educated man, some man with a high intelligence, with a cultivated, developed mind, who is down here in Boston busy in his office on election day. It is rather a difficult thing even for the candidate or his friends to approach him to get him to come out and vote.

I want to say, also, in regard to the education of the voters, that if somehow by such an arrangement as this resolution provides we could make men feel the burden and the duty and the responsibility of voting, not holding the franchise as a mere privilege, I believe that soon you would discover this to be a process of education.

I am interested in this measure, feeling that it ought to pass, fundamentally upon that principle that I have laid down, that citizens in the community who accept the blessings of the community, if they will not accept also the burdens of the community, ought to be made to accept them.

Mr. Coombs of Worcester: I merely wish to ask the last speaker whether, under the beneficent workings of the initiative and referendum, of which I believe he was a devoted adherent, the question of compulsory education of the voter will not be almost settled by itself.

Mr. Knotts: I think that I was as consistent as I could be, but I think also, if the gentleman remembers, that I voted first with one of the partizans on that matter, and then with another, until I had both sides vexed. But it seems to me that here we ought not in any sense to attempt to evade our responsibility simply because we have decided to present some other matter to the voters of this State to decide.

Mr. Barrett of Cambridge: As the mover of the resolution under discussion I wish to speak briefly, because I realize that the temper of the Convention is somewhat opposed, — and justly so, — to long speeches.

The matter of compulsory voting is nothing new in Massachusetts; in fact, it has been debated in every State in the Union. I believe one of the western States, namely, North Dakota, has adopted compulsory voting and written the same into the State Constitution, giving the Legislature of the State power to pass laws governing compulsory voting. The State Legislature I believe has not taken any action up to the present. I believe that in the State of Missouri Kansas City had a compulsory voting clause in its charter, which has been ruled illegal by the courts of that State. Be that as it may, I believe the resolution has a great deal of merit. There is nothing more demoralizing than our present election system and condition. I presume every man within my hearing in the Convention at some period of time has supported candidates for election, and we all realize in cities, particularly those cities having a population of 20,000 or more, the condition of our elections. Let a man have the brains and ability of the present chief executive of this Nation, it would be impossible for him to serve in any capacity in a municipality with a population of 25,000 or more without expending a vast amount of money. In the first place, you have to employ paid assistants. You have to employ checkers. You have to employ canvassers going from door to door to see that John

Smith or John Brown has exercised the function of citizenship that he should be compelled to exercise. You have the political ward heeler watching and waiting for his stipulated price to vote. I have seen in a city not three miles from here, at the close of an election, twenty-five men lining up and telling the candidates for office that they absolutely refused to exercise their suffrage unless they were paid so much for their vote, and I have no doubt that the candidates who were successful on that occasion bought those votes at the price stated. On the other hand, you have the idle rich. They think it is beneath their dignity to go to the polls on election day and exercise their right of franchise, and those are the very people who most severely criticize and oftentimes denounce the present condition of government under which we are living. I believe that the Legislature of our State ought to get permission to change present conditions. That is simply what this resolution asks for. It certainly is a step in the right direction, particularly in this period when American citizenship amounts to so much and should amount to so much. The man is not fit to be called an American who on election day thinks himself too big a man or too little a man to exercise his right as a citizen. In view of those facts and bearing in mind that I said at the commencement of my remarks that I wanted to be brief, I believe that this measure has merit, and I hope that under these conditions the Convention in its wisdom will reverse the report of the committee and adopt this measure, which I had the honor of presenting to this Convention.

Mr. McANARNEY of Quincy: I had supposed this matter ended yesterday. It is only by chance that I happened to be here this morning. Now that I am here I will state my position on this resolution.

To my mind, whether a man is in favor of a compulsory voting law depends upon how he views the opportunity to vote, — conferred by law upon certain members of the community. The people of this State, to my mind, are divided into two well-defined groups. In one group are the legal voters, — for convenience I will refer to them as the voting class or legal voters; in the other the non-voting population. The non-voting population comprise the alien, the adult female, the minors of both sexes, the males who, by reason of mental or physical infirmities, are incapacitated from becoming legal voters, and the disfranchised; they are the great and overwhelming majority of the people of this Commonwealth; the voting class, the legal voters, — the minority. Now what duty, if any, do members of the voting class owe to the non-voting people of this Commonwealth? If they owe them no duty, the matter is ended, there is no occasion for any compulsory voting law, because if they owe the non-voting population no duty, the fact they may vote is a mere personal matter, a personal privilege, which a man may exercise or not just as the whim seizes or as convenience dictates. A man who takes that view of the opportunity to vote afforded to him by the law will not be in favor of a compulsory voting law, because it might interfere with that which he regards as a purely personal privilege. But if, on the other hand, sir, those who are set apart by the law as the sole people of this Commonwealth who may vote, to whom have been granted the duty of speaking and acting for, not only themselves, but also for the other,

the non-voting class, — if such owe to those people who are unable by virtue of our law to vote for themselves a duty, the duty of voting, and voting for their best interest, then it seems to me there can be no objection on the part of any one to having a compulsory voting law which will make the voters discharge their duty, or penalize them for failing to do so. To use a legal term, can it not be said that the legal voters of this Commonwealth are the trustees for the non-voting population of the Commonwealth?

What are the men who are legal voters of the Commonwealth to the citizens who cannot vote? What are the legal voters other than the trustees of the political rights of all the people? Can any man seriously contend at this day that the opportunity of voting, which some members of the community have, is a mere personal privilege? Let us analyze that proposition. Take any man of this Convention who is the head of a family. Let us assume he has a wife and young sons and daughters. Election day arrives. The opportunity is presented for that man to vote. By voting, in effect, he passes upon the laws. He is dealing with the laws of the Commonwealth. His vote, if the initiative and referendum be passed, may be cast directly upon proposed laws having to do with the health, the life and the liberty of that wife and those children. If the initiative and referendum should not be adopted, or even if it be adopted, his vote at least will have this effect: It will have the effect of either tending to elect or defeat the men who, in their turn, will have an opportunity to pass upon laws dealing with the life, health and happiness of that wife and those children. Tell me, you men, do you mean that the head of such a family on election day owes no duty to that wife or those children? Can it be said of him in all seriousness and with a clear conscience, by any man, that when he leaves the threshold of his home on the morning of election day he may throw away and disregard the obligation he owes to his wife and children to go to the polls and vote upon such laws, or for or against those who will have the making of them in their keeping? Can he disregard that obligation and go and attend to his business? Is he not clothed before man and God with the responsibility of a trustee, and is not the duty upon him to go to the polls and cast his ballot, according to his conscience, for the well-being, the safety and happiness of that home and, extending it further, the well-being, safety and happiness of his State and country? Is there any question in the mind of any sane man who analyzes the situation as to the soundness of that proposition? If there is, if my statement does not upon its own face carry sufficient weight to prove it, then there is no occasion for our having upon our books any corrupt practice act, there is no occasion for all those laws for the protection of the sanctity of the ballot. There is no sanctity in the ballot if it is not something which is sacred because of the effect its exercise may have upon the people; and if it is something so sacred that it needs safeguarding and protecting, then it is something which is so sacred it should not be neglected. Like a religious obligation it should be observed, and the necessity for its observance impressed on all whose duty it may be to exercise it. It seems to me that proposition is so clear it does not need extended argument to develop it.

In my advocacy of this proposition I have been confronted with this argument, a practical argument. I doubt if any man has spoken

to me upon it who has not run in the old saying, — we all are familiar with it, — "You can lead a horse to the trough, but you cannot make it drink." Yes, you can lead a horse to the trough, but you cannot make it drink. What is the effect of that saying? It is this: You can command a man to do a thing, but you cannot make him do it. That is what I understand it means as applicable to the question under discussion. Let us analyze that for a moment, and see where it leads us. Let us see whether it has any merit in it. You can pass laws commanding men to do things, but you cannot make them do them. As one member of the committee on Suffrage said to me: "You lower the dignity of that great and priceless American privilege of voting when you make it a matter of compulsion and say a man must vote." The two arguments go together. They dovetail. One is the natural outgrowth of the other. Well, the wisest of all minds laid down the first general laws governing mankind. I have yet to learn the Ten Commandments lose anything of their dignity or virtue, lose anything of their merit, because the great maker of all laws, He who ordained them, said "Thou shalt" on the one hand, and on the other "Thou shalt not", or that virtue loses any of its ennobling qualities because under the moral law its observance is necessary to salvation. [Applause.]

Mr. Sawyer of Ware: It seems to me the gentleman is arguing a good deal on theoretical and general matters, whereas on this matter of compulsory voting it is a condition, not a theory, that confronts us. The committee on Election Laws in the Legislature for many years has had this problem, and we always have found this: That if we are going to have compulsory voting, then the secrecy of the ballot must go; that we cannot enforce compulsory voting in any way and maintain secrecy of the ballot. If the gentleman who is speaking can give us something we have been unable to get for several years in the Legislature, I would be glad to have him tell us how we can get a man to vote, and have knowledge of his voting, so that we may punish him if he does not vote, and at the same time maintain secrecy of the ballot.

Mr. McAnarney: If the gentleman is in a position to assure me a majority of those who are listening to me this morning will vote in favor of a compulsory voting law if the details are worked out, my argument will be shortened.

Mr. Walker of Brookline: I ask for information the opinion of the gentleman who is speaking on this matter. Has not the General Court authority now, without this constitutional amendment, to pass a compulsory voting law?

Mr. McAnarney: It is my belief that there is a grave constitutional question, grave doubt, as to whether the Legislature to-day has the constitutional right to pass a compulsory voting law with appropriate penalties for its violation. It is for that reason that I appeared before the committee and am urging now the adoption of this amendment.

Mr. Walker: May I ask the gentleman whether the question ever has been tried and decided, or on what grounds he thinks the General Court has not the power?

Mr. McAnarney: As to whether it ever has been tried and decided, my information leads me to believe the question never has been passed

upon by any court of last resort in this Nation, except in the case that arose some years ago in the State of Missouri, with which we all are familiar, because it is cited at some length in the pamphlet on compulsory voting given to us by the commission. If we were on the subject of an elective judiciary I would talk about that case, because the opinion in that case reads like a campaign document. That is all it amounts to. It has nothing to do with the legal merits of the question before the court. In my opinion there is doubt as to the power of the Legislature to pass a law which will make it compulsory that a man shall either vote or forfeit the right to vote. While there is that doubt, and it has been voiced in this Commonwealth for years, and the Legislature in the face of it never has passed a compulsory law, it seems to me the time is opportune now to pass a constitutional amendment which will remove that doubt.

The matter the gentleman from Ware (Mr. Sawyer) called to my attention I will deal with before I conclude what I have to say, because it seems to me so simple and clear. To be perfectly frank with the Convention, I cannot understand why the Legislatures in the past have been unable to find any practical method of enforcing such a law, — if that was the only objection standing in the way of adopting the law.

The gentleman's remarks interrupted me in the trend of my argument. It compels me to go back to my original line of argument, because of the fact I am advised there are many in this Convention who look upon this proposition as un-American, and, as I said and will repeat, beneath the dignity of the American voting privilege. I want to call your attention to this fact, that whoever hesitates to vote for this matter because he thinks it is putting the shackles on his conscience is laboring under a misapprehension. As a matter of fact, when you come to analyze it, there is to-day too little, or, rather, there is at this moment less of the real freedom those men are talking about in the history of this world at this moment than there ever has been before, and in my opinion there is more freedom at this moment in the world than there ever will be again. I mean freedom from law.

You say it will be un-American and lower the dignity of our American manhood to have a compulsory voting law. It seems to me that is not so. As a matter of fact, we all know, the lawyers of this Convention know, that there is very little freedom in one sense, I mean freedom without the restraint of the law. There is plenty of freedom under the law. Take, for instance, this test. Men are compelled to-day to render their Commonwealth services as jurors. Are not the Legislatures frequently required to legislate for the purpose of preventing men shirking their responsible duties as members of the community in attending the courts and answering as jurors and render that public duty to the Commonwealth? And are not those men compelled to render that duty to the Commonwealth under a compulsory law? Does a compulsory jury service law lower the dignity of that service or impair its value? Are not men compelled to attend court and testify to the truth under a compulsory law? I appeal to you, is there any question in your minds that a witness who goes upon the stand under the commanding force of a subpœna issued by a magistrate of this Commonwealth is less likely to tell the truth than he

who volunteers his services as an interested party in favor of the plaintiff or the defendant?

Mr. Herbert A. Kenny of Boston: Would compulsory voting in any way eliminate the casting of a blank ballot? Does my brother consider a blank ballot a vote?

Mr. McAnarney: I will deal with that when I deal with the request made by the gentleman from Ware (Mr. Sawyer). I want first to clear up any confusion, if there be any, in the minds of the delegates as to the danger of passing this law, of this casting any stigma upon the voting right of the citizens of this Commonwealth.

Another practical illustration. We have it all over the country to-day. We have to-day a military conscription law in full force and effect in this country. Now, let me apply the test that law gives to the compulsory voting law. If it were wise to have a conscription law in order to carry the youth of this country into this world war, and as to the wisdom of that no man can doubt, let me ask the delegates to this Convention, when the boys of Massachusetts "go over the top" do you believe for one minute that the German foes who may be waiting for them can tell which is the volunteer and which is the conscript? They cannot. Compulsory service does not lower the dignity of that service. Compulsory conscription, compulsory military service, does not lower the dignity of the military service. When those boys "go over the top" the volunteer and the conscript are the same, fired by the same spirit and animated by the same intentions. And when men serve on the jury it makes no difference, it does not take from the quality of their service, because they are compelled to serve as jurors.

When men testify in court under the sanctity of their oath it makes no difference in the quality of their testimony that they are compelled to respond to a summons of the court, a compulsory law. Why, then, should it make any difference in the quality of the service that you would render to your State, to your family, and to yourself, if you were compelled to respond to a compulsory voting law? So many arguments could be advanced along that line it seems to me many of them, all of them, perhaps, are obvious to every delegate. I will not continue further on that branch of what I have to say.

Let me come next to the practical operation of the proposition. It has been suggested that you cannot make it practicable. Let us see if that be so. Now, the best test of all is experience.

Where has the compulsory voting law been tried, and where tried has it lived up to the hopes and expectations of those who caused its adoption? The pamphlet every delegate has upon compulsory voting, bulletin No. 24, gives you all the information you need upon that subject, and I will not take your time by calling your attention to details of it. There it sets forth the different countries, — Australia, Belgium, Spain, the cantons of Switzerland, — where it has been adopted, and in each and every one of these countries it has resulted in increasing the percentage of the voters who go to the polls and vote.

You cannot make a man cast a ballot for Jones or Smith for Governor of this Commonwealth by merely making him go to the polls and cast a ballot. He may cast, if he wishes, a blank ballot. Yes, that is absolutely true. There is no occasion for arguing against that proposition. You can compel him to go to the polls. You can compel

him to cast a ballot, or you can provide penalties under which he will labor if he does not do so. There is no question as to that. But you can say to a man: "You have the right to vote; if you see fit to refuse to avail yourself of that right for one, two or three years, then the right to vote is taken away from you. You no longer are worthy of that right. If you don't think enough of it to respond to the call of your Commonwealth to vote, then your right to vote is canceled and you stand disfranchised." Do you believe that penalty is not a penalty which will carry weight in the mind of every sensible voter of this Commonwealth? Would I, as the head of a family, when election day came, want to go out of my door and say to my family: "I cannot vote to-day. I am disfranchised. I don't stand on an equality with my neighbor. He can exercise this great right or duty of voting, but I cannot. I am an outcast, a political outcast. I have no right to vote." Do you think that any sensitive, sensible or sane man would put himself voluntarily where in the eyes of his own family, not alone of the Commonwealth, he would stand branded with that stigma of un-Americanism and lack of civic worth? No, we know, we know that men are sensitive to public opinion and to the opinion of those who are near and dear to them; and one of the most effective spurs you can place upon any man, in my opinion, is to put him where he will have to face that great question as to why he is different from other men, less worthy, in the eyes of those to whose opinions he looks for approval.

Now as to the secrecy of the ballot. I wish the gentleman who put that question to me would himself tell me how it invades the secrecy of the ballot to know that a man voted on any given day. What does that disclose as to his vote, to know that he cast his ballot on a given day? How does that disclose how he voted? The record can be kept as to whether he voted. No record can be kept as to whether he cast a marked or a blank ballot, I grant you that, but there will be a record that he cast his ballot.

And then we come as practical men to a practical proposition. Is it going to be said here in all seriousness that any substantial number of citizens of this Commonwealth are going to vote on election day and continue to cast blank ballots? Do you think so? Do you believe it? Have I got to meet that argument, that men will go to the polls and will cast blank ballots? Well, if they get grouchy about this matter, the first time they may, but the second time they will be less likely to do so, and the third time they will not. The voting habit, once instilled into them as a responsible, conscientious duty, which the law says they shall exercise, will be sufficient to prompt them to exercise it properly; and if this generation does not respond to that, the next generation will.

The trouble has been in this Commonwealth that a term has been made a term of reproach which in my opinion should be made one of honor. It is too common in this Commonwealth to point the finger of scorn at a man and say he is a politician. To my mind it should be one of the highest compliments you could pay to a man to say of him: "He is a politician." The day ought to come in this Commonwealth, and it is my opinion it will come, when every man will be glad to call himself a politician; and when that time comes there will be no reproach in the term.

Is there any occasion for this law? I wish I knew what was in the minds of all the delegates, other than the fact, perhaps, that some of them would like to have me get through. If I did I might not feel obliged to argue this proposition fully in all its details. Is there any occasion for it? Well, right down in his heart, every one of us knows there is. You and I have been thinking this is a pretty important Convention, we have had to do with some serious matters, have we not? And we have been going about our duty conscientiously. Now in the city of Quincy there are about 7,000 (in round numbers) legal voters. The delegate who got the highest number of votes received only 1,900 votes out of about 7,000 registered votes. To state that fact alone ought to answer the question as to whether there is occasion to have a compulsory voting law.

It was argued here on one side during the initiative and referendum debate that only a small number of citizens, of registered voters, voted upon a proposition that was submitted to them under the initiative, and on the other hand the initiative and referendum friends held up that vote as speaking for the people, the voice of the people; and yet down in our hearts, — I am not dealing with the merits of the initiative and referendum at all, — we all of us know the vote did not in any sense reflect the opinion of the majority of the voters of the community. [Applause.]

If there had been a compulsory voting law on the day when the people of this Commonwealth voted for this Constitutional Convention, — I wonder how many of us could say truthfully we knew we would be here to-day. [Laughter.]

As testing the merits of the proposition to which I am addressing myself, the necessity for this law, what percentage of the voters of this Commonwealth take part in the primaries? Never mind the elections; the primaries, because the primaries determine the quality of the candidates and the quality of the men who are going to serve the Commonwealth for the ensuing year. Not the election. The man who votes on election day has only a choice, he may think, perhaps, of evils, of only one or two men, but the men who go to the primaries are the men who determine the standard of your candidates for public office. What percentage of the voters of this Commonwealth attend the primaries? Less than one-quarter.

How many of you attend the primary of your own party? How many of you attended the primaries of your own party last year? Some of you may have, but I will venture the prophecy that there are many of you who did not. And yet it is the primaries that really select our public officials. Now, sir, if there were a compulsory voting law, and voters were compelled to attend the primaries, without attempting in any way to throw any cloud upon those who have served us or may be serving us to-day, I venture the suggestion that the standard of public officials would not be lowered in any respect if the full citizenship, voting citizenship, voted at the primaries and on election day.

The PRESIDENT: The time of the member has expired.

Mr. PILLSBURY of Wellesley: If my friend from Quincy (Mr. McAnarney) desires or will take further time I rise for the purpose of moving that it be accorded him.

The motion was adopted.

Mr. McANARNEY: Take the election of 1916. When I appeared before the committee on Suffrage I had the statistics of 1916 with me. I did not expect that I would speak to-day, so I have not got those of 1917. But I was interested in looking into the campaign of 1916 and found this condition of affairs: Governor McCall that year, you remember, ran, or rather Mr. Mansfield ran against Governor McCall. The Governor won by 46,000 votes. In the city of Worcester alone 5,700 registered voters did not vote. Fifty-seven hundred registered voters did not vote in the city of Worcester alone, and yet the man who was elected Governor was elected by only 46,000 voters. Out of 23,000, 5,700 did not vote.

Now, we will take it further. I have the record of the cities here, many of them. In the State election of that year there were 628,000 registered voters; 120,457 registered voters did not vote. Many of them may have been commercial travelers, many of them may have been sick, but were all the 120,456 or most of them incapacitated from voting by reason of absence or ill health? Do you believe it? In the cities and towns that year out of a total registered vote of males and females of 742,870, 211,500 did not vote. Twenty-eight per cent did not vote. Does that speak well of their sense of duty? It seems to me that it does not. In the city of Boston 31 per cent of the registered vote did not vote that year.

Now I want to put this proposition to you as a practical one. Do you think that is doing the square thing by the Commonwealth? Is it doing the right thing by the Commonwealth? Are we doing the right thing by the Commonwealth if we know that practically only one-quarter of the people of this Commonwealth attend the primaries and select the candidates for public office and we are going to allow that condition to continue? If you stood alone, if any man in this Convention stood alone, clothed with the power and authority of remedying such a condition on his conscience, would he say: "I will not act," or would he say: "I will act, and I will act for the benefit of the State. I will have a law passed which will compel these people to vote, or they shall pay the penalty for not voting?"

A compulsory voting law need not require that a man who is sick or absent shall lose his right of voting. Provision may be made by which such a person can register the fact as to why he did not vote. Reasonable provisions to protect such can be made. Many of them easily can be thought of and devised. A remedy can be provided so that he who does not vote because of an honest and just inability can be protected in his failure to vote. But he who does not have that reasonable ground for not voting, in my opinion, should be compelled to vote, or else it should be said to him: "You are the trustee for your fellows. You have refused repeatedly to discharge the responsible duties of that trusteeship. The time has come when you have got to resign your trusteeship, and resign it you must." As my friend in front of me suggests in a low tone of voice, "Say to him, 'You are a slacker.'" Yes, that is what too many of us are, and I want to remedy that condition of affairs.

I will not further trespass upon your time, unless some gentleman has any questions he wishes me to answer. [Applause.]

Mr. WALKER of Brookline: For many years I have been looking forward to the opportunity of voting in favor of a compulsory voting

law. All through the years that I was in the Legislature it was the question of devising a practicable working law. I am thoroughly in favor of giving the power to the General Court to pass a compulsory voting law, and I trust a good one may be devised. I wish therefore to ask you to consider one or two friendly suggestions in regard to this matter. I myself never have doubted the power of the General Court to pass a compulsory voting law. It seems to me there is little or no doubt on that question. Some of the best lawyers in the Commonwealth are here, however, and if they think there is a doubt I shall be only too glad to clear up that doubt by a constitutional amendment; but we must remember that we are going to put a good many amendments on the ballot, and I do not wish to see an unnecessary amendment appear there. Now, if there is a doubt as to the constitutionality of a law providing for compulsory voting, in what respect would it be unconstitutional? For what reason would it be unconstitutional? I do not think that any one believes that a compulsory voting law which provides for an ordinary penalty would be unconstitutional. It may be possible that it would be unconstitutional if we withdrew the right of franchise or the privilege of franchise from a man who neglects to vote. That may be unconstitutional, but I wish to ask you to consider whether this amendment to the Constitution meets that objection. Does it? It simply says that the General Court "may provide for compulsory voting." It does not say that as a penalty for not voting the General Court shall have the right to withdraw the privilege of the franchise. Now, it seems to me that if that is the real objection, the amendment should take such form as clearly would grant that power. I hesitate to vote for this amendment, for two reasons: One, because I think it is unnecessary; and the other because, if it is necessary for the reason that I have stated, this particular resolution does not meet the situation.

Mr. Sawyer of Ware: I wanted to say a few words on this, but in order that all the members may be warned of the motion pending, I will move the previous question.

I have served on the committee on Election Laws for five years in the Legislature. Several years we have had a bill for compulsory voting before us. I do not recall that it was objected to as unconstitutional. The committee on Election Laws always has reported adversely on it, because it always has seemed to that committee to be impracticable. We never have had any one before us who was able to convince us that he could draw or present to us a law that would work justly and fairly and yet apply the drastic punishment for failure to vote that the advocates desire. The other day it was stated by one gentleman in this division, — I do not know but what it was the gentleman from Quincy (Mr. McAnarney) himself, — how large a bulk of our statutes the election laws occupy, several times more than the criminal law. That is because almost everybody who wants to become a public reformer begins to think that if we could have some dickering with the voting proposition the State would be saved, and so he comes before your committee with all sorts of schemes, and of all the visionary schemes that ever have come before your committee this has seemed to us the most visionary. The plan to compel men to vote is to disfranchise those who fail to do so. How are you going to draw a statute to disfranchise men that shall work with fairness and justice?

There will be those who are sick here, and traveling men. Here is the working-man who recently has changed his occupation from one city to another far distant city in the Commonwealth. The expense for him to go back will disfranchise him. If you should draw such an act as the gentleman proposes it would work ultimately to the benefit of the well-to-do, who economically are situated securely in one locality, and the disfranchisement of the working people. Go to our industrial cities. See the great floating working population going from one city to another. It means a tax upon them, such a law as this, of ten or a dozen dollars yearly in the loss of pay and the loss of a day's labor to get back to vote, or else it means that they stand stigmatized in the community as slackers. Now, if you want to do that which will disfranchise the working people, those who move from place to place in search of employment, then draw such an act as this. I have very little fear that the passage of this will do any harm. Your committee on Election Laws in the Legislature, when it has faced this proposition, never has been able to find much sense in it, and I doubt if any future Legislature will find any more sense in it than the past Legislatures have, and I think this simply will be putting upon the pages of our Constitution a useless and needless amendment if we pass it. We cannot make any law beyond simply compelling attendance at the polls. We can compel attendance at the polls; but if you are going beyond that and are going to punish the man who does not vote anything but a blank ballot, why, then, the same principle demands that you punish the man who votes only a half ballot.

Debate was continued after the recess.

Mr. Bodfish of Barnstable: It seems to me that this whole matter can be summed up in a very few brief sentences. The right to vote is not a special privilege; it is a duty which inheres in the very sovereignty of our electorate. The greatest peril to our republican institutions lies in the apathy of that electorate. The General Court should be given full and certain power to deal with that peril. This proposal gives to the General Court that power. I think it is not necessary to set forth details of method in the amendment. Those minor ingredients, as Marshall says, can be deduced and should be deduced from the objects set forth in the amendment itself.

We want our best men in public office. Frequently they cannot become candidates because they lack the means of getting the voters to the polls. Under compulsory voting they would not be obliged to meet this unfair handicap. For these reasons, it seems to me that this proposal ought to be adopted.

Mr. Smith of Provincetown: I take the floor at this time to answer the gentleman from Ware (Mr. Sawyer). This is my second surprise that I have had on this proposition. The gentleman from Ware told us this morning that he had been a member of the General Court for five years, and on the committee on Elections, — that is what I understood him to say, — and for five years this proposition had been before that committee, and was considered by that committee as one of the crankiest, most unworkable propositions that they had to deal with; in fact, they decided it was the ace of all these fake propositions.

I have been a member of the General Court for seven consecutive years, and only twice in my time, to my remembrance, do I remember this proposition coming before the General Court. That was in 1913 and 1914, and I put that bill in myself. There was nothing in that bill in regard to disfranchising anybody. The whole subject-matter of that bill was this: Any voter who was in a precinct during any hours on which the polls were open should vote; in case of failure to vote he should make a reasonable excuse to the registrars; if they were not satisfied with his excuses they could give him a certain amount of publicity and a small fine of $2.50 or $5. That bill was not amended. You could get a good voice vote on that bill in the Legislature, you could get a good rising vote, but you could not get a roll-call. That is, during five years out of my legislative experience there has been no bill of this kind before the Legislature.

The gentleman from Brookline (Mr. Walker) lays so much stress on disfranchisement. Why, as he says, if there is any doubt about this matter, why not let it go now to the voters and decide on it and have it written into our Constitution? This little question is not going to lumber up the ballot a great deal. Take a proposition of his own. If he had any business proposition do you suppose for one moment that he would not remove all doubts possible? Certainly he would. And that is what you do here, what this Convention does, if there is any doubt in the mind of the gentleman.

Mr. Buttrick of Lancaster: I want to call to the attention of the Convention again that we are not attempting to pass a compulsory voting law. We simply are attempting to write into the Constitution of Massachusetts the words: "The General Court shall have authority to provide for compulsory voting at elections." If there is any question as to the constitutional right of the General Court to pass a compulsory voting act, then this will do away with the constitutional objection.

Mr. Walker: I wish to emphasize the point that this amendment will not take away the constitutional objection. Now, I want to give the General Court, if there is any doubt about it, power to pass a compulsory voting law. This amendment does not remove the constitutional objection, because the constitutional objection, if there is any, lies in the fact that, as a penalty, the right to vote cannot be withdrawn, and this does not cure that objection.

Mr. Richardson of Newton: I rise to add one word of testimony to the eloquent argument of the delegate from Quincy in the third division (Mr. McAnarney). There is one Republic in South America which has distinguished itself among all her sister Latin-American Republics for progress, prosperity and stability. The learned ambassador to this country from that Republic, the Argentine Republic, Señor Romulo S. Naon, was asked at a meeting in this country, something over a year ago, whether there were any features in the governmental system of Argentina to which he attributed any part of the remarkable development of that country; and his answer was not hesitating, but came back as quick as a flash, that there were three features in the government of that country to which he thought a large share of its prosperity might be attributed. And the three features were these: Compulsory education, compulsory military service and compulsory voting. [Applause.]

Believing that the hands of the Legislature ought to be untied upon this proposition, I shall favor this amendment.

Mr. BUTTRICK: I wanted to say just a few words more when my time expired. I want to say this to the gentleman from Brookline (Mr. Walker): That if rejection is negatived, this resolution, I suppose, will go on the calendar for its next reading, and between now and the time it is reached I assume he will have an opportunity to prepare the amendment which he thinks ought to be adopted. It seems to me as though the time was ripe for us at least to give this resolution a reading; and then, if there is any objection to it that possibly can be raised, to amend it in such form as will make it workable.

Mr. WALKER: I wish to say that I think that is a very sensible suggestion. I shall vote for the matter at this stage, and at the next stage endeavor to introduce an amendment that will meet the point which I make.

Mr. SAWYER: There is only one State in the Union that has put a provision like this into its Constitution. That is North Dakota; and though that was done seven or eight years ago, the North Dakota Legislature never has acted upon it. Of the foreign States referred to, Austria was foremost in passing a constitutional resolve in favor of compulsory voting; but only one province in its popular branch has acted upon the provision and passed a law for compulsory voting, and only two provinces have accepted the same provision for the upper branch. I apprehend if we do the same thing here that this constitutional provision, like the provision in North Dakota, will be a dead letter.

Mr. WEBSTER of Haverhill: My chief concern in this matter is to improve the results of voting; and if it could be proven that an increase in the number of votes cast would achieve that, then acquiescence in this resolution would be obviously the proper thing. But, sir, it seems to me that under normal conditions an increase in the vote would permit of but limited change in the complexion of things political.

For instance, when we speak of Boston or of Berkshire County our thought may indeed be primarily geographical, but the suggestion is almost equally strong of a state of mind.

That is the normal condition at present; but under the stress of an unusually interesting campaign, in the presentation of some peculiarly vital or popular issue, or by the bringing forward of some exceptionally strong candidate, it may be possible to reverse the results which ordinarily would be expected; and in that, sir, to my mind, probably lies the chief value obtaining in the present system, in that party leaders are subject to a constant incentive to discuss live issues and to search for strong candidates, in the hope that through those influences they may effect a political overturn. But if they knew that the whole vote was coming to the polls anyway, that incentive would disappear automatically; and I apprehend, in spite of all the hopes entertained by the gentlemen who advocate this proposition, that when the condition had crystallized, so to speak, under a continuous use of the proposed system, it would be found that the resultant situation was in no respect an improvement over the present, and indeed that a considerable inferiority of help to the body politic might be noted.

The honorable member from Quincy (Mr. McAnarney) made a strong appeal to us, as representing the voting part of the community, with regard to our responsibility to the non-voting population. That appeal has weight with me, sir. I do not retort to the gentleman with the outworn if somewhat obvious query, "Am I my brother's keeper?" because I remember that it was the world's first criminal who asked that question, and his class have been asking it ever since. [Laughter.] A thousand times, yes, I am my brother's keeper, and by my political action a heavy responsibility for those not so fortunate as myself rests upon me.

But by increasing the number of voters are we going to get a more intelligent action? That is the whole question with me. And I say, No. I believe that in the chemistry of the ballot-box is separated naturally the intelligence of opinion which we need in the direction of public affairs. The admission has been made that it is the "Silk stockings" who need a bench warrant to get them to the polls. That inference runs through all the discussion here, as it does upon the street; and how many times I have heard, — especially upon the lips of defeated candidates, — that the best and most intelligent men in our community do not take the trouble to vote.

That proposition is to me *per se* an absurdity. Failure to vote, to my mind, is abundant proof of a man's unfitness to vote. When they tell me how good, how intelligent, men are who stay at home on election day, I say, No, I cannot accept that view of it; a man who does not appreciate the privileges conferred upon him by this free government and participate in its conduct is not intelligent. If he is so selfish, if he is thinking about his own business affairs to such an extent that he will not take time to go to the polls, then I say he is not only not a good man, but he is a miserably, a detestably, unfit citizen; and if I am a candidate for office I do not want his vote, and I do not want that man to have a voice in framing legislation under which I must live.

What are the classes of men, sir, who refrain from exercising the privilege of the franchise? To my mind they separate themselves roughly into two, as I recall. First, the men who consider themselves not sufficiently well informed to vote; and I submit, sir, that it will be wise upon our part to accept them at their own valuation [laughter], and it will be for the health of the body politic if we let them go in that belief. Let us include with them those who are too indolent or selfish. I class these as one.

Then there is another group which in my own political experience I have had occasion to observe, and they are the men who have a grievance against the government, who have taken umbrage at the result of some particular ballot, at the passage of some legislation, or the success of some candidate who is so unfortunate as to lie outside of their approval, and those men refrain from voting as a rebuke. Now, sir, they deserve a moment's consideration. I am going to summarize, by a brief quotation, the sentiment of that class of men. It is the father of Huckleberry Finn speaking:

> Oh, yes; this is a wonderful govment, wonderful. Why, looky here. There was a free nigger there from Ohio, — a mulatter, most as white as a white man. He had the whitest shirt on you ever see, too, and the shiniest hat; and there ain't a man in that town that's got as fine clothes as what he had; and he had a gold watch

and chain, and a silver-headed cane, — the awfulest old gray-headed nabob in the State. And what do you think? They said he was a p'fessor in a college, and could talk all kinds of languages and knowed everything. And that ain't the wust. They said he could vote when he was at home. Well, that let me out. Thinks I, what is the country a-coming to? It was 'lection day, and I was just about to go and vote myself if I warn't too drunk to get there; but when they told me there was a State in this country where they'd let that nigger vote, I drawed out. I says I'll never vote agin. Them's the very words I said; they all heard me; and the country may rot for all me, — I'll never vote agin as long as I live. And they call this a govment" — says Pap. [Laughter and applause.]

I submit, sir, that although this is an illustration from the pages of fiction, and gentlemen may term it exaggerated, it is a typical instance of the feeling of a class of men that we all have met.

Now, I want to deal with one or two other questions, if I may, in the brief moment permitted me. One gentleman says this will minimize corrupt practices. I doubt it, and I might go further. Voting consists of two things: going to vote and then casting a vote. You need not pay a man to get him to the polling-place if you get this legislation through, but you can pay him for whatever you want after he gets there. Which would be the man most likely to accept an improper consideration for his vote, — the man who goes there from choice, or the man who goes grudgingly, feeling he is giving up time that he ought to be recompensed for? Just consider that point.

The analogy has been drawn with considerable force between compulsory voting and the draft, the military draft. Sir, when the one common fact of compulsion is stated, the analogy dies. There is no further nexus between those two spheres of activity. It is true that drafted soldiers are just as good as volunteers. Anomalous as that statement may be, it is not the less true and often proven. But military service is a necessity, — a necessity to the very physical existence of the State. That establishes one point of considerable difference. The drafted man goes out and his service is in the open; we know what he is doing every moment. You do not know what the voter does in the secrecy of the ballot-box. Further, the drafted soldier has to pass a searching examination to prove his fitness for the duty before he ever is put upon the firing line. Another thing still, before he is put upon the firing line, even after he is drafted, he is trained thoroughly and completely for his duty. Do you see any points of differentiation there, gentlemen?

Now, I desire to touch upon one other matter, — getting out the vote. That seems to be a rather serious consideration in the minds of many. My honored friend from Brockton (Mr. Clark) says that it is going to do away with what he supposes, and what many gentlemen of this Convention suppose, is the advantage enjoyed by the men who can command an automobile to get voters to the polls. Now, I speak as a practical politician. I have had a little experience in that sort of thing. I have been interested, in the past twenty years, in a great many campaigns for political office, either as a principal or as an accomplice. [Laughter.]

It has been my somewhat shadowy experience in the past to be a candidate for public office on several occasions. I always had to engage in that interesting humanitarian experiment known as a poor man's campaign. I never had an automobile carrying any voters of mine to the polls, — supposedly. My opponent or opponents invari-

ably have been well supplied with such means of transportation, and they very obligingly have carried droves of voters to the polls who voted for me. [Laughter.] One of the shrewdest politicians whom I ever knew, a real student of the practical science of elections, once said: "You can always safely reckon on your opponents doing at least fifty per cent of the work of getting out your vote." I believe that is a careful and sensible statement of fact.

I have no patience with, I deprecate, I detest, the suggestion, which unfortunately even here runs through so much discussion, that under the present condition of things, only the men with wealth have a show to get office and political prominence. I think that is a dangerous assumption to place before the rising generation of this Commonwealth. I say to the ambitious youth of Massachusetts: If you have the brains and ability to conceive a live issue, and so state it that busy men will grasp and appreciate it, if you have the courage to go out and advocate that fearlessly, and if, above all, you have the sincerity which inevitably will inspire confidence in your honesty, then there is no avenue to political preferment in the Commonwealth that necessarily is closed to you. [Applause.]

And I hope I may say, sir, with becoming modesty, that my own experience is a refutation of that assumption [laughter], because whatever means I have used to get political preferment, the Lord knows I never had any money, and I always have relied upon the soap box rather than the cigar box. [Laughter and applause.] A man can get by and get away with it if he has a message.

Now, sir, you will note particularly that reference is made in these propositions only to elections. Why do not they include primaries? Because they realize the moment they do so what a Pandora's box is opened. It would be the most unpopular measure that ever was foisted upon the people of Massachusetts, as I believe even in its modified form it would be very, very unpopular. Why do not men go to the primaries? Why are so few recorded there? Because they have to go and register their party affiliation, and a great many men, I will not say whether properly or not, are unwilling to do so. I have belonged to different parties, too; I have had my courage tested in that matter, and I never have hesitated to declare what party I affiliated myself with for the time being. But some men have a conscientious objection to that and regard it as really an invasion of the principle of secrecy which is conceived in the Australian ballot system if they even have to go so far as to say what party they belong to. Therefore many otherwise desirable voters will not register in the primaries. Now, you cannot compel a man at first to declare his party affiliation and at the same time compel him to vote. That is compelling him to say what party he belongs to, and I believe that would be considered a serious invasion of personal political liberty. This is simply one of those inconsistencies which adhere to the whole proposition.

The assumption runs, as to the size of the vote, that if only we could get everybody recorded there would be no dissatisfaction. That is not so. Some man would be defeated. The advocates of a measure that was defeated would be just as much dissatisfied if everybody voted as they are now, and perhaps more. At present there is a sort of elastic wall for their opposition and disappointment to beat against. They feel: Well, it is our own fault; if the fellows had all come out

we would have had them beaten. It is our own fault and we might as well grin and bear it. I submit that is a reasonable interpretation of the feeling as it exists now, and that there would be no improvement worked by the feeling that, "Well, we got them all out anyway; you are down and might as well make up your mind you are beaten."

I believe it is a good thing to have a variation in the size of the vote cast. If an issue is brought forward, and the vote is small, that indicates that the issue is not gaining in importance in the public view. If a candidate cannot bring out his party vote, that indicates some element of weakness in the candidate. All those things are viewed in the light of past experience. The party fathers will look at it and will say: "Well, we must avoid those mistakes in the future, we must get better issues, we must get stronger men;" and then the size of that vote goes into history and it becomes subject-matter for investigation and study in the political laboratory, so to speak.

I believe, sir, that every argument that has been brought forward in this discussion, perhaps, in a sense, more truly than pertains to any other discussion we have had here, is susceptible of a two-sided interpretation. I do not believe there is any proposition in advocacy of this measure that can be proven absolutely. It is a matter of opinion. It is, as we began, a question of sentiment, and must so remain.

If I may be pardoned another personal allusion, I should like to tell the members of the Convention why I feel so strongly that a man ought to have such a desire to vote that he will vote. I recollect on the occasion of my coming to that age when I could cast my first vote I was employed at a distance, outside the State, under conditions which are not germane to the argument and need not be rehearsed. My duty to my employers obliged me, or I so felt, to be present in a certain part of a neighboring State on the afternoon before the election. If I fulfilled the obligation, the train service was such that I thought it doubtful if I could get home the next day before my time to vote would be gone, the polls closing early in my little town. I therefore left there in the evening, walked all night a distance which the Boston & Maine section records fix as 59 miles, — and I thought at the time they did not exaggerate it, — I walked that distance in fifteen consecutive hours and got home to vote. [Applause.] Now, suppose in years to come, when my boy has arrived at the age when he is to vote, I should tell him with, perhaps, a pardonable feeling, that he might be inspired by my example, not to neglect his own opportunities and privileges in the way of voting; and then if this system had been in force for several years, he might naturally rejoin: "Why, yes, of course, father; you thought you would be arrested if you didn't get home."

I submit that this whole suggestion tends to prostitute the very sentiment that should animate a man when he arrives at the age and has proven himself worthy and qualified to enjoy this most important privilege.

I hope, sir, that the sober sense of this Convention will attempt no change in the methods which, however much we may complain of conditions, educate, agitate and animate the people. Perhaps this very discussion here, when we tell the slackers what we think of them, may have an effect. That is the only way to reach the difficulty, to

my way of thinking. I hope the Convention, with sober judgment, will make no change in the existing system. [Applause.]

By a call of the yeas and nays, the Convention, by a vote of 82 to 140, refused to reject the resolution; and it was placed in the Orders of the Day for a second reading.

The resolution was read a second time Thursday, August 1.

Mr. Hart of Cambridge moved that the resolution be amended by adding at the end thereof the words ", but nothing in this article shall be deemed to authorize disfranchisement as a penalty for the omission to vote".

Mr. Hart: The question that is before the Convention at this moment is not a new one. It can be traced back to the earliest history of the Colonies and early States. There are no less than eight different acts of the Virginia Colony and State upon that subject, but the last of those acts is dated in 1798. This is sufficient proof that the method of applying some kind of pressure upon the voters who fail to exercise their right has been employed repeatedly within the United States. It also has been employed in some foreign countries, particularly in the Canton of Zurich in Switzerland, in which about thirty years ago a law was passed to the effect that every voter must appear and vote or be fined, with the very serious result that about something like 20 per cent of the voters appear and cast blank ballots. They would not incur the fine, but, on the other hand, when it came to the point they were entirely unwilling to commit themselves to making up their minds.

In this Commonwealth, as in all others, we are sensible of the great difficulties that arise from the inattention of voters to their duty. Some twenty-five years ago I made an investigation into this subject and discovered that in Massachusetts at that time, in many important elections, the number of legal voters who participated was not more than 55 per cent. There are communities in the south in which not one-tenth of the legal voters appear and cast their ballot on the voting day. It seems as though there might be some pressure applied to the voters to compel them to meet this duty upon which the welfare of the Commonwealth depends. I am not here to protest against the resolution as introduced by my colleague from Cambridge (Mr. Barrett), but to try so far as may be by a few remarks to enforce the principle that the worst thing you can do with a voter, a grown man, — or a grown woman in the States where woman suffrage prevails, — the worst thing you can do with the voter is to put him in the excluded class which is deprived of the suffrage, and extinguish hope of returning to it except by some difficult process.

The truth is that the non-voters are of many different kinds. We are familiar with the leakage which is necessary in the vote because of absence of men from home on the day of voting, and illness and old age make a considerable difference, so much so that in 1885, out of the number of voters in Massachusetts who, upon the face of it, were normal voters, which was 465,000, there were only 431,000 legal voters.

I have said that there are various classes of non-voters. In the first place, there is the man who does not vote because he is not interested in politics. I am acquainted with a young man 42 years of age who has lived most of his life in Massachusetts, whose only evi-

dence of decision is that he never has cast a vote. Of course that intelligent, educated young man is of very little service to the community in any capacity. He not only never has cast a vote, but he never has done anything in his life that will render any service to the community and he never will do anything.

There is another class of non-voters in whom we all are especially interested, and that is men who fail to vote because by not voting they produce a political effect. I already have alluded to the fact that in some of the southern States the vote is very small, often not over 10 per cent of the registered voters. Why? Why, because in those States the whole thing is decided by the primary; and there is only one party that has the least hope of winning the election, so that the person designated by the primary is certain to be elected, and those who go to the regular polls know it is a matter of form. It would be preposterous to disfranchise 80 or 90 per cent of the voters because they did not go through a process which would have made no difference in the result. And in the same way many members of a party which is in a hopeless minority refrain from voting. Where the party in control might cast three-fourths of the votes, it would be preposterous to deprive the members of the minority party of their vote as a penalty for staying away from the polls on some particular occasion, when they know they could not accomplish anything by voting. That is to say, there are many reasons for refraining from voting which ought not to be punished by a deprivation of the suffrage.

Another class of non-voters is of great political significance. How did Grover Cleveland come to be President of the United States? Because in the year 1882 the administration of President Arthur put up as candidate for Governor of New York a very unpopular man, Mr. Folger, Secretary of the Treasury. Against him was nominated Grover Cleveland, who had been mayor of Buffalo but was little known throughout the State. He proved to poll a majority of 192,000. It made him instantly a National figure; it was seen at once that he probably would be the man to be nominated by the Democrats in 1884. How did he get that majority? He got it because about 200,000 Republicans would not vote for their party candidate, and they meant to put such a mark on that candidate and the influences that put him there that their party would listen to it. The result was then that not by an accumulation of 200,000 extra Democratic votes, but by the will of 200,000 Republican voters who said: "We would rather have Cleveland for Governor than have one of our men whom we do not like," Cleveland reached the Governor's chair.

Now, I maintain that that is a political right. A man ought not to be deprived of the privilege of declining to vote when declining to vote has a political effect.

Mr. BRYANT of Milton: I should like to ask the speaker if he would approve of an amendment in this form:

Resolved, That the Constitutional Convention have authority to provide for compulsory voting at its sessions.

Mr. HART: If I were the presiding officer I should rule that that amendment is entirely germane. We see for ourselves, — we are not able to compel the vote of our own members, nor even their attendance.

In concluding I wish simply to say that it is a very serious thing for this Convention to disfranchise what, in any one election, may be one-third of the vote. If we want people to vote there is a way to secure a large number of votes, and that is to put up candidates in whom they are interested; not a long ticket in which three-fourths of the names are unknown to them, but a ticket made up of names for responsible and important offices. The great solution of this question is not disfranchisement, but the short ballot.

Mr. BUTTRICK of Lancaster: I move to amend the amendment offered by the member from Cambridge by inserting after the word "authorize", the word "permanent", so that the same shall read:

but nothing in this article shall be deemed to authorize permanent disfranchisement as a penalty for the omission to vote.

With this amendment, sir, I see no objection to the amendment.

I might say, sir, if I may be permitted to offer my opinion, that I think the amendment offered by the gentleman from Middleborough (Mr. Washburn) ought to be adopted. I do not intend to take the time of the Convention discussing this question. It was debated at considerable length when the matter was up before, and I think perhaps there are others who desire to be heard. I do, however, desire to move the amendment.

Debate was continued after the recess.

Mr. BRYANT of Milton: I rather hope that we are going to take a second sober thought on this resolution and look at it for a few moments from a practical standpoint. There is nobody in the Convention who believes more than I do that we should deal with general principles, but we do not want to be so dazzled by glittering generalities that we cannot come down to the practical side of the matter. We do not want to have our heads so high in the clouds that we disregard all the probabilities and possibilities and practicabilities of a matter, and because we think we see a small abuse go ahead in general terms to try to legislate it out of the Commonwealth by putting a provision in the Constitution. I hope we shall look at this thing for a moment from the practical point of view. Now, the Legislature, I am informed, has tried to draft bills for compulsory voting. We were informed by the gentleman from Cambridge (Mr. Hart) that this started in Virginia, I think it was in 1798, and if he put any more examples to us since that time I did not happen to hear them. Now, what is the difficulty in the way?

Mr. NEWTON of Everett: May I ask the gentleman also to inform the Convention that South Dakota attempted to put this into operation by law in revising their Constitution, but found that no Legislature was able to put it into satisfactory form.

Mr. BRYANT: I was not previously informed of that fact, but I am not at all surprised to hear it. Now, I asked the gentleman from Cambridge (Mr. Hart) if he would approve a resolution to make compulsory voting necessary in this assembly. Why is it we have not had compulsory voting here if the thing is possible, is practical?

Look at the situation before us. Here are men paid $500 for this session to come here and vote. We are dealing with a body of 320 nominally, and probably only 250 actually, and yet with all the desirability of having people vote, with all the importance of the questions

that come before us, nobody has been able, or at least has tried, to frame a resolution that would compel people to come here and vote. Why, if we had such a rule here as the gentleman from Cambridge (Mr. Hart) wants, we should miss his presence. We should miss him from our meetings forever, because he would be confined in some institution in this Commonwealth on account of his absence from roll-calls. [Laughter.]

I want to remind the gentleman from Cambridge (Mr. Hart) of another fact. He does not want this passed unless it is provided that a man shall not be deprived of his right to vote. If the gentleman had been present when the resolution went to its second reading he would have heard it argued that this constitutional amendment was needed for the simple and sole purpose of enabling the Legislature to prevent a man from voting, depriving him of his vote. Everybody agreed that the penalty of fine or imprisonment is now within the power of the Legislature. What they disagree about is whether the Legislature now has the power to disfranchise a man for failing to vote, and that is the sole and simple purpose that this amendment is offered to the Constitution to accomplish, just exactly what the gentleman from Cambridge (Mr. Hart) does not want to accomplish; and if he appreciates the real situation he will vote against this resolution and so will make it impossible for a man to be disfranchised if the Legislature ever finds a way to enforce a reasonable system of compulsory voting.

Mr. Besse of Newburyport: I should like to ask the gentleman if members of the Convention who are not here are not compelled to vote at the time.

Mr. Bryant: I do not think I understand that question. If I do understand it I should answer it in the negative.

Mr. Knotts of Somerville: I was trying to frame a question that I think the gentleman can understand. I should like to ask the delegate whether at times he would not desire to employ compulsory voting in this Convention.

Mr. Bryant: I think it is desirable not only for every member of this Convention to vote, but I think it is desirable for every legal voter of the Commonwealth to vote; but just because I believe that, and I believe that every man should vote here and elsewhere, I am not going to vote to put into the Constitution of Massachusetts a provision which on its face is perfectly impracticable and which simply throws discredit on the common sense of the Convention, as I believe.

Mr. McAnarney of Quincy: Does the gentleman think that Rule No. 14, adopted by this Convention, cast any discredit upon the members of this Convention when they adopted it? For his convenience I will read the first sentence of that rule:

> Every member present in the Convention when the question is put shall give his vote, unless the Convention for special reasons shall excuse him.

Mr. Bryant: There are two answers to that. One is that nobody compels him to be here, but the resolution now before us would compel a man to go to the voting booth. The second is that I will remind my friend that that rule is not enforced, and that many men sit silent and do not vote when questions are called. If we cannot enforce in this comparatively small body of ours any scheme which will obtain

the moral support of a majority of the Convention, if we cannot frame a scheme that will obtain the moral support of the majority of this Convention, to compel a man to be here and vote, how can we reasonably say to the Legislature: "You must compel 750,000 voters to go to the polls"? Is that a reasonable proposition for us to pass, with all the important measures which we have before us, when there is such a chance to confuse the electorate at the next election?

Mr. AVERY of Holyoke: I should like to ask the gentleman if he believes in compulsory education.

Mr. BRYANT: I have no objection to the word "compulsory" in itself. What compulsory education has to do with compulsory voting is not clear to me. Of course I approve of compulsory education.

Mr. SMITH of Provincetown: I should like to ask the gentleman why in this argument he goes into all the details of this matter which is going to be put into the hands of the Legislature.

Mr. BRYANT: That is exactly what I was trying to bring out in my position here. I believe we should deal in general principles, but we should not get so general, so far away from the every-day matters of life, that we put into the Constitution something which we cannot any of us imagine a reasonable law being framed to carry out. It has been tried time and time again by the Legislature, I understand not only by this Legislature, but by other Legislatures, to frame something to compel a man to do his duty. That is all I have to say about that.

What is going to be the machinery of this? The advocates of this resolution seem to be in a good deal of doubt as to how it will be enforced. I think on the second reading, if I am not mistaken, those who wanted it passed said that it was not feasible to fine or imprison a man for failure to vote. Now, it is suggested that it is not feasible to deprive him of his franchise. What are you going to do? What pressure are you going to put on him that a reasonable man would support? Ultimately I suppose the question would have to be decided by a court. The advocates of this scheme do not intend to have him automatically deprived of his vote or automatically put in jail if his name does not appear on the voting list. I suppose some kind of complaint would have to be made to the court, and if it was it ultimately would come before a jury. Now, do you suppose that a jury of this Commonwealth is going to convict a man and put him in jail for failure to go and vote at an uncontested election, for instance? Would any jury of this Commonwealth put in jail a woman for failing to vote for school-committee, when there were only the same number of candidates that there were places on the ballot?

Mr. MCANARNEY: Does the gentleman feel competent to advise us how a jury will decide any given case?

Mr. BRYANT: I am not as competent as the gentleman who last spoke, but there are certain things which I think common experience would indicate to our minds that a jury will not do. There are plenty of laws on the statute-books at the present time that cannot be enforced simply because they are not supported by the moral sense of the community. One of the laws or ordinances is the law about spitting on the sidewalk. Every man who spits on the sidewalk in Boston is technically liable to a fine of $5 or imprisonment, but in recent years has anybody heard of anybody being fined for that

offense? They were for a while, but the moral sentiment of the community did not support it, and now it is practically a dead letter.

Mr. Cox of Boston: I should ask the gentleman in this division if he is not aware that there were numerous prosecutions under that act, and that fines were paid, and that the result has been that if the gentleman lives in Boston or goes through Boston he can walk on any of our streets and find that the sidewalks are absolutely free from sputum deposited upon them by other passersby. And I will ask him if that law has not accomplished a great deal of good and is not practically enforced everywhere to-day in the city.

Mr. Bryant: That law to my knowledge is not practically enforced everywhere to-day in the city. I have seen sputum, to use a polite word, deposited on the sidewalk many and many a time. I have known of its being deposited on the sidewalk by a policeman, and a friend of mine who is very much interested in that kind of thing had the audacity to hand to the policeman a card gotten out by some association or other which said: "Do not deposit sputum on the sidewalk, because if you do so it spreads disease." He is still at large, and able to tell about it. But I contend that that law is not enforced to-day and nobody can show me within I think probably five years any conviction.

Mr. Avery of Holyoke: I should like to ask the gentleman if the element of compulsion is a good or bad thing for us, and, if it is a bad thing, in what laws should it be kept.

Mr. Bryant: We have got back to metaphysics now. Compulsion is necessary if the law is necessary, and compulsion is wrong if you have got the kind of law that is not enforceable or if you are not going to use the compulsion that you have got. That is just my objection to it. So that I say, when a man goes up before a jury, personally I cannot conceive of a jury convicting him if he has the slightest possible excuse for personal absence on that day. Suppose, for instance, the woman suffrage bill shall pass the United States Congress and shall be adopted by the State. Are you gentlemen, or is anybody, going to put women in jail for not voting? Do you not know that if woman suffrage ever does come to pass there will be a very large proportion of women in the Commonwealth who will not approve of voting and who will not want to vote? Are you going to put them all in jail, or are you going to disfranchise them all? I have heard of the statement about leading a horse to water and not being able to make him drink, but this is leading a horse away from the water if you are going to penalize him by disfranchising him for never seeking any water. That is the net result of the proposition which is put before you by the majority of the committee.

Mr. Newton of Everett: I hope the gentleman will not say by the majority of the committee. The committee reported against this resolution.

Mr. Bryant: I apologize for that statement. I recognize the fact as it is.

Mr. Buttrick of Lancaster: In order that the gentleman may understand the situation I want to say to him that there was a small but energetic minority of the committee who believed in the resolution.

Mr. Bryant: I am not going into the metaphysical question of how much a vote is worth coming from a man who does not want to vote,

who has not got enough of decency in his makeup to want to exercise his legitimate right to vote. Personally, I do not think his vote is worth anything to the Commonwealth. But I will not attempt to argue that question, because there may be others who consider his vote very valuable under those circumstances. Nor will I deal with the question where a political party nominates a man who is not popular with his own party, against whom there are great objections, but for whom that political party would like to force to the polls the people who are enrolled with them in that party, because they know they will not vote for the other party and that if they go they will vote for the man who is nominated by their own party, although of their own choice they would rather stay away, — and I say under those conditions they have a right to stay away. There is nothing that would better please the "bosses," if there are such, of the Republican party, and the "bosses," if there are such, of the Democratic party, than to be able to say to their followers: "Whoever we nominate, you must go and vote for. You must enroll yourself as a Republican or you must vote for our man, who you think is an improper man to vote for." That is one of the things that would be for the greatest advantage of any political boss or political ring in the Commonwealth of Massachusetts.

Mr. Smith: I should like to ask the gentleman if he takes and votes the ticket straight down through every time.

Mr. Bryant: I suppose the gentleman wants a political confession of faith. If he wants to know if I have voted the Republican ticket straight through at every election I will say no, I have not, and my sins be on my own head. I always have voted in every election since I have been twenty-one. I know I have not missed one. But everybody knows that when a weak man is put up by the Republicans or by the Democrats it has been the experience of everybody, including the gentleman himself, that one of the ways in which he is defeated is his failure to arouse enthusiasm in his own party. Nobody could make better use of this particular provision of compulsory voting than the boss of a party who has put up an unfit man.

Mr. Besse: Does the gentleman think that the majority of the voters if compelled to vote would select a weak man?

Mr. Bryant: I think that the majority of voters, when not compelled to vote, often have elected weak men. If they are compelled to vote I assume the result would be substantially the same, that they sometimes would elect weak men.

Now, I am not going to argue this question any more. We have got a great many things before us. Nobody has offered to this assembly any practical means of enforcing, or any law passed by any Legislature, as far as I know, enforcing compulsory voting. We are putting on the statute-books something that is not needed, unless you mean to disfranchise a certain number of the voters, unless, for example, you mean to disfranchise a lot of women in this Commonwealth who do not go and vote at school elections. Now, although they have the right to vote, in most cases the election is a foregone conclusion. There is no sense in the women going up and voting when there are only three candidates and three offices to be filled, and you cannot blame the women for not voting very much under those circumstances, and you cannot put a woman in jail, whatever my friend in the third

division says a jury may do. I say no jury will put a woman in jail under those circumstances.

Mr. Hart of Cambridge: The extraordinary interest in the gentleman from Cambridge needs some attention. The gentleman who has just spoken and myself are quite in accord on many points, but apparently he was not here at the critical moment in the last discussion, when I introduced my amendment with the express purpose of limiting the future power of the Legislature in this respect. The proposition to punish those who fail to do their duty as voters has many merits. It may be carried out. It may be possible to provide some system of fine or otherwise, something that will cause the voter to sit up.

For this purpose three different propositions have been made at various times. The first is a money fine. The second is a fine in proportion to the taxes that a man already pays, say 25 per cent of his annual taxes to be added to those taxes if he fails to vote at a particular time. A third method is to provide that a man shall be placed on the jury-list, if he fails to vote; that he shall be disfranchised, upon the theory, apparently, that if a man is a bad voter he will make an excellent juryman. Doubtless there are other methods that might be found. It is not my business to find them. I did not introduce this measure, but I am not opposing the main proposition, unless the amendment which I have proposed against making exclusion from the suffrage a penalty for failing to vote should fail. The resolution without this is dangerous, because it confers upon the General Court, if this amendment should pass without the restriction which I have suggested, the power to alter the constitutional limitations and conditions of suffrage; that is, to set up a new system of qualifications of voters.

Something has been said here about compulsory schooling. Why, of course children are compelled to go to school, but what happens if they do not appear on a particular morning? Are they excluded for the rest of their lives, or even for a week, from the privilege of going to school?

How is it with the compulsion to vote in this assembly? That is a question of parliamentary law which in other bodies has been differently settled. John Quincy Adams once rose in his seat in the House of Representatives of the United States and protested that it was an outrage on the rights of his constituents to compel him to vote. Supposing we are compelled to vote, and supposing the gentleman from Milton (Mr. Bryant) unfortunately is delayed one morning and is excluded; what is the penalty? Is he excluded from voting on any more roll-calls while this Convention holds? Why, the sole object of this amendment is to secure more votes, to get more voters to go to the polls and to exercise the suffrage. Without the amendment that I have proposed the effect will be to reduce the number of voters. So far as we can see, it may be in the power of future Legislatures, as a penalty for one omission to vote, to ruin a man for life by an exclusion from his rights as a freeman. Against any such possibility I here protest.

Mr. Clark of Brockton: I move an amendment now in the hands of the Clerk, — adding at the end thereof the words: "or to encourage such voting ", so as to read:

The General Court shall have authority to provide for compulsory voting at elections or to encourage such voting.

It may seem to some members, and in fact it does to me, that the wording of that resolution as we have it is pretty strong. It may be found a difficult matter to compel voters to exercise the right of suffrage, and I think such a modification as would be made by the adoption of the short amendment which I have offered, at the end of the resolution, will modify it so that it may seem more reasonable and be more easily enforced.

This encouragement might be given by the way of abating a tax to the man who exercised the right of suffrage, or by some other method which would appeal to him with sufficient strength and force to induce him to go to the polls, and I think it wise that something of this kind should be adopted by this Convention. I would favor also, if this is adopted, the amendment as offered by the gentleman in the fourth division from Cambridge (Mr. Hart), which I think would make the matter complete and sufficiently strong and forceful.

Mr. Albert H. Washburn of Middleborough moved that the resolution be amended by adding at the end thereof the words ", but the right of secret voting shall be preserved".

Mr. Washburn of Middleborough: There is no occasion for me to consume the time of the Convention, beyond making a very brief statement in relation to this amendment. The amendment carries itself. It may be said that it is unnecessary, but I would point out that the Legislature in proposing the 38th Article of Amendment in relation to voting-machines, deemed it wise to incorporate language of this sort. It is quite true that there is no imminent danger of an attack being made upon the right of secret voting, but no man can tell when the hour and day may come when it will be made. It is an interesting fact that the great row, the historic row in the Convention of 1853, in connection with the Berlin vacancy, was not over the power of the Convention to fill vacancies; the storm broke out because the Legislature of 1853 sought to amend the Convention Act of 1852 by requiring in effect delegates of the Convention to be elected by an open rather than by a closed ballot.

Just one word more. Possibly it may be urged that the language proposed is inapt in so far as the word "preserve" is used. I say in answer to this that every State which has sought to protect the right of secret voting has used just this language. That is true in Pennsylvania, it is true in New York, and we have our own precedent right here in Massachusetts.

I believe, although he will speak for himself, that the amendment which I propose is acceptable to the gentleman who originally introduced this resolution, and I trust it will find the favor of the Convention.

Mr. Newton: The committee reported adversely on this resolution because they believed that there was only one thing needed to put into the Constitution to give the Legislature the right or power to force people to go to the polls, and that was the right to disfranchise them. We have heard nothing so far in this debate, either from the gentleman from Quincy (Mr. McAnarney) or the others who have spoken, that has left any doubt in the mind of any person but what to-day the Legislature has all the power that it needs, if it sees fit to use it, to compel people to go to the polls. The only power they have

not, that there is any question about, is the right to disfranchise voters if they fail to go to the polls. Therefore we thought that we ought not for one moment to give the Legislature that power. Now, if you propose to submit this constitutional amendment to the people you ought to submit it knowing fully what you are doing. If you adopt the amendment of the gentleman from Cambridge (Mr. Hart) you simply are reënacting the Constitution as it is to-day. If you propose to give the Legislature the power to disfranchise a voter, then you ought to consider very carefully before you give them that power, because it is easy to contemplate what a Legislature under such conditions might do, wherein it could disfranchise a large proportion of the citizens contrary to the desire of the people themselves. Not that I desire to impose myself on the Convention except as a personal matter, but I am somewhat disturbed that this Convention should not see that in passing this resolution as it was substituted the other day it says to the Legislature: "You may disfranchise a voter." If you adopt the amendment suggested by the gentleman from Cambridge you simply go right back to what the law is to-day, as we understand it, and you are gaining nothing at all in this situation.

Mr. HART: May I ask the gentleman what would be the effect if the amendment were to be adopted and sent to the people without the safeguard of the amendment offered by the gentleman from Cambridge?

Mr. NEWTON: How can I answer that question? The effect? I do not know that. I am told by the labor people that they are going to vote for this resolution, because they think it will make elections a public holiday, which they think ought to be done. I do not know what the effect would be of submitting a proposition like this; but I know this, that if the people were told that it was to give the right to the Legislature to disfranchise a voter, I have too much respect for the intelligence of the people of this Commonwealth to believe for one moment that they would vote in favor of it.

Mr. BROWN of Brockton: I should like to know the source of authority of the gentleman as to speaking of labor people. He did not make any exceptions. Certainly I have not heard any suggestion to that effect from any source.

Mr. NEWTON: The gentleman did not state the proposition as I stated it. I said that I had been informed that the labor people who favored this proposition believed that it would help or assist toward having election day a public holiday. If the gentleman represents the labor people, and they are opposed to this proposition, I am very glad to know it, because the vote the other day did not seem to show that situation.

I want to say one word more. The Supreme Judicial Court, in its very recent decision, 224 Mass., in the question of the Attorney-General *v.* The Commissioners of Boston, who were laying out, as you remember, the districts for election of representatives, used this expression:

> The right to vote is fundamental, personal, and a perpetual right.

Now, I think we ought to consider that carefully. I do not know how it could be stated better. The right of the individual to vote! Not a person in this Convention, no advocate of this measure, for a

moment admits that it is possible under the present method of the secret ballot, if you are to retain the secret ballot, to compel a person to vote. They say simply that we shall compel people to go to the polls, and we think that by compelling them to go to the polls somehow or other we will educate them into the idea of voting. Now, think for a moment what that means, — passing a constitutional amendment, suggesting it to the people on the theory that you can accomplish nothing by it except possibly make a person go to the polls, taking away, as you propose to do, from the people, from the voter, this fundamental right that is his, and giving it into the hands of a Legislature to disfranchise him if he refuses to do what they think that he ought to do under that.

I want to say something, too, to my friend from Holyoke who asked a question about compulsory education. Yes, we believe in compulsory education of the youth, but I want to ask him if he believes that we should compel them to go to a certain prescribed school. That is what he proposes here. I think if this Convention would stop to think for a moment and would consider for a moment and get themselves beyond the theoretical idea of the word "compulsion" they never for one moment would propose to put into the hands of the Legislature the right to take away from the voter that "fundamental, personal and perpetual right" that should be his, simply because a few men refuse to exercise that right.

Mr. Chandler of Somerville: This question of voting is a very interesting one. Some of us would like to vote. I therefore move the previous question.

Mr. Barrett of Cambridge: On hearing the argument made by the gentleman from Milton (Mr. Bryant), the Convention would be led to believe that some disaster was about to come to the Commonwealth of Massachusetts. It is not the intention of the resolution or the amendment thereto approved of by this Convention that any such condition should exist. Of the hundreds of measures presented in this Convention the resolution under discussion is the simplest of the entire number. It simply makes provision that the General Court shall have authority to enact a law providing for compulsory voting at elections. That is simplicity in itself. It is not the intention of the gentleman who has introduced the measure that any man or any woman should go to jail for not complying with this simple form of going to the polls and voting at the right time and right place. To my mind, it is a step in the right direction. I have somewhat of a recollection of the time the Australian ballot system went into operation, and at that particular time the very same opposition that has arisen here to-day was directed against the Australian ballot system; and is there any sane man in this Convention or in the Commonwealth of Massachusetts who would go back to the old system of voting, when capital and labor, one just as bad as the other, controlled not only the votes but the views, in a great many instances, of the electors? I remember in the country where I was born and bred, the landlord would stand and scrutinize the vote of the tenant before it was deposited in the ballot-box. Every Nation of progress has adopted this very resolution that we are discussing now. In little Belgium, one of the most prosperous countries in Europe, it has been in operation for a number of years, and successfully. In Switzerland, Spain,

Tasmania, New Zealand, where the Australian ballot originally came from, it is in operation successfully. There are two classes of men this will strike, in the event of the people voting in its favor and the Legislature enacting a law, namely, the ward heelers, the professional politician and the idle rich. I remember in my city a few years ago Mr. A did not go to vote. Mr. B said: "Mr. A, by the way, you have not voted to-day." Mr. A replied: "No, I am rather busy, I cannot vote to-day." Mr. B said: "By the way, you did not vote last year or the year before." Mr. A replied: "Well, that is my business. That is none of your business." The following year the two gentlemen met and Mr. A said to Mr. B: "What is the matter with our city government?" "I see nothing the matter with our city government," replied Mr. B. "Why, yes, my tax bills this year indicate that the taxes have risen $1.50 on the thousand," was Mr. A's complaint. "Just as you voted for, just as you required," answered Mr. B. "You were too busy last year to go and select the right men, and you are just having the condition of affairs that you are a part and parcel of." On the other hand, we will have the ward heeler, with 25, 30, 40 or 100 men to vote just as he says. I do not mean to assert that this will cure us of all ills, but I believe it is a step in the right direction, it is a step in the line of progress, and I am rather surprised that some of the advocates of the initiative and referendum should stand on the floor of this Convention and oppose any meritorious measure like this.

I have no particular objection to the amendments, and I hope that the resolution will pass in its amended form.

The main question was ordered.

Mr. Bennett of Saugus: I did not take pains to dissent in the committee on this proposition. I think perhaps one reason why I did not dissent was because I was so fond of the chairman that I did not like to antagonize him; but I think this is something which properly may and should be written into the fundamental law of the State. It occurs to me it has been said in regard to sumptuary legislation, — I think I am right, — that the great value of sumptuary legislation is not in compelling obedience, but in crystallizing and emphasizing popular sentiment. That is what the prohibitory law has done. We just started by popular sentiment. And I never have seen anything work like the present compulsory draft law. Compulsory military service. During the civil war expressions of disloyalty were overlooked throughout the north. As I read about the American Revolution the word "copperhead" originated in the American Revolution. Toryism, copperheadism, were not visited with anything like the amount of public contumely that any disloyalty is to-day. Why, I remember that down in the village of Freedom, Maine, which I happen to know about, a man raised a battalion for the rebel army after Fort Sumter was fired upon, and all that was done to him was to send him down to Fort Lafayette in New York harbor, when he was allowed to go free after a short time. At the present time you hear no expressions of disloyalty. Why, if you judge human nature by what you read in the newspapers, three or four years ago, as to the lowness and falsity of human nature, and you compare it with the tremendously high standard of patriotism and of moral conduct and of

ideal sentiment at the present time, it is wonderful. There are no expressions of disloyalty. Compulsory military service, the compulsory draft, aside from its practical application, centralizes and emphasizes the sentiment of the community.

I confess that personally I should like this law, because I should like to drag about five hundred citizens of Saugus by the ear to the polls, — the men who have not any particular, strong superiority to other people, except that they wear boiled shirts seven days in the week, for they do not work in the General Electric, or in the shoe-shop, or on the farm, but who think they know so much that they sneer at anybody who takes part in politics. I want to get hold of that disloyalty, and I want to drag people to the polls and make them vote. And I want to emphasize the fact that when you say in the woman suffrage discussion that voting is a duty it should be written into the fundamental law of the Commonwealth that it is a duty, and I want people compelled to vote. I should just as lief have the strongest kind of penalty for them for not voting, but the Legislature will provide a penalty. Let this be written into the fundamental law, and the Legislature will provide a penalty, and we shall emphasize the fact, which needs emphasis, does it not? Take the men all round you who sneer at anybody who takes part in politics. They not only do not take part themselves, they do not go and vote, but they sneer at you if you go to the houses trying to get out the vote. Your missionary spirit may be as lofty as that of any missionary who ever went to Africa or the Sandwich Islands. You may desire only the good of your community, mixed sometimes with some selfishness, perhaps, but it is largely on the basis that you want the community well run, you want the vote gotten out. If you put this into the fundamental law of the State you will put it where it belongs, and these fellows, these 500 in Saugus and 10,000 in Boston or elsewhere, who never come out to vote unless they want a little piece of road or sidewalk, or something in their school, but who never come out to vote for the general good and who sneer at the people who do take part in politics, you will go on record as emphatically as in your prohibitory law, your compulsory draft law, or any other sumptuary legislation, if I use the right term, which formulates the best moral sense of the community. I hope it will pass without much further discussion.

Mr. McANARNEY of Quincy: My views on this resolution I stated at some length the other day. I do want at this time to say that so far as I personally am concerned, I have no objection to the proposed amendments. I am particularly impressed, however, with the amendment offered by the gentleman from Middleborough (Mr. Washburn).

Now, as to the matter of disfranchising the voter, I hardly can bring myself to believe that a gentleman of the experience in matters political of the chairman of the Suffrage Committee (Mr. Newton) gave the matter serious thought before he urged his arguments upon this Convention. Is there not a law on our books to-day disfranchising voters of this Commonwealth if they fail to have their names placed upon the voting list, and have we heard any complaint against it because men were disfranchised by it? When I say "disfranchised", when the term disfranchised is used, let us understand whether it

means disfranchised for all time or merely temporarily. If a man is a registered voter to-day in a given community we need no argument to show that under the law of this Commonwealth such a man next year may be disfranchised for that year at least because he fails to have his name put upon the registered voters list.

Mr. BRYANT: If the gentleman's argument that a man is disfranchised because he does not go to register at the polls is a sound argument, of course the argument that he is disfranchised to-day because he does not go and vote, is sound also. If he is disfranchised because he does not go and register, of course the gentleman can argue with equal truth that he is disfranchised if he stays away voluntarily from the polls.

Mr. MCANARNEY: If the gentleman is referring to the same man because he does not become a registered voter, of course he is temporarily disfranchised; but if a registered voter stays away from the polls he is not disfranchised. What happens in such a case? He is faithless to the trust the law put upon him when it put him in the exalted position of one of the registered voters of this Commonwealth. That is what happens to that man and not disfranchisement. What I appeal for, and what I hope to see in this Commonwealth, is a quickening of the sense of the people with regard to the duty of voting. The duty of voting is a sacred duty. It is the duty of a trustee. To every man on whom the law confers that privilege it says: "You are among the men into whose hands is given the exercise of all the political rights and liberty of the rest of the community." I want such a man to realize that the duty carries with it a responsibility. He should discharge his duty or resign his trust, or suffer some other penalty. The penalty is for the Legislature to determine. It may be a fine. It may be one thing or another. It may be disfranchisement for a year or for a limited period of time. I believe there is an adequate remedy for such a neglect of duty, and it can be found.

If the initiative and referendum be adopted this fall by the people of this Commonwealth do we not then want this law on our books? Do we want only those people going to the polls and voting who are interested in the special matter they have had put upon the ballot? Do we not want all the people of this Commonwealth charged with the knowledge in advance that they are going to be obliged to go to the polls on election day and vote, and with that knowledge in advance determine how they shall discharge their trust by studying the ballot and carefully studying the questions they will be called to pass upon? The initiative and referendum, it seems to me, if it is adopted, will need this for the safety of the Commonwealth.

Mr. RICHARDSON of Newton: It is perhaps a dangerous thing for professors to disagree, in the open at any rate, but I hope that the amendment which has been offered by my learned friend from Cambridge in the fourth division (Mr. Hart) will not be adopted, and I hope so because I think it is totally unnecessary. The Constitution now provides the qualifications of a voter, and although it has been amended many times the simplest part of it remains in these words:

> Every male citizen of twenty-one years of age and upwards, excepting paupers and persons under guardianship, who shall have resided within the Commonwealth one year and within the town or district in which he may claim a right to vote six calendar months, etc., shall be entitled to vote.

I maintain that it is just plain, elementary common sense that the addition of a clause to the Constitution in the same form in which we have it here in this proposed amendment providing for compulsory voting, does not add to and cannot subtract one syllable from the qualifications of a voter as they are fixed in the Constitution at the present time. In other words, if this amendment is adopted the qualifications for a voter will remain exactly as they are now, and the Legislature, in my judgment, would not be within its constitutional rights in attempting to impose disfranchisement as a penalty for failing to vote. That still would be beyond its constitutional power. I am in favor of the amendment as it stands now upon the calendar, and I hope that it will pass.

Let me state again the testimony which I stated the other day in the few simple words which came from the Argentine Republic, the most progressive and stable of all the countries of South America. The Ambassador from that country to this country says that the governmental features of his country which are the most noteworthy as contributing to the advance of that Nation are three: Compulsory education, compulsory military service and compulsory voting. I believe that the Legislature will find plenty of ways to put such a plan into operation without trampling upon anybody's toes, and that even if the Legislature never passed a law that the threat of compulsory voting standing in the Constitution itself would be sufficient to cure a large part of the indifference which now exists on the part of the voter.

Mr. Morrill of Haverhill: I think those who advocate compulsory voting have formed their judgments from surface indications. I think still we may entertain hope of killing this proposition despite the opposition of the member from Saugus (Mr. Bennett) and some others. Now, speaking with regard to surface indications, there were 1,091,000 assessed polls in Massachusetts in 1917 and but 634,606 registered voters; in other words, two-thirds only of the assessed polls were registered as voters. So some members, therefore, say that one person in every three who failed to register was a slacker. This is not true, for one very excellent reason why that one-third was not registered is found in the very restricted naturalization laws, which operate to debar well-intentioned aliens from becoming citizens. They are obliged, for instance, to go to the county seat to become naturalized, many being obliged to travel from ten to twenty miles in some counties and even twenty-five miles in some others to take advantage of the law. It is necessary that he shall repeat the journey, making two trips, on the second paper. Again, Massachusetts requires of American citizens a longer period of residence within the State and within the city or town as a qualification for voting than what two-thirds of the other States require. Thirty-four States require a shorter period of residence within the city or town, three months or less being the limit in most of them. Six months' residence is required in Massachusetts. In some others only ten to twenty days' residence is required, — in six out of those thirty-four States, as a matter of fact, — three-fourths of the States in the Union. A great many of the one-third of the unregistered assessed polls are unable to register because of residence on April 1 in some other city. These men, because of industrial exigencies and the seasonal character of their occupation, frequently

do not stay long enough in any single community to meet the excessive residence requirement of Massachusetts' registration laws. Then if they do happen to stay a year or two in a city and become registered, they often are compelled, when hard times come, to secure employment at a distance. Often it happens they go so far away that the expense of returning to vote, coupled with the loss of pay incidental to the time off, is an insurmountable item. An Essex County voter, temporarily employed in Berkshire, for instance, would be forced to lose three days' employment and assume the expense of the trip.

Now, are these well-intentioned people who go by surface indications going to say to a man like that, with a large family in Haverhill: "You have got to pay a $5 or $10 fine," or in the case cited more than twice that sum, when his family needs the money he sends by mail to maintain the house? Under the easiest circumstances he is obliged to pay living expenses in two places.

The people, by a mandate last year of more than three to one, instructed the Legislature to pass an absentee voting law. The Legislature failed to do it. The only absentee voting law they passed applies to those men in the army or navy. If the Legislature had obeyed the people, the shoe worker, registered, for instance, in Haverhill, but working in Dalton, or anywhere, could vote by mail and thus be saved the great expense now necessary.

Furthermore, if election day were a holiday it would help solve the problem of the unrecorded vote. But what would help most of all would be the adoption of a policy by which representation should be based on the number of people who do come to the polls and vote a certain ticket. No one then would be throwing his vote away; everyone would have an inducement to attend the polls and vote, because every citizen would count one if he cast a vote. It would be to his interest to vote, whereas, under the present system, if a district is three to one Republican, there is no inducement for a Democrat or for a member of any minority party to vote in that district.

The amendment moved by Mr. Clark was rejected.

The amendment moved by Mr. Buttrick was adopted, by a vote of 75 to 49.

The amendment moved by Mr. Hart, as amended, was rejected.

The amendment moved by Mr. Washburn of Middleborough was adopted.

The resolution, as amended, was ordered to a third reading Thursday, August 1, by a call of the yeas and nays, by a vote of 108 to 96, in the following form:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have authority to provide for compulsory voting at elections, but the right of secret voting shall be preserved.

The resolution was read a third time Tuesday, August 13.

Mr. WEBSTER of Haverhill: Since this matter was last before the Convention for discussion certain eventualities have served to further complicate the issues which it then presented. I had hoped that the opinion of the Convention, deliberating upon certain difficulties which seem so evident in the way of carrying out the provisions, might in-

duce to a change of belief. I simply should like to call the attention of the Convention to one or two of the things which have served to complicate the issue. The matter as first presented has been amended. It now stands before us with the remarkable provision, by way of assurance, that no one who violates the legislative provision, which may be enacted under this resolution, shall be penalized therefor by being disfranchised. Now, sir, I hope that the significance of that amendment, an amendment which piles absurdity upon anomaly, will become wholly apparent to every member of this Convention.

Mr. Buttrick of Lancaster: I think that the gentleman from Haverhill (Mr. Webster) is in error. The amendment which he refers to, and which he thinks was adopted, was defeated at the last reading of the resolution. The amendment was offered, I think, by the gentleman from Cambridge (Mr. Hart) and was not adopted. The only amendment adopted was the one which is printed in the calendar.

Mr. Webster: I accept the correction and the information of the honorable member from Lancaster (Mr. Buttrick) with pleasure. I am delighted to find such an evidence of sanity in the friends of this measure.

Now, sir, I suppose that it may be entirely a fruitless task to attempt any further opposition to this matter, in view of the substantial approbation which it has received in the columns of the Boston American. I simply want to point out to that journal, or to any other advocate of the initiative and referendum, one result which I can foresee clearly. Those who recall the form in which we are to present the resolution amending the Constitution, enabling the people to initiate legislation, will recall that no matter presented to them upon initiative petition will be considered as passed to be enacted unless it receives a very substantial proportion of the total vote cast. Now, let us consider what the total vote cast under the system which we propose to inaugurate is likely to be. Men who ordinarily do not care enough about politics to go to the polls at all, when they are subpœnaed to the ballot-box, in my opinion, will discharge their duties as easily as they can. They may vote for something. We do not know that they will make a mark upon their ballot; but assuming that they do they will vote perhaps for Governor, and then if they have a personal friend in some little candidature they may vote for him. The class of men who do not vote now will be a difficult body to approach upon the merits of a legislative measure on the ballot, and I apprehend that in large number they will not register their opinion. By bringing in the tremendous slacker potential vote which already exists upon our check-lists I can foresee clearly that the result of practically every initiative petition that is put upon our ballots is going to be negative; and all effort, whether it is made by the friends of the proletariat or the friends of privilege, is to be absolutely thrown away. I believe that that is one sure and certain result, and I am not altogether certain, sir, but what that result has been foreseen abundantly in certain sagacious quarters.

For many years I have been associated with various reform movements. I have felt the subtle enthusiasm which is aroused in the breast of the reformer upon raising some particular slogan or other. Time was, sir, when I believed that the human race might be regenerated and all our public questions vastly simplified by the adoption

of some one particular simple measure. Experience has chilled somewhat that youthful enthusiasm. I wish that I could enthuse with my friends who see so much benefit, such an all regenerating influence, to flow from this proposition; but, sir, even the initiative and referendum no longer comes to me with a certain promise of absolute reform. I cannot agree with my socialistic friends that the millennium, that golden age of which the prophets and the seers through all the ages have sung and prophesied, is waiting only for a majority vote to go into commission. The millennium is a wary old bird and has evaded us for lo! these many years. [Laughter.] And yet how cheering it is to find among us so many optimists who still believe that by scattering some grains of theory about they may coax it out of the roseate dawn of futurity and put salt on its tail. [Laughter.] Oh, yes, they say, compel everybody to vote, — that is all. Get them into the ballot-boxes. Make the door to the polling-booth look like a soup-kitchen back in 1893. Never mind whether they know what they are voting about or not, get them there. The result will be the salvation of the Commonwealth.

Mr. Broderick of Waltham: Whether the right to vote is a privilege which may or may not be exercised by those vested with it, or involves an obligation which the State may require to be fulfilled by imposing some form of punishment for failure to fulfil it, all must admit that the right is a priceless gift, and that those who possess it deserve only censure who regard it with indifference and neglect to exercise it. This fact does not prove, however, that it is wise, necessary or expedient that this particular amendment to authorize the Legislature to provide for compulsory voting should be adopted. What is it more than anything else that makes the right to vote invaluable? It is the fact that the voter, under our present system, is enabled to express secretly his views on questions of public policy and secretly express his will in the choice of candidates for public office. Withdraw from the voter this secrecy and you deprive him of that element which is most essential and vital to him as a voter. The citizen who votes only as he is directed does not register his own will but that of some one else. It is not long since the method of voting in this State was by the open ballot, and there may be those now who believe in that method, though they do not deem it expedient to suggest or urge openly a return to it. But it is well recognized that there is a negative force as well as a positive force, and that either one or the other may be invoked to make a law ineffective and render it null and void. The force and effect of any law may be destroyed as effectively and completely by imposing restrictions and limitations upon its enforcement and operation as by an express revocation or affirmative repeal. It cannot be maintained successfully that compulsory voting can be made practicable or can be enforced without destroying the secrecy of the ballot. If this amendment is intended and calculated to destroy the Australian system of voting, a more effective method hardly could be devised or introduced. But if that is the object of those by whom it has been proposed and is being supported, this fact should be disclosed in order that the issue may be met fairly and openly.

I wish to call the attention of the Convention to section 2 of Article XIV of the articles of amendment to the Constitution of the United States, which reads as follows:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Now, under this amendment to the Federal Constitution, while a State may deny or abridge a citizen of the United States the right to vote, if it does deny or abridge that right the State's representation in Congress may be reduced as a result. Is this alleged evil of non-voting so great a menace that in order to remove it the secrecy of the ballot should be destroyed and the State's representation in Congress reduced? It seems to me that it is a question that should be dealt with by Congress because it affects the rights of citizens of the United States, and because the power of a State over such citizens has many limitations. In the course of this debate many subjects have been introduced which can have no application. The draft law, for instance, has been referred to; but that law was enacted and is being administered as a great war emergency measure. This amendment is proposed to establish a new and permanent policy in the conduct and control of elections in this State. What may be justifiable and necessary to meet a great emergency may be dangerous and pernicious when applied under normal conditions, and in the ordinary affairs of government. In my opinion, what we need in this State is less rather than more coercion and compulsion in our elections. It should be made an indictable offence for any employer, public or private, or for any person who superintends or directs the industrial operations of the voter, to attempt or undertake to coerce, influence or intimidate that voter in the discharge of his political rights. Such interference with the voter is common and even notorious. But why should members of this Convention deny to the voter the immunity which it reserves to itself? Whether the right to vote is a privilege or an obligation, the voter is not compensated for voting, but members of this Convention receive compensation for their time and service, and yet they are not always in attendance. As members of this Convention we should not be so presumptuous and lordly as to usurp the power conferred by the voter to penalize and punish him, when we know he so often is misguided, deceived and even betrayed by those in whom he confides and upon whom by his vote he has conferred high honors. I believe that if we are to apply compulsion to the voter, we should include the elected or appointed public official and make him subject to be recalled or retired whenever he shall refuse to fulfil preëlection pledges, or whenever in any manner he shall prove false to his trust.

Mr. WASHBURN of Middleborough: I should like to ask the gentleman if the Congressional representation of any of the southern States has been cut down by reason of the adoption of the so-called grandfather clauses in those Constitutions.

Mr. BRODERICK: I do not think we should embody in our Constitution an amendment under which the Federal Constitution may be

violated, on the theory that it may be with impunity, even if it is a fact that some other States have done so. But I think the gentleman has reference to another article of the Constitution, Article XV, which enumerates certain classes of citizens who shall not be prohibited from voting by any State. Under section 2 of Article XIV a State may deny or abridge to certain citizens the right to vote, but the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

I am aware that there has been added to this amendment the proviso that the right to vote secretly shall be preserved, but this addition only exposes the amendment to ridicule and reduces it to an absurdity. In this form the amendment has no significance or meaning, is nothing but a mere group of words or series of sentences. The question presented to the Convention includes two alternatives, one of which must be adopted or the whole amendment rejected. One is that the Convention adopt an amendment which shall provide in fact and in effect for compulsory voting and thereby destroy the secrecy of the ballot, reduce the representation of the State in Congress and open wide the door for many abuses by the unscrupulous and selfish; or that the Convention adopt an amendment which shall have no significance or meaning. In either form the amendment should be rejected, and I appeal to the sound judgment of members of the Convention to vote against its adoption.

Mr. FITZ-RANDOLPH of Nantucket: I move the previous question.

The main question was ordered.

Mr. SMITH of Provincetown: This question has been pretty thoroughly aired in this Convention. We have had two roll-calls on it, and if the wisdom of this Convention permits its submission to the people it is one which they can answer; they are familiar with it. If you submit it to the people you simply are submitting it to the people who are doing your work in the State to-day and asking them whether they desire to haul in this reserve force which continually hangs back and might properly be termed slackers. The gentleman from Boxford (Mr. Webster) when he raises up this bogy man that was buried a few days ago is very presumptuous, and so was all his argument. Now, the word "compulsory" in this proposition is going to be left to the Legislature. You are going to leave these voters to decide, these patriots who leave their work and go to the polls and vote, not the men who will continue to hang back and find fault. They might say: "The gentleman from Boxford is not my Representative, I did not vote for him," or "The gentleman from Provincetown is not my Representative, I did not vote for him." Yet you are the Representative from that district, and so am I. Do not leave any opportunity for anything of that kind to happen.

Now, I wish to call your attention to a bill that was put in in 1914. The bill provided that if any man was in the precinct during the hours in which the polls were open he should vote; otherwise he should make a proper and reasonable excuse to the registrars. If it was not proper and reasonable he then should receive some publicity and a fine if the Legislature so determined. Now, is not that right? Is not that reasonable? That exempts all men who are outside who will make a

reasonable excuse. Their excuse would be that they were not in the precinct during the hours in which the polls were open.

Mr. Bryant of Milton: I merely want to ask whether, if a voter had gone to his office, out of the precinct where he roomed, it would be sufficient excuse under the act which the gentleman cites.

Mr. Smith: I should be pleased to answer the gentleman in this way: That the Legislature is going to be clothed with this power. And now that we are speaking of the Legislature, I have been greatly surprised in this Convention by what men have said of it. One day in the week you would think that every man who was a member of the Legislature should be indicted and put in jail, and some of the same men the next week will laud the Legislature and hold them up before the people as one of the most honorable bodies that ever existed in the world. That has been done here in this Convention. Now, I have explicit faith in the Legislature's judgment. It was but a short time ago when the gentleman from Everett, chairman of the committee (Mr. Newton), was aiding the other gentlemen with the information that this had been tried, I think in Dakota, but the Legislature of that State was not able to arrange and fix up any bill that would be workable. At the same time he and quite a good many others in 1912 and 1913 were holding up these little States in the west and telling how progressive they were and what they could do, and yet they were not capable, — he acknowledged it himself, — of framing a law that would fit this case. Now, I tell you if this goes to the people and the people say by a majority that they want it, I do not believe but what the Legislature of Massachusetts has the ability to frame some bill that will be just and be of great benefit to the people.

There is one other question that I should like to impress upon your mind, and every member must realize it, — that we have got questions that are going to be submitted to us and you want the votes of all the people. I say, as I said the other day, that is the question. I did not doubt the honesty and the integrity of these men on the initiative and referendum. I was opposed to it; they were for it and they won. Do they want to go to that part of the electorate who vote, or do they want to submit that question to all the voters?

Mr. Kelley of Rockland: I had prepared the outlines of a bill which, we were told by an experienced legislator, previous Legislatures had found it impossible to draw, but I have had no opportunity to present it, as the motion for the previous question was made by the gentleman whose face we seldom see, and who now already has disappeared.

The gentleman from Milton (Mr. Bryant) inquired the other day: "Do you mean to put a man in jail if he refuses to vote?" I say No. And to his equally earnest inquiry: "Will you put a woman in jail if she neglects to vote?" my answer is No. The name of this amendment is its worst feature. It is not compulsory voting in the sense of compelling by force. If it read that the Legislature were authorized to make such provision as would insure a higher percentage of voting, or a full percentage of voting, with certain limitations and penalties, then we would know that it is not compulsory voting in the above sense.

I have had no chance to go into it, but I have had some experience in drawing bills, not much, not enough to entitle me to be a doctor

of laws; but it is simply, sir, a question of classification. A man after due notice shall go on a list, not of the regular, faithful voters; he shall be upon another list, with due notice of how and when he can get off that list. And the same provisions would apply to registration. There would be no jail business. We do not want men and women in jail; we want them voting. If this measure be passed this reading, I have the utmost confidence that it can be put in shape to meet the approval of the Convention.

Mr. Knotts of Somerville: I hesitate to take even one minute of the time of this Convention, but because of the determined onslaught upon this resolution I want to say a word. The gentleman from Milton in the fourth division (Mr. Bryant) came into this assembly hall the other day when this matter was under discussion, just after the recess hour, and with his characteristic poise arose and made an appeal to common sense. After having said that the gentlemen who were in favor of this resolution were up in the air among the clouds, — and I wondered how he knew they were up there unless he had been there himself, — after having made that statement then he made an appeal for the Convention to come down to the level of common sense, and then, — characteristic again, — he began to make an abstract discussion, even threatening the Convention that he might invade the abstract, abstruse and profound realm of metaphysics. Now, if I know anything about metaphysics it knows nothing about common sense. It even contends that there is no such thing as time and space. Then stalwart common sense rises up to strike back at metaphysics, to contradict, to ridicule metaphysics. If you want to know, gentlemen, what the verdict of common sense is on this question, — I hesitate to say it, but it will be necessary to leave the halls of this Convention and go out on the street and ask the first man you see, or go home again to your own constituency and begin to interrogate the men who elected you or who opposed you for this Convention, what they think concerning this matter, and you may phrase it as you please, compulsory voting or compulsory attendance at the polls, and invariably every man whom you ask will say instantly: "That is a capital measure, and it ought to go through." Now, gentlemen, that is the verdict of common sense.

I should like to say one other thing in this connection. I have been sorely perplexed and grieved here, not only this session but last summer, because of the method that some members of the Convention constantly employ of labeling measures. Now, the gentleman in the first division who always speaks with imposing figures of speech (Mr. Webster of Haverhill) instantly to-day labeled this resolution as a Boston American resolution. With the unthinking, that label downs the resolution immediately. Its merit counts for nothing. There are other measures here. The moment they come up they are labeled socialistic. That is enough for some members of this Convention. Now, the gentleman from Milton (Mr. Bryant), every time he has spoken on this resolution, has labeled it as unworkable. Unworkable, that's sufficient. Gentlemen of the Convention, we ought to ask ourselves seriously this question: If the will of the people is once expressed concerning a matter, whether or not we are so impotent, we are so devoid of wisdom, we are so lacking in practical common sense, that it is impossible for us to put into execution the will of the people.

Another word. I have heard the word "grafter" used again and again in this Convention. I suppose those who know most about grafting are best able to talk on that subject; but, gentlemen, if I know anything about grafting and grafters the worst kind of a grafter we have in our civilization is the grafter of moral values, the man who constantly is taking benefits and blessings out of the community and never does anything to produce them. Let us place this matter of compulsory voting upon its real basis, — that for men who have a duty in their hand to perform and who refuse to do it, men who reap to themselves the benefits of the community and refuse to carry its responsibilities, there ought to be some method devised at least to embarrass those men into the doing of their duty.

Mr. Bryant of Milton: I do not know where the entire realm of common sense is that the gentleman refers to, but I know that it is not in the United States, because there is not a single State in the Union that has compulsory voting.

This subject I have expressed myself on at considerable length and have given about all my ideas upon it, but I should like to answer the statement that it has worked well in several communities. If you have taken the trouble to look at the report that was prepared for us by the commission to get information for this Convention, you will have found those different places referred to. I will read them over hastily. Austria, Belgium, Spain, Switzerland, New Zealand, Tasmania. Now, those are the only places that that commission found where this thing was put into force.

I do not know whether the proponents of this measure think that the experience of Tasmania is so valuable to Massachusetts that it is worth more than the experience of all the rest of our own country, or the experience of New Zealand, or the experience of Spain. To those who think that the experience of Spain is valuable I will call attention to the fact that compulsory voting has worked very badly in Spain, and they can read what a Spaniard says about it in this volume. In Tasmania it amounts to this: That if a man does not vote, his name automatically goes off the voting list for the next election. Now, if you want that to come to pass, the Legislature unquestionably can do it now. There is no question that the Legislature can compel a man to register, if he does not vote, in order to get the vote.

Mr. Smith of Provincetown: I should like to ask the gentleman if he believes that any Legislature that ever was elected or that ever will be elected will disfranchise a man for not voting.

Mr. Bryant: I am not competent to answer that question. I do not think that they should disfranchise a man for not voting. What they will do or will not do I cannot say; but if they do not do that the only other possible penalty is to put him in jail, and I think still less should a man go to jail for not voting, because a fine means jail, $5 or five days. That is the only way you can frame it.

The reason I really object to this is because it is a piece of paternalistic legislation. I do not believe it is workable. I do not believe it is for the benefit of the community if it can be worked. I am reinforced in my belief that it is paternalistic and nothing else by the arguments that are put up here to support it. The first argument that has been offered to you by the eloquent gentleman who is not

here to-day (Mr. McAnarney) is that we believe in compulsory education. I believe in compulsory education, — for children. Does he believe in compulsory education for grown-ups? I believe that every healthy boy should get spanked once in a while, but I do not believe in a whipping-post for men or a ducking-stool for women. I believe that boys should go to bed at nine o'clock, but I do not believe in the curfew law.

The second argument that is used is the military argument. You compel people to do things in the army, therefore you should compel them to vote! Is it possible that a majority of this assembly sees no difference between a man in the army and a free citizen outside of the army? Why, you compel a man in the army to go to bed at a certain hour. You compel him to wear certain clothes. You provide him with food. You provide for every minute of the day what he shall do. It is paternalism, pure and simple, the best example of paternalism there is. It is a necessary paternalism, for you cannot run an army in any other way, but you can run a country some other way, and we have run this country without paternalism ever since it was started. I object to an amendment that goes back to the old days when they tried to control every activity which a man had in the course of his daily life.

Mr. Buttrick of Lancaster: Just a few words in relation to what my friend from Milton (Mr. Bryant) has been saying. You would judge by his argument that we were attempting to pass a compulsory voting bill. We are doing nothing of the kind. He has referred to the countries where compulsory voting exists. Compulsory voting will not exist in Massachusetts if this article becomes a part of the Constitution. It all remains for the Legislature of Massachusetts to say whether or not they desire to pass any legislation upon the subject. It merely authorizes and gives to the Legislature a right to provide for compulsory voting. So let us not be led away from the main track upon the question of what compulsory voting has done here or what compulsory voting has done there. We merely put it into the Constitution and leave it for the Legislature of Massachusetts to say how it shall be carried out. As a matter of fact, my friend neglected to read to the Convention the fact that in North Dakota the Constitution provides that the Legislature may prescribe penalties for failing, neglecting or refusing to vote at any general election, and up to date the Legislature has done nothing. Possibly they will do the same in Massachusetts. But let us not be led astray about all the evils of compulsory voting when you cannot have compulsory voting if this resolution goes into the Constitution until and unless the Legislature of Massachusetts sees fit to pass a bill.

The resolution was passed to be engrossed Tuesday, August 13, by a call of the yeas and nays, by a vote of 96 to 90.

It was considered again Thursday, August 15, the question being on submitting it to the people, and it was rejected, by a call of the yeas and nays, by a vote of 104 to 106.

On the following day, Mr. Barrett of Cambridge moved that this vote be reconsidered.

Mr. Barrett of Cambridge: I move that we reconsider the vote whereby resolution No. 282 was rejected at last Thursday's session.

This resolution has been before the Convention for the last two years. I had the honor of introducing it. I believe it to be one of the most meritorious measures that has confronted the Convention during our two years in session. I believe that it ought to be reconsidered and submitted to the people. It is a progressive measure. I believe that the progressive leaders of this Convention are in favor of this measure. I am very much opposed to the haphazard manner in which it was rushed through last Thursday, though by no means through any fault of the Chair. We had gentlemen voting on the measure last Thursday who never had attended a single session of this Convention this year. They were brought in for that particular and specific cause and reason to defeat the resolution, and thereby to my mind not only misrepresented the views of their constituents but the entire views of the citizens of this State by depriving them of an opportunity to express their views on the matter through the ballot. I believe the matter should be submitted to the people, that we should give the people a chance to vote on this meritorious resolution, and for that reason I hope the matter will be reconsidered.

Mr. BENNETT of Saugus: I hope this matter will be reconsidered, because all parties to this discussion admit that the right to vote, the exercise of the franchise, is a duty. All parties agree that it is a duty. At the present time there is a great deal said in the newspapers about directors who do not direct, and almost everybody is in favor of compelling them to direct and to attend to their business of directing. How can you be in favor of compulsory service of directors who do not direct and be opposed to compulsory action in regard to voters who do not vote? The beginning of the majestic preamble of our Constitution is that 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 tranquility their natural rights and the blessings of life. What excuse can you find for a man who does not attend to that duty that is imposed upon him in that dignified and majestic language?

Mr. CREED of Boston: The gentleman is speaking about not attending to duties. He is speaking now on the motion to reconsider. I should like to ask him if it is not a fact that the mover of reconsideration and also the speaker himself do not appear on this roll-call that we had last Thursday.

Mr. BENNETT: I do not know about it. It is too insignificant a question to require an answer. This is a large public question. I do not know whether he appeared or not. I have not appeared sometimes when I ought to have appeared.

And that brings me to a suggestion in regard to this matter. The only objection that is made to this is that possibly it cannot be enforced. Now, who could the gentleman say is in favor of repealing the Ten Commandments because sometimes we regret to say we cannot enforce them in our own cases? If I had time, I should like to make a differentiation between moral laws and laws of expediency or administration. Why, there is no law so difficult of enforcement as the laws against the social evil, but nobody ever has thought we should not have those laws. When you come to questions of moral laws like that, one of the highest authorities of the Federal government, who is

a member of this Convention, informs me that for the first time in all history there is not a house of prostitution in the city of Boston to-day. Laws embracing a moral principle are to be adopted even though they may be difficult of enforcement.

Now, I do not say that this is the most important measure of this session, but I do say that if we pass this on to the people, if we express the sentiment of the Convention in favor of this measure, there will be no matter in this Constitution which, as the years go by, we will look back to with greater satisfaction and a fuller sense of having done our duty than we will to this one, and it is fully and wholly in line with the original great compact in the cabin of the Mayflower.

Mr. ANDERSON of Brookline: I can conceive no sound reason why the people should not be permitted to pass on the question as to whether the Legislature should have power to deal with the subject of compulsory voting. That is the question now. The question is not one of legislation; the question is one of grant of power to the Legislature. I have no confident opinion as to whether the Legislature could or could not work out an effective and successful system of compulsory voting. But I do submit that it is a subject which requires attention, and it is a subject to which the Legislature should be given power to give attention. These are times when the duties of citizenship come home to us. The sons of many of us here present are volunteers in the army of the Nation. It is possible that the sons of others have been drafted. The greatest example of American citizenship shown since the civil war is the effective application of the draft law.

Now, I am not willing, as the father of one son who has volunteered, as the colleague of other fathers whose sons have volunteered, as a citizen who believes in the right of the Nation to draft men into the military service to do service on foreign soil, to sit by and see this Constitutional Convention refuse power to the Legislature of Massachusetts to draft men to the performance of their duty at the polls. There is your issue. [Applause.]

Mr. WEBSTER of Haverhill: It was not my purpose to enter into any further discussion of the merits of the proposition, which has been debated abundantly through four stages of its passage, but I must recur for a moment to some of the delightful consistencies and congruities with which the history of this discussion has been replete.

In the first place, we have the proponents of this measure so filled with enthusiasm for the proposition that voters should be escorted to the polls with the hand of a policeman at their elbow, that they forgot when the measure was to be reached, and it went by default the first time that it was read on the calendar, and then by courtesy, the matter was reconsidered. Those gentlemen had abundant opportunity to present every possible phase of their argument to this Convention. And, perhaps somewhat under the spell of the delightful personality and strong argument of our good friend the honorable delegate from Quincy (Mr. McAnarney), the Convention upon its first vote carried this proposition by a majority of 40 votes.

Allusion has been made to haphazard discussion. Sir, if ever there was a proposition which in its passage through a legislative body indicated the influence of a campaign of education and the effect of sober second thought and deliberation, I maintain that that example is be-

fore us. This proposition has been voted upon by this assemblage four times. In its first vote, as I remarked, it was carried by a majority of 40 votes. Upon its second reading, that was cut down to a majority of twelve votes. Upon the third vote, by roll-call, that majority was further reduced to one of six votes, and upon the fourth contest it was defeated by two votes. Now, sir, I maintain that that result was not fully to be attributed to the shifting personnel of the various meetings which acted upon it, but there was a real change of opinion in the minds of some deliberate and thoughtful members of this Convention, and I further believe that nothing is to be gained by any further attempt to prolong discussion upon it.

I want to call the attention of the Convention to this fact: That many men have supported this compulsory voting proposition who at the same time are enthusiastic advocates of biennial elections. Consider how these gentlemen will go to the people in advocacy of those measures. In one case they will say the trouble is that men do not feel their responsibility to go and vote, and they must take more of an interest in politics. "Politics is a serious business, and you ought to devote more time to it, and you ought not to hesitate to sacrifice your personal or business interests," they will say. "You must go to the polls, and we are going to see that you go. If you do not go to the polls you will be jailed, because we are not going to disfranchise you. Heaven save the mark, you probably will be jailed for contempt. And then you will come under the provisions of the absentee voting law, and we will send a polling clerk to the jail and poll your vote there." That is what they are saying by one of these measures, that "You are not voting enough. You are not sufficiently disregarding your private interests." Then, on the other hand, they will say: "Why, the whole trouble with this State is that we are harassed and overwrought with politics. We have too much to do. We have to vote two or three times a year, and it is absurd for busy men to be required to give up their time to go and vote so often." And so they are going to regenerate every condition of life in the Commonwealth by saying that we shall vote only half as often as we are voting now.

Mr. NEWTON of Everett: The trouble with this is that it is not true. The whole Convention has misled itself by the words "compulsory voting." Even the gentleman from Brookline (Mr. Anderson), who was not present at the former debate, has failed to understand what this would do. There is not a man in this Convention who for one moment dares to say that as long as we retain the secret ballot we can compel a man to vote. All this possibly could do would be to compel a man to attend the polls, and it ought to have been so designated. I suggested to the committee on Form and Phraseology that they should change the title, but they did not see their way clear to do that. If we should take this measure as it is and put the proper heading on it, and say to the voters: "We want to give the Legislature authority to compel a man to go to the polls," it would not have any standing at all; but when the words "compulsory voting" are used it seems somehow to sufficiently mislead us to make us think we are voting for something that has some particular advantage. There is not any doubt, either, in the mind of any lawyer here but what the Legislature has all the power that this would give it, namely,

the power to make provisions in regard to voters attending the polls; but if you want to give the Legislature the power to disfranchise a voter, if you want to give them that power, then you ought to reconsider this measure and put it into some kind of shape, so it will give them that power irrespective of the fact of the secret ballot. Otherwise this measure ought to be left where it was left by the Convention last Thursday.

Mr. Powers of Newton: It seems to me that the Convention is losing sight of one very important consideration, and that is that our government, not only National but State, rests upon an expression of public opinion. In other words, this resolution proposes to give to the Legislature the right to require an expression of public opinion upon the election of officers, and that is as far as it goes. We have compulsion in the performance of about all the duties connected with political life. We are compelled to serve upon juries, we are compelled to pay taxes for the support of the country, we are compelled to give military service for the defence and protection of the country; and yet we hesitate to say that any one shall be compelled to express his opinion, which is the foundation of the government in which we live.

I appreciate that this is a non-partizan Convention. We are here not as Republicans, not as Democrats, not as Progressives; but one of the great parties of the State already has discussed this question and has embodied the proposal in the platform upon which it elected its Governor, and I ask permission to read from the platform of the Democratic party. I am not sure but that all Democrats here are in favor of compulsory voting. I notice that my friend from Brookline (Mr. Anderson), who is back here from the performance of important services at the National capital, has come here to say a word in support of this proposition. In doing this he represents the great party to which he belongs. Now, the Democratic State Convention adopted this as the platform upon which they elected the Governor of the Commonwealth:

> It is as much the duty of the citizens to vote as to serve on a jury or to do military duty in times of public peril. The stay-at-home voter is the source of unnecessary expense at elections, and is therefore a source of evil. Since we believe that these citizens entitled to do so should be required by law to vote, election day is a solemn day and should be made a holiday dedicated to the most important of all duties of citizenship.

Now, I am with the Democratic party for the first time in my life, and I propose to vote with them to-day. I believe that there are enough Republicans who will join the Democrats in this Convention to carry out the principle laid down by the Democratic party upon which they elected the Governor of the Commonwealth.

Mr. Shea of Dalton: Our very interesting friend from Haverhill (Mr. Webster) gave us an accurate tabulation of the different votes on this question, but through some oversight he did not give a complete tabulation. I merely call this to your attention because I understood him to say that the friends of this measure were not present. Let me read to you the figures on the standing vote and ask you whether the friends of this measure at that time had any real reason for hastening out to notify others who were interested that a vote was about to be taken. On the standing vote on this question 89 voted in the

affirmative and 76 in the negative. When the roll-call was reached 104 were in the affirmative and 106 were in the negative. The question is: Shall we reconsider the vote taken at that time? You members who were present on that day know what happened. I do not expect all of you who voted in the negative to vote for reconsideration at this time. Some of you would say: "Why, that is absurd. I have got to be consistent," but it seems to me that there are many big men in this Convention who voted against this measure who will now vote for reconsideration, inasmuch as it already has passed the Convention on three or four different votes.

Mr. KNOTTS of Somerville: We ought not to recede at any point. The gentleman in the first division (Mr. Webster) is a first-class logical sleight-of-hand performer. I suppose I might better have said an illogical sleight-of-hand performer. He tells us that the proponents of this measure propose to go before the people of the Commonwealth, if it is submitted to them, and say to them: "You citizens are not voting often enough." Then, on the other hand, the same set of men, very largely, who are interested in biennials, if it is submitted to the people, will go before the citizens and say: "You vote too much." Now, he holds that up to us as an inconsistency. Well, he himself creates that inconsistency. It is not in our logic. The issue is this: We are saying on this proposition that men ought to vote when the time comes for them to exercise the franchise, men ought to vote when the hour of their duty has arrived. That is what we are saying. On the other hand, when we come to discuss biennials, the question is, how often men shall exercise their duty, how often the hour shall strike for duty to be performed. Here there is no inconsistency. Then let the delegates keep this issue clear.

More than once in the efforts that I have made in various communities in the interest of reform, when it was an off year, and when General Apathy walked abroad in those communities, more than once the chairman of a city committee, more than once a gentleman who was running for mayor of the city, has come to me and urged me, and not only urged me, but even offered assistance, to get out the vote on a great moral issue, because he said: "There is indifference; no possible way for us to get the vote out." They appealed to me, therefore, that a moral issue be thrust into the election to awaken the voters and get them to the polls, — to get them to do their duty. Let us keep this issue clear. Further, the franchise is not merely a privilege, it is a great duty. Deeply was I impressed once, in my reading, with the language of all the State papers of Napoleon. In every paragraph the word "glory" appears. On the other hand, in all the State papers of Wellington nowhere could the word "glory" be discovered, but the word "duty" was written into every paragraph. It seems to me, if now we can but submit this matter to the people, it is a clear issue upon which they can decide; and therefore, if we assist in getting the citizens of the State to perform their duty in the exercise of the franchise, we shall have rendered a great service to the Commonwealth.

Mr. BRYANT of Milton: We have arrived at the stage where I assume the Convention will not lightly attempt to reconsider matters that have been passed on with as much discussion as this matter has received. I have maintained from the first that the matter is impracticable. There are a great many duties that you cannot enforce by

law, and this one one of them, and I assume that the last speaker would say that it was a duty to go to church, and certainly everybody here would say that it was a man's duty to support some church. It used to be the law in this Commonwealth that every man had to support some church. A hundred years ago that was the law. The people paid taxes to this church or the other, but they had to pay to some church. Was not that a good thing? Were they not doing their duty? Why was it that that was discontinued? Because that kind of compulsion to do a moral duty we discovered a hundred years ago did not work, and in the long run was a bad thing.

I do not know exactly how to describe this particular kind of compulsion that we are talking about now. Some of the delegates who have spoken in favor of this do not want a man disfranchised. Others of the delegates who have spoken in favor of this do not want a man or a woman put in jail for failure to vote. I do not believe that the majority of the delegates to this Convention would unite upon any punishment, and I call it to your attention that so long as we have been discussing this matter nobody has suggested an adequate means of putting compulsion on a voter.

Mr. Winslow of Newton: The gentleman says that this duty cannot be required. I should like to inquire, if that is so, how it is that it works so successfully in Belgium, where 94 to 96 per cent of the vote is brought out with nothing more severe than a very light fine for the first and second offences, and temporary disfranchisement for the third or fourth offence as the most severe penalty.

Mr. Bryant: I do not know why so large a percentage of people vote in Belgium, but it is not on account of compulsory voting, because as a practical matter they do not have compulsory voting in Belgium. Anybody in Belgium who does not happen to find it convenient to go to the polls is brought up before a justice of the peace, and if he can furnish what seems to be a satisfactory excuse that is the end of it. Now, there are 161 justices of the peace in this assembly, and if this is going through I hope all you gentlemen will pick out the best natured one, because you may need some time to come before him, just as they do in Belgium, and say: "Well, it is not very convenient, and you would not prosecute me, would you?" And he would say "No." That is what they do in Belgium, because it is solely in the discretion of a justice of the peace whether a voter shall be prosecuted or not. Is that the kind of process we want in this Commonwealth of Massachusetts? It illustrates my point that the whole thing is impracticable. You cannot put real pressure on the voter, and every country that has tried it realizes it, as is shown in the pamphlet that has been prepared for us.

I have contended from the first, as I say, that this thing is impracticable. Every remedy that has been suggested here, except to disfranchise a man, is in the hands of the Legislature now. There is no question that the Legislature can publish a list of people who do not vote and put moral pressure on to that extent, if they want to, without a constitutional amendment. If people have not got public spirit enough now to go to the polls, I do not think we need a constitutional amendment to put moral pressure on them.

The motion to reconsider prevailed, by a vote of 127 to 67.

Mr. Sawyer of Ware: I want to remind this Convention that your committee on Suffrage gave this matter very careful consideration. The proponents of it were not able to present to us any workable plan, any more than they ever have in the Legislature. It was found that only one State in the Union, North Dakota, ever has put compulsory voting into its Constitution, and though that was done several years ago the Legislature never has acted upon it. Now, in face of these facts, and the fact that your committee on Suffrage and various committees of the Legislature in the years past have looked into this matter carefully, have found out that compulsory voting was compulsory nonsense, it is unjust and unfair for us to thrust it upon the people this year in face of the other questions that we have and the other amendments that are exciting public attention. As the chairman of our committee on Suffrage has well said, we can go no further than simply to compel people to attend the polls. So long as we have secret voting we cannot have compulsory voting. I hope we will stand by our judgment of last Thursday and refuse to send this to the people.

Mr. Morrill of Haverhill: The question has been raised here as to why compulsory voting works successfully in Belgium, it having been stated that at least 94 per cent of the voters there go to the polls. The answer is that in Belgium there is an inducement to the voter to go to the polls. Every man in Belgium who votes is certain of representation. Give everybody representation here and the people will have some object, some incentive, to cast a vote. Belgium has a system known as a unanimous constituency or equitable or proportional representation system. Each party is represented in government in exact proportion to the votes it polls, not, as in this State, on the theoretical basis of a certain amount of geography and a certain number of legal voters, those legal voters comprising registered voters and those who would be eligible to register provided the restrictive qualifications were not excessive, thus preventing them from registering, because of an insufficient residence period. Three-fourths of the States of this Union demand as a qualification for voting a shorter period of residence than Massachusetts has. Even in Maine thirty days' residence in a city or town suffices, and if I am not mistaken thirty days' residence in the State makes a citizen eligible to vote. In this State six months' residence in a city or town is required, and one year in the State. Many legal voters refuse to register because they lose their jobs, — they lose their places in the shoe towns and cities, for instance, and are compelled to travel fifty or a hundred or more miles to procure another job. And what are you trying to do? Are you willing to give the Legislature the power to compel such a man to come back fifty or a hundred miles, pay from $10 to $20 car fare and lose his wages, just to register, then compel him to make the same expenditure a second time to vote? Or, if you advocate confining voting to those who are registered, then you are advocating unfair discrimination. If it is confined to registered voters it will be easy enough for a man to give the assessors a wrong middle initial or other technically incorrect information or to have such wrong information given for him. Then he may be dropped from the voting list and thereby become exempt from voting under the terms of this resolution. Now, this Convention itself does not enforce compulsory voting

on the part of its members; in fact, it permits from one-third to two-thirds of its members to be absent nearly all the time, and are we going to be so inconsistent as to say to the citizens of this State that we would give the Legislature, provided a bare majority of those voting thereon approve this amendment next November at the State election, — that we shall give the Legislature the power to compel the people to vote? In other words, are we going to say that those who happen to come to the polls this year shall be entitled to say to those who happen to be absent: "We will make you come and vote in the future"?

Mr. Aylward of Cambridge: The statement of the gentleman from Brookline (Mr. Anderson) that this measure ought to be sent along to the voters is just as applicable to nine-tenths of all the stuff that we have rejected in this Convention, and that is no argument. Another point that has not been much touched upon in this discussion is the situation that presents itself to-day with the possible acceptance by the people of votes for women. Now, whatever argument may be addressed to compel men to attend the polls, does not that argument fail when we consider women voters? There are a great number of women, if not a majority at least a great minority, who, apart from the principle that women should vote, do not themselves wish to have to take part in elections; and are you going against their will on something that they will take no part in, in which they have not a vote? Are you going to allow the Legislature, to permit the Legislature, to draft a law to compel that large percentage of women to vote? That is a thought that I think we might well consider in these last few moments of this discussion, and if it is considered as it should be I am satisfied that this Convention will vote as it did at the last session.

Mr. Langelier of Quincy: It seems to me that it is most unfortunate that the title of this resolution is compulsory voting, for the opposition has played upon that title at every stage. The measure really should be entitled a resolution to provide an incentive for voting. Why, to hear the opposition talk here to-day and at previous stages you would think that we were passing a resolution which would provide that every citizen who did not vote should be landed in jail immediately. Now, we are doing nothing of the sort. Just look for one moment at the resolution. It contains but two lines:

> The General Court shall have authority to provide for compulsory voting at elections.

Now, what does that mean? It means, in the first place, that we are to submit to the people of this State the question as to whether or not they desire the General Court shall have the right to pass some such law. If they vote in the affirmative, which I believe they will, then the General Court can attend to all of the details, and the opposition, who claim this penalty and that penalty will be imposed, and that it is impracticable, merely say to you in so many words that they consider the General Court incapable of passing any kind of a law that will be an incentive to voting. Why, I do not believe any members of this Convention feel for a moment that a man who does not vote should be carted off and landed in jail. It seems to me that there is plenty of opportunity by which the Legislature can arrange for reasonable penalties. For instance, a man might be deprived of

his privilege the next year. But they say that you cannot deprive a man of his vote. Look at the naturalized citizens to-day who are deprived of their vote because of the fact that they are too lazy, too indifferent or for some other reason do not get their names on the voting list, and you practical politicians know how hard it is to get these naturalized citizens on the voting list, so that they can vote.

I believe that there is a good average attendance here this morning, a representative attendance, and I do not believe that it is necessary to argue much further, except I wish the members would keep this fact in mind: That we are not passing a compulsory voting amendment. We are passing a resolution asking the people if they desire their Legislature to have the right to make up such a bill as will be satisfactory to them. I hope, therefore, that the resolution passes.

Mr. Brown of Brockton: I am not responsible that I have got a chance once more to address this Convention. I voted against reconsideration, but I want to say a word against compulsory voting. I once had the disease as bad as some members of this Convention have it now. My answer to what has been said is that when you come to jury duty that is a necessity, you cannot do it in any other way; when it comes to fighting you have to do it that way, there is no other way; but when it comes to voting a man who stays at home votes. He is perfectly satisfied with whatever takes place. Why should not he be permitted to exercise such discretion? It surprised me to find Democrats advocating sumptuary legislation of this nature. How we have changed! Some men who find fault that men do not vote are responsible for it. Some forty years ago the Democratic party threw overboard its landmarks and indorsed a liberal Republican platform and liberal Republican candidates. Since then it has pointed with pride to its previous performance and has had no issue, except in the nineties. The Republican party was once a conscience party, but it drifted away from its conscience and its moral issues and narrowed its spirit to protecting itself against the gradually growing strength of the progressive Democrats. The situation now created is that both parties throw over any and all issues to enable them to get power. The Republican party surrendered to prohibition and got licked. Lately it surrendered to the conscience party in the shape of the Progressive party. The Democratic party surrendered to the progressive ideas of the Populists, who rapidly were coming into power based on the ideas of Jefferson and Lincoln. The People's party made it hot for Democrats down south and the Democratic platform adopted their issues and had votes enough. There was no reason to complain of the percentage of votes that came out in those Presidential elections. When there are no issues voters stay at home. Take it at the present moment. What is the difference between Democrats and Republicans? What have they got for dividing issues? There have been only three great issues in this country anyway to divide people upon in National elections, outside the State issues, and to-day the great parties are on both sides of these great questions, — the currency, the tariff, the slavery or labor question. That is the reason why the voters do not vote; and you seek to drag out the people, who do not care whether it is John or Jim who is elected to office. I am making this point, — that the man who stays away from the polls does vote. The Democratic party knows that in the country towns, where they

are beaten, and where they cannot get out their vote, this will bring the vote out. A man now says: "I am in the minority. What is the good of my going out and voting? I won't change the result. The Republicans are going to carry the State." The Republicans who whisper: "Vote for this because it will get out our vote," should take care. When they get their vote out they may find that the voters are so disgusted with the Republican party that they will vote for the Democrats. Thus far they have stopped at the half-way house of not voting. They show their disgust by staying at home, but bring them out and they will vote it. For these and other reasons, I am opposed to the resolution.

Mr. SMITH of Provincetown: I am very much surprised at the stand that my brother on my right (Mr. Brown) has taken when he says those who stay at home vote and are satisfied. Does he not know that the men who stay at home are the biggest growlers we have got in the State, that they find more fault with the men who are elected and do more howling against the State laws than any other class of men? That is a fact, and I am surprised that he should make that statement, that the stay-at-home voters vote. They do not vote. If they are not there to vote, why, the other man gets the vote and is elected.

I have failed yet to hear anybody in this Convention who was opposing this proposal attribute any sordid motive to the proponents of this measure. We are advocating this measure believing on the whole it tends to the public good. There are opponents of this measure who to-day are leaving no stone unturned to defeat this measure, and they have compulsory voting to a certain degree in their own districts. There are men in this Convention who are warm friends of mine, whom I esteem very highly, who can select the man who shall come to the House of Representatives or go to the Senate chamber, who can dictate who shall be mayor of this great city of Boston and make Congressmen. While such a man seems to pay no particular attention to this measure, and those who are not familiar with him might believe that he cared but very little about it, I assure you now that in his own district at this particular time, to know that his own voters vote right on questions, that gentleman furnishes ballots, distributes them and pays the bill, so that the voters will have the proper instructions. If we had such an able and efficient and fearless and honorable leader as that gentleman in both parties in every district in this State, we would require no measure of this kind, but such is not the case. We to-day have not such men, and the consequence is the proposition to the Legislature to put it up to the people, and if in their wisdom they think they should like to have it go through, then it is left to the Legislature to settle.

I am surprised to hear the gentleman in this division (Mr. Newton) and the gentleman in the fourth division (Mr. Bryant) and the gentleman from Boxford (Mr. Webster) bring up that same argument we had the other day. We are not settling the details of this proposition. We are not attaching any penalty. That is the farthest from our minds. The gentleman in the first division (Mr. D. D. Driscoll) would be judge and jury on this case. We can trust the Legislature. We can trust the people, and the people can trust the Legislature. We have nothing to worry about. I am sure this is a proposition on which

the people know how they want to vote, and we ought to allow them to have that opportunity. I hope that this resolution will be sent to the people.

The Convention voted, Tuesday, August 20, by a call of the yeas and nays, by a vote of 148 to 96, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 134,138 to 128,403.

XIX.

WOMAN SUFFRAGE.

Mr. Charles G. Washburn of Worcester presented the following resolution (No. 130):

Resolved, That it is expedient to amend the Constitution of the Commonwealth by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The right of the citizens of the Commonwealth of Massachusetts to vote shall not be denied or abridged on account of sex.

The committee on Suffrage reported that the resolution ought NOT to be adopted.

It was discharged from the Orders of the Day Tuesday, June 25, 1918, on motion of Mr. Newton of Everett, and was considered forthwith.

THE DEBATE.

Mr. NEWTON of Everett: I make this motion with the consent of the dissenters to the report, and at the suggestion of the Woman Suffrage Committee of this State who think that, in view of the fact that the Congress of the United States now is acting upon the matter in a National capacity, the House of Representatives already having passed such a resolution and the matter being now pending in the Senate, it would be ill advised for this Convention to take action upon the matter at this time.

The resolution was rejected. On the following day Mr. Sawyer of Ware moved that this vote be reconsidered.

Mr. SAWYER of Ware: I do not know that any one else in this Convention feels as I do about it, but it seems to me that when the vote in the Federal Senate is coming on Thursday on the question of suffrage we might as well keep the matter of suffrage before this Convention until after that vote; and so I would move that we reconsider the action whereby the Convention yesterday accepted the adverse report on Calendar No. 211, and I would move further that the question of reconsideration be postponed until Friday next.

Mr. LUCE of Waltham: It is again my ungracious duty to object to postponement, and in this particular case I feel fortified by the fact that those who have taken the keenest interest in this subject agreed that they would not ask the Convention to take its time for the purpose of the consideration of this measure. It was my lot, as the chairman of the committee on Election Laws in the House of Representatives for several years, to take an active part in the annual discussion of this subject. We always knew that the discussion was solely for outside effect. In all probability the days that were given to it in the House never changed a vote or at any rate changed very few votes. Discussion of the matter here would have the same bearing. It would change very few, if any, opinions, and would serve none of the immediate needs of this Convention. In view, therefore, as we again

and again have reflected, of the peculiar and exceptional circumstances of the time, which call for us to concentrate our energies on problems likely to be approved or with the chance of approval by this Convention and by the people, I trust that the Convention again will decline to give its precious minutes to discussions that can produce no practical immediate result.

Mr. SAWYER of Ware: Our attitude on this of course will depend upon which of the various groups that want suffrage we are in sympathy with, and roughly considered they may be classed as three. There is a certain body of influential and wealthy women who are interested in suffrage. With some of them it is merely a fad; with others it is an academic conviction, or a conclusion on an academic discussion. They are all of them people who economically are secure in life, and their convictions on the matter do not root very deep. Apparently those people are not desirous of fighting suffrage very hard, and, as the gentleman who has just spoken has said, they are willing to call off the battle. There is another group that has worked for suffrage in the years gone by, and that is the group connected with our churches. Their desire for suffrage, however, was very largely that the women might vote on the liquor question, and as the Legislature has settled that question I fancy we shall hear very little more from the churches in regard to woman suffrage. But there is another group, a group for whom I speak, and that is the group of working girls and working women who want the vote, and they want the vote because they feel the injustice of the situation under which they now live without it. They want the vote that they may improve their industrial and economic status. They know that they are discriminated against in the shops and the mills because they do not have the vote and the men do have the vote. Those people have been fighting for suffrage for years. Those people will fight in the battle and never let up until they get their just rights. In behalf of those people I trust that those who sympathize with them at least will vote for this proposition to-day, to keep this thing on the calendar until we see how the Federal Senate acts. Of course if the Federal Senate passes woman suffrage, why, all of us are agreeable to the proposition of the gentleman from Waltham (Mr. Luce); but if it should act adversely we want to make a fight here. I hope we will keep this on the calendar.

Mr. HARRIMAN of New Bedford: This is a vital question, one that affects democracy, and I cannot see for the life of me why this Convention should not postpone action until after the Federal Senate has acted. If the Federal Senate should reject this proposition, it does not mean that Massachusetts, or the working people particularly, are disinterested; and if the Congress of the United States refuses to submit it to the people let me say to you that the argument in the Senate is that the State will attend to it. If the Senate of the United States refuses to send this to the people, then I believe that this Convention can well consider it, and I think we at least ought to hold it over until the action of the Senate.

Mr. CLARK of Brockton: While personally I am not perhaps as deeply interested in this question as some others may be, yet I view it from this standpoint: That this body of men elected a year and a half ago were chosen for the purpose of assembling in Boston to

consider the questions that a great number of our people are interested in, and I think that there are very few questions in which there is a deeper interest throughout the Commonwealth than in this one. I believe it is due to the people of Massachusetts that this question be discussed and considered before being disposed of. Hence I certainly hope, in justice to that large element of our citizenship, that the matter will be postponed.

The Convention refused to postpone the consideration of the motion to reconsider, by a vote of 32 to 74. The motion to reconsider was negatived.

Mr. Louis F. Delaney of Holyoke presented the following resolution (No. 284):

Resolved, That it is expedient to alter the existing Constitution by adopting the subjoined

ARTICLE OF AMENDMENT.

Women shall have the right to vote upon the same terms as men, and no political right shall be denied on account of sex.

The committee on Suffrage reported that the resolution ought NOT to be adopted.

It was discharged from the Orders of the Day Tuesday, June 25, 1918, on motion of Mr. Newton of Everett, and was considered forthwith.

The resolution was rejected without debate.

XX.

BIENNIAL ELECTION OF GENERAL COURT.

Mr. Frank E. Lyman of Easthampton presented the following resolution (No. 87):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall assemble annually on the first Wednesday of January of each year and shall be prorogued at the conclusion of the one hundredth day of its session, without any proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other time as it shall judge necessary or when called together by the Governor.

Senators and Representatives shall hold their respective places for two years next following the first Wednesday of January after their election, and until others are chosen and qualified in their stead. The meetings for the choice of Senators and Representatives shall be held on the Tuesday next after the first Monday in November, biennially. The Senators and Representatives who shall be chosen at the election at which this article shall be adopted, shall hold their respective places for the term provided by the existing Constitution, and no longer; and thereafter Senators and Representatives shall be elected and hold their respective places conformable to the provisions of this article.

All provisions of the existing Constitution, inconsistent with the provisions herein contained, are hereby annulled.

The committee on Suffrage reported that so much of the resolution as relates to biennial elections of members of the General Court ought NOT to be adopted; and it was rejected, without debate, Friday, June 28, 1918.

At the next session, Tuesday, July 9, Mr. Frederick L. Anderson of Newton moved a reconsideration of the vote by which the resolution had been rejected.

The motion to reconsider was negatived.

THE DEBATE.

Mr. ANDERSON of Newton: In common with many other members I was surprised when the Convention at its last session rejected the proposal for biennial elections without a word of debate. I am sure that there is a considerable body of delegates who favor biennials and for one I cannot allow the matter to pass in silence.

Massachusetts is the only State which elects its entire Legislature annually. Annual elections have been abandoned by all except us and there is no sentiment in any State for a return to the annual system. Annual elections keep the State in a perpetual political turmoil. The legislators hardly receive congratulations before they must begin to plan for a reëlection. Attention is distracted from public duties. There is hardly time for the legislator to become acquainted with his work before his term expires. The voters tire of the everlasting series of primaries and elections and fail to come to the polls. And the system encourages the formation of a class of professional politicians.

Biennials not only tend to remedy all this, but tend to give the State a stable legislative policy, more experienced legislators, and save the State, if State officers are included, what is estimated at one million dollars annually. They are a step, and a great step, toward one of our most important goals, the strengthening of the Legislature. Biennial elections do not necessarily imply biennial sessions, but, as in this proposal, may be combined with annual sessions of the Legislature. Nor do they involve any limitation on the length of legislative sessions, though that may be desirable.

The Republican State platforms of 1915 and 1916 called for biennials, and surely there are enough Republicans here to stand for a roll-call on this question. Governor Walsh urged biennials on the Legislature. The Democrats might join the Republicans on this question with perfect consistency. My liberal friends need not fear the change to biennials on the ground that they would help the invisible government, for the most progressive and radical States have biennial elections and no one in those States has any such fear. And to make assurance doubly sure, I call attention to the fact that the platforms of the Massachusetts Progressives in 1914 and 1915 called for biennials, and the Progressives cannot be suspected of any love for the invisible government.

Let all who wish to change from our present ultra-conservative annual system stand up and be counted. The future, if not the present, is ours.

Mr. UNDERHILL of Somerville: On page 4 of the calendar is No. 230, a resolution to provide for biennial elections of State officers, Councillors and members of the General Court. Following it, No. 232, a resolution providing for biennial elections of State officers, Councillors and members of the General Court, and for biennial sessions of the General Court. Unless I am grievously mistaken, all the gentleman desires to do through reconsideration can be done under either one of these resolutions. There is no necessity of taking the time of the Convention in a reconsideration.

The motion to reconsider was negatived.

XXI.

BIENNIAL ELECTIONS.

Mr. George B. Churchill of Amherst presented the following resolution (No. 126):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

The Governor, and Lieutenant-Governor, and Councillors, shall hold their respective offices for two years next following the first Wednesday in the January succeeding their election, and until others are chosen and qualified in their stead.

The first election to which this article shall apply shall be that held on the Tuesday next after the first Monday in November in the year nineteen hundred and ; and thereafter elections for the choice of all the officers before mentioned shall be held biennially on the Tuesday next after the first Monday in November.

All the provisions of the Constitution inconsistent with the provisions herein contained are hereby annulled.

The Secretary, Treasurer and Receiver-General, Auditor, and Attorney-General, shall hold their respective offices for two years, beginning with the third Wednesday in the January succeeding their election, and until others are chosen and qualified in their stead.

A person shall be eligible as Treasurer and Receiver-General for three successive terms, and no more.

The first election to which this article shall apply shall be that held on the Tuesday next after the first Monday in November in the year nineteen hundred and ; and thereafter elections for the choice of all the officers before mentioned shall be held biennially on the Tuesday next after the first Monday in November.

All the provisions of the Constitution inconsistent with the provisions herein contained are hereby annulled.

ARTICLE OF AMENDMENT.

Senators and Representatives shall hold their respective offices for terms of two years, beginning with the first Wednesday in the January succeeding their election.

The first election to which this article shall apply shall be that held on the Tuesday next after the first Monday in November in the year nineteen hundred and ; and thereafter elections for the choice of Senators and Representatives shall be held biennially on the Tuesday next after the first Monday in November.

The General Court shall assemble every year on the first Wednesday in January; and each General Court shall, without any proclamation or other act of the Governor, be finally dissolved on the day preceding the day appointed for the first assembling of the next elected General Court.

All the provisions of the Constitution inconsistent with the provisions herein contained are hereby annulled.

The committee on Suffrage reported that the resolution ought NOT to be adopted.

It was considered by the Convention Thursday, July 11, 1918.

By a vote of 95 to 111, by a call of the yeas and nays, Friday, July 12, the Convention refused to reject the resolution (No. 126), as had been recommended by the committee on Suffrage; and, accordingly, it was placed in the Orders of the Day for a second reading.

It was read a second time Tuesday, August 6.

Mr. Joseph S. Gates of Westborough moved that the resolution be amended by inserting after the word "and", in lines 11, 26 and 37, respectively, the word "twenty".

These amendments were adopted, by a vote of 88 to 53.

Mr. Ezra W. Clark of Brockton moved that the resolution be amended by inserting after line 46 the following paragraph: —

All elected State officers, Councillors and members of the General Court shall be subject to recall after one year of service under such regulations as the General Court shall make and provide.

This amendment was rejected.

Mr. Raymond P. Dellinger of Wakefield moved that the resolution be amended by striking out lines 41 to 46, inclusive, and inserting in place thereof the following paragraph: —

The General Court shall assemble biennially on the first Wednesday of January succeeding its election, and shall proceed at that session to make all the elections, and do all other acts which are by the Constitution required to be made and done at the annual session which has heretofore met on the first Wednesday of January in each year. And the General Court shall be dissolved on the day next preceding the first Wednesday of January in the second year next succeeding its first assembling, without proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as it shall judge necessary, or when called together by the Governor.

Mr. Robert Luce of Waltham raised the point of order that this amendment was not germane, for the reason that it related to biennial sessions of the General Court, whereas the resolution under consideration related to biennial elections.

The Chair (Mr. Albert E. Pillsbury of Wellesley) declared the point of order not well taken.

The amendment was rejected.

The resolution, as amended, was ordered to a third reading Tuesday, August 6, by a call of the yeas and nays, by a vote of 97 to 92.

It was read a third time Wednesday, August 14, in the following form, as changed by the committee on Form and Phraseology (No. 421):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

SECTION 1. The Governor, Lieutenant-Governor, Councillors, Secretary, Treasurer and Receiver-General, Attorney-General, Auditor, Senators and Representatives, shall be elected biennially. The Governor, Lieutenant-Governor and Councillors shall hold their respective offices from the first Wednesday in January succeeding their election to and including the first Wednesday in January in the third year following their election and until their successors are chosen and qualified. The terms of Senators and Representatives shall begin with the first Wednesday in January succeeding their election and shall extend to

the first Wednesday in January in the third year following their election and until their successors are chosen and qualified. The terms of the Secretary, Treasurer and Receiver-General, Attorney-General and Auditor, shall begin with the third Wednesday in January succeeding their election and shall extend to the third Wednesday in January in the third year following their election and until their successors are chosen and qualified.

SECTION 2. No person shall be eligible to election to the office of Treasurer and Receiver-General for more than three successive terms.

SECTION 3. The General Court shall assemble every year on the first Wednesday in January.

SECTION 4. The first election to which this article shall apply shall be held on the Tuesday next after the first Monday in November in the year nineteen hundred and twenty, and thereafter elections for the choice of all the officers before-mentioned shall be held biennially on the Tuesday next after the first Monday in November.

Mr. Albert H. Washburn of Middleborough moved that the resolution be amended by the substitution of a "Resolution to provide for biennial elections of State officers."

This amendment was rejected.

The resolution (No. 421) was passed to be engrossed Wednesday, August 14, 1918, by a call of the yeas and nays, by a vote of 116 to 108.

On the following day a motion was made that this vote be reconsidered; and the motion to reconsider was negatived, by a vote of 24 to 100.

The Convention voted, Tuesday, August 20, by a vote of 132 to 104, taken by a call of the yeas and nays, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 142,868 to 108,588.

THE DEBATE.

Mr. CHURCHILL of Amherst: This is at least a matter which calls for a real consideration and discussion. It is of course true that it is one of the difficulties in talking of this subject that the main arguments *pro* and *con* are pretty well known to every member of the Convention, and for that reason debate upon this subject may be exceedingly limited.

In urging upon the Convention the passage of this resolution, asking the Convention not to reject the proposal, I am not going to take their time to recapitulate arguments the nature of which and the force of which are well recognized by all the men in this Convention. It is unnecessary. It is perfectly true that to all of us who are here to act upon the proposal as a whole it is clear that certain very great advantages would be obtained by a system of biennial elections. It seems clear also to a good many that there are certain drawbacks to such a system. The real question at issue, and I am only endeavoring to state it, the real question at issue is whether the thing that is of most importance, the thing that is of real importance if you like, is to be lost or gained by having biennial elections. For example, I do not suppose for a moment that any one of us would deny that there

would be a saving of nearly, if not quite, $1,000,000 to this Commonwealth every year if we had biennial instead of annual elections. There are certain other advantages clearly set forth in the pamphlet with which this Convention has been furnished, and well known to us all, which probably most of us would agree would be obtained.

The one answer of importance, — and I say that with forethought and mean it, — the one answer of importance to the arguments in favor of biennial elections is an answer which is based upon an idea of political education, of political interest, of political responsibility on the part of the voters of the Commonwealth. We have been dealing with several questions in which that same fundamental purpose has been in the minds of all; and yet we have differed in opinion as to the expediency of measures intended to secure that result, and, it seems to me, in the matter of biennial elections, we have precisely the same real question before us. We all want an intelligent, educated body of electors interested in the affairs of the State, deliberating upon the affairs of the State as they come before the electors to vote upon, and we want from our electors an intelligent vote as the result of interest and purpose. We all agree about that, and the problem as to whether we had better have biennial elections instead of annual elections is precisely that problem. Shall we increase the intelligence and the interest and the deliberation of our voters upon these questions by the method of biennial elections? Shall we, by cutting down the number of occasions where theoretically they should be giving their attention to these problems and making decisions by their votes, — shall we, by cutting down those opportunities, nevertheless actually increase as a total intelligent action on the part of our electorate in the choice of our officers and in the decision of public questions?

The advantages to the officers, the officials, would be great, I am taking for granted. I shall try to meet an objection on that ground if the objection is raised; but I am inclined to assume that we all agree that so far as that is concerned it would be better for good administration and for good judgment on the part of the people as to the nature of their administrators and their administrations if the Governor of this Commonwealth, for example, were tried for two years rather than being judged in less than one. Putting that aside, the one thing that we all ought to be considering in this, it seems to me, the crucial matter, is: Shall we get a better result in the action of our electorate by the biennial system rather than the annual system? An arguer upon this subject must face that as upon various other measures that have been before us. It is largely a matter of judgment, and the judgment of one individual may be just as good as that of another. You will vote upon your judgment, but the judgment should be upon that point, it seems to me, and upon no other.

We have the argument upon the other side put before us in very eloquent, very effective shape, in certain quotations in this pamphlet. We have, for example, the argument of Speaker Reed, we have the argument of Mr. Blaine, we have some short quotations from the argument of Senator Hoar, three men who were opposed to biennial elections, and it is quite probable that that argument is as well stated there as it can be stated anywhere. They are effective presentations. But the question that each one of us must ask himself is: Do I really think that is true? Do I really think, for example, that as a practical

matter, as a matter of reality, it is true that if we wish the benefit of free government we must take the method, — that is the implication of the statement part of which I am reading, — we must take the method of giving the voter the opportunity to vote every year?

What is that fundamentally? It is an argument based upon an assumption which must be tested by our experience of the facts. Theoretically it is extremely easy for us to think, though not so easy as it was for John Adams and the men of his day to think, that there will be dangers to our freedom and dangers to our intelligent decisions as to our officers if we do not make those decisions very frequently. We all know perfectly well that those dangers had seemed genuine and alive to the men who made our Constitution. Are those dangers genuine? Are they alive? I cannot argue very much upon that point. Each one of you must answer that question for himself in his vote. I simply can record my own conviction upon that point. I know it to be the conviction of a great many people, not merely that they do not want to be disturbed, not merely that they are hard pressed, as they say, and overburdened with political demands, — and a good deal could be said upon that subject, but it is unnecessary to say it, — but they are convinced that they can fulfil, that the electorate of this Commonwealth will fulfil its duty better by concentration than by diffusing their attention. That is the thing in a nutshell.

So far as our officers are concerned, it is perfectly plain that on the whole this is the situation in Massachusetts. We have a system of biennial elections without the advantage of not spending money every year for the formal process. How often is a member of our State government after one year of service rejected by the electorate? Theoretically, in order to overcome the danger from our officials, we should be able to take them from their office at the end of a year, but actually as it works out in this Commonwealth very few people are ready to judge an officer of the Legislature or of the State government after one year. An officer has to be very conspicuously bad before he is rejected at the end of one year. By a kind of tacit consent on the part of our electorate judgment is withheld until the close of a second year. When a legislator has served for two years, then is the danger time, then is the time when the electorate feels: "It is now up to us really to consider the record and the work of this man. He has had a fair chance to show what he is, to show his policies, to show his character, and now we will judge him." A spirit of fairness on the part of American citizens leads us to do that thing. Political ambitions of opponents, desires on the part of other people, have very little effect in a contest after one year. They do not contest because they know this feeling on the part of the electorate. The day for them to contest is after the electorate knows that the man against whom the contest is made has had a fair show. I believe that to be absolutely true with the exception of a very, very few cases, regularly year after year throughout this Commonwealth.

How about the effect upon the electorate itself? It is manifest that so far as the will of the people is expressed to-day in its votes for its officers that will is not expressed, generally speaking, except every other year. There are exceptions, but not many and not often. At the present time they have comparatively little opportunity to express themselves directly upon policies and measures, and it is not necessary

to argue at the present moment that they must have the opportunity every year to vote upon measures and policies.

The argument for the short ballot, — what is it? Is it an argument to take away from the people the real control of its officials? Is it to remove, for example, the Secretary of the Commonwealth or the Treasurer and Receiver-General from the scrutiny and control of the people? In purpose, at least, the object of the short ballot is that by concentration, by not overstraining the demand upon an electorate, they may be disposed at fitting and proper intervals to pay real and fresh attention to their jobs as electors. Now, that is the thing. That is the question before us. Is it true that by our annual system of elections we destroy or tend to destroy that real attention, that real interest on the part of the electorate which alone can produce an intelligent and intelligible result? Is that true? I believe it is. To state the other side, the opposite side, is it not true that if the electors are given the opportunity to do what as a matter of practice they now are doing formally, and saving to the Commonwealth all these other advantages that are to be obtained by the system of biennial elections, we may depend in the long run upon a deeper interest, a fresher interest, a more intelligent consideration of officials and policies?

I answer that question only for myself. I personally am convinced that the system of biennial elections will be to the ultimate profit of the Commonwealth. The question before the rest of the members of this Convention is simply: What is your opinion about that? And your votes will be, it seems to me, upon that basis. For to repeat in conclusion, I am assuming, and I believe it to be true, that the plain advantages, so far as they are plain, of the biennial system are known to us all, and that the thing that makes the problem for us to-day as individuals is precisely that question which I have raised. Is the net result, the total result in good government, in intelligent action on the part of our electorate, going to be greater by the biennial system than by the annual system?

I want to add just one word to that in explanation of the reason why in this measure biennial elections are called for and not biennial sessions of our Legislature. So long as Massachusetts pursues the present method of the introduction and handling of legislation, a method which has its disadvantages but far greater advantages in truly popular democratic government, in a true participation on the part of the individuals of this State in the legislative work of this State, so long as that system lasts I regard it as a practical impossibility to legislate efficiently in this State upon a biennial plan. If we prefer for other and general reasons to have biennial sessions of our Legislature we clearly shall be obliged to adopt other methods of procedure from those which now obtain. So far as I know it has been a matter of general praise of Massachusetts, in spite of the common criticism of all Legislatures that we legislate too much, that it is a possibility for every inhabitant of this Commonwealth to secure the attention of the Legislature and the public attention to any proposal of legislation that that individual citizen chooses to put forward. That inevitably means a tremendous number of bills which by another method we might throw out at the start. The advantage of that method, however, I as a good democrat believe to be so great that personally I prefer the system of annual sessions of our Legislature

and biennial elections, and that is the reason why in this measure I have proposed biennial elections but annual sessions of the Legislature as at present.

Mr. CREED of Boston: If any of my constituents take the trouble to look over my record in this Convention, I trust they will give me a little credit for having given some slight consideration to every subject that has come before this assembly; but whether they do or not, I claim for myself the credit of having given to this subject of biennial elections most earnest and most careful consideration. In answer to the gentleman from Amherst (Mr. Churchill) I am constrained to advocate the report of the committee on Suffrage, especially because in reading the calendar I observe that the only dissenter from the report of the committee is the gentleman who has the honor to represent in part with me the 12th Congressional district (Mr. Gallagher). While I regret to differ with my colleague from the Dorchester-South Boston Congressional district, my convictions and my investigation of this subject have forced me to assume a different attitude than appears in his dissenting opinion.

It is true that eminent citizens of our Commonwealth, leaders in social, political and financial fields of endeavor, support the passage of this resolution, and that fact brings my memory back to 22 years ago in this very State House. In February, 1896, I sat as the ranking minority member of the committee on Constitutional Amendments, listening to the merits of this very proposition. So great was the interest manifested in the subject that year that we were permitted to hold our hearings in the old hall of the House of Representatives in the Bulfinch front before it had been remodeled for the use of the upper branch of the Legislature. Day after day distinguished citizens of the State came before our committee and with great force and with great persuasiveness argued that the voters were clamoring for this radical change in this method of the time of election, and if one was not well grounded in his belief in the efficacy of our annual system of voting he would have been converted by the earnestness of their appeal. But I remembered as I sat upon that committee that there is in this Commonwealth of ours an overwhelming percentage of the voters so aptly described as the "invisible governed," who hardly, if ever, are represented at any of these public hearings; and even then I put into operation the thought that was suggested by the distinguished ecclesiastic Bishop Hughes, who in his prayer in this Convention on June 21 of last year said: "Gentlemen of the Convention, think sometimes that the walls of this chamber are made of glass and look through them at the thousands upon tens of thousands of men, women and children in the Commonwealth who will be benefited or injured by your deliberations here." But the arguments of the eminent citizens prevailed. The committee on Constitutional Amendments reported the resolution to the Legislature, and there, after debate, to use the constitutional expression, it was agreed to refer the resolution to the people, and you know the result. Although our people were engrossed in a great presidential election, over the issue of sound money or the free and unlimited coinage of silver, although there is in the Commonwealth a small minority of the citizenry basing its judgment upon the fact that two successive Legislatures, — the popular branch by a two-thirds vote have passed the amendment, —

always voting in the affirmative on an amendment, the people rejected biennial elections by 50,000 majority, and then my associates in the Legislature of 1896 learned that these distinguished gentlemen no more represent the plain people of Massachusetts than the official atmosphere of Washington indicates the true temper of the American people on great questions of public policy. And so, I am to-day, as I was then, in favor of retaining our annual system of elections as an educational institution in which the individual citizen can be enlightened on questions of public policy.

But the proponent of this measure says, — if not the gentleman from Amherst (Mr. Churchill) those who favor it in pamphlets and otherwise say, — that because Massachusetts is practically the only State in the Union that has annual elections of all its State officials we should join the procession of the rest of the States of the Republic. Massachusetts likewise is one of three States, — Connecticut, California and Massachusetts, — that have an honest educational prerequisite for the privilege of the ballot. And when I say an honest literacy test I exclude from consideration those sixteen southern States which under the guise of a grandfather's clause disqualify the colored voter and deny to him his rights, privileges and immunities under the 14th amendment to the Federal Constitution. And yet, although Massachusetts is one of the three States that have an honest literacy test, no member of this Convention, no voter outside of the Convention, had the temerity to ask us to recommend to the people a resolution which would eradicate the literacy test from our Constitution.

We all heard a few days ago the debate on the question of the method of appointing or electing the judiciary, and it was ably pointed out that Massachusetts is practically the only State in the land that has the appointment of a judiciary during good behavior, which we know practically means for life; and yet you all observed how little support this Convention gave to either the election of judges or a tenure of office for years, and to those gentlemen who have advocated or who will vote for the abolition of the Governor's Council; the short ballot, upon which I take issue with the gentleman from Amherst (Mr. Churchill), a misnomer of legislation, meaning nothing more nor less than the taking away from the voters the right to elect certain officials and appointing them by some power instead; the State budget, which you passed this afternoon, giving great power to the executive; the giving of great power to the chief magistrate, — in fact, you gentlemen who will vote for every resolution upon our docket that means the centralization of power in the hands of a limited few, how inconsistent your attitude when you place further away from the people the opportunity to pass upon the honesty or the dishonesty, the efficiency or the inefficiency of the officials given this unparalleled power!

When I took my seat in this Convention I promised myself that I would not attempt to predict to my associates here what the people might or might not do on any resolution that we would refer to them, but I am going to venture this suggestion: If you mistakenly pass this amendment and the voters of the Commonwealth, engrossed in newer political principles or misled by the reactionary leaders or the conservative press, adopt this biennial amendment, then I venture

the prediction that in a few years the voters of the State will be clamoring at the doors of the Legislature, asking the Legislature to pass that dangerous antidote for infrequent elections, the recall of public officials, or some more ugly or more speedy form of impeachment proceedings, so that we would have here repeated maybe that deplorable exhibition that was given in the Empire State of New York when they had to resort to impeachment proceedings to get rid of their Governor, William Sulzer, elected for a two-year term. Is this mere assertion? In the group of 22 States of the country that have biennial elections only a minority have some form of the recall of State officials in their governmental machinery; but in the group of 24 States that have some form of the recall of judges, of judicial decisions or of State officials in their Constitution and laws, a majority have that principle engrafted therein.

But yet it is, after all, to the gentlemen who were the chief spokesmen for the initiative and referendum, which I so loyally supported in answer to an agreement I made with my constituents in the South Boston-Dorchester district, even to the extent of voting against the Loring compromise amendment in regard to the constitutional initiative, that I desire to address my remarks. I understand it is rumored that they say because their favorite policy is about to be adopted there is no longer need of this annual system of elections. If they persist in that attitude let me say to them that the people of this Commonwealth will ask: When was it ever a gain for democracy to surrender a true and tried policy of government for a newer progressive principle? When was it ever fitting or proper to compromise on a principle of justice or a matter of right?

Mr. WALKER of Brookline: I do not speak for my friends who have favored the initiative and referendum, but in speaking for myself I will say that I personally take no such position as he suggests.

Mr. CREED: I do not know how the gentleman intends to vote upon this question. I cannot infer it from what he states.

Mr. WALKER: If I may be more explicit, I will state that I intend to vote against biennial elections and in favor of the present annual system.

Mr. CREED: Then my remarks do not apply to the gentleman from Brookline.

It is said by some of the people who favor the passage of the amendment that in an off year of elections, when there is no presidential elector to be elected or a member of the Federal Legislature, we could well dispense, on account of the apathy and the indifference of the voter, with the yearly system of voting; but I suggest that it is unfair to penalize the 60 to 75 per cent of the registered vote that goes out at every election and conscientiously performs its duty, because of the criminal neglect of a minority of the electorate. The true remedy, as suggested by the gentleman from Amherst (Mr. Churchill), for the apathy and the indifference of the electorate is the education of the individual citizen. Let us teach him that in truth the ballot is the priceless privilege of the patriot. Let us educate him to the fact that it has been well said that

> The crowning fact,
> The kingliest act
> Of Freedom, is the freeman's vote!

Let us have him learn the words of that oath which every freeman was obliged to take in the days when the Colony was under a King and before we were sovereigns in our own right:

I do solemnly promise upon my sacred word of honor and conscience that I will so cast my vote as will best conduce to the public weal. So help me God.

If I had the power, I would have the teachers in the public schools, whose duty it will be to carry out that act of the Legislature of 1917 entitled: "An Act to teach the duties of citizenship in our public schools," relate to the scholars now and then an incident in the life of Governor Benjamin F. Butler. It had been observed that every time General Butler voted in his home city of Lowell he did so with uncovered head, so one day a neighbor said to him: "General, why do you always take off your hat when you cast your ballot?" And that plain, fearless tribune of the plain people replied: "I always uncover when I deposit my ballot because I stand in the presence of the sovereignty of the people and am about to cast my ballot into the sanctuary of the people's will."

For these reasons I believe that we should retain the annual system of election, so that all the voters can partake frequently of this sacrament of political liberty.

But it may be said that I look too seriously upon the question of lengthening the time of our elections. Well, gentlemen, when I leave this State House to-day to go to my home in the 12th Congressional district I must take the first step on the road that leads me to my home. This, in my opinion, despite the gentleman from Amherst (Mr. Churchill), is the first serious step along the road whose ultimate goal is the centralization of power in the hands of the few. It is the first serious invasion of the rights of all the people, and the beginning of the end of our scheme of government.

Mr. Anderson of Newton: Do I understand that the principle of the gentleman is that the more frequent the election the more democratic the government? If so, why should we not favor elections every six months?

Mr. Creed: There is such a thing as reducing a proposition to an absurdity. If he means to make the government more Democratic in a party sense I hope it will so prevail; but if he means in the general sense I believe that the fathers established the unit of one year, the calendar year, and it is a very appropriate unit.

But as I was saying, while I am only a skeptic as regards the advantages that are presumed to flow from the adoption of this amendment, I have not a scintilla of doubt as regards the baleful influences that are behind it. There are thousands upon thousands of honest, upright, patriotic citizens in the Commonwealth who are behind this amendment and believe in its adoption; but the greatest and chief backer that it has, in my judgment, is a corrupt combination between monopolistic business and machine politics. It has the support, in my judgment, of every enemy of the Commonwealth who places cunning above conscience and graft above honesty in the administration of our public affairs. It has the support of every corrupt corporation lawyer, of every trained lobbyist and of every hireling Hessian of the corrupt corporations of Massachusetts.

And now in conclusion, as a sincere lover of more, rather than less, government by the people, as a firm believer in the truth of that historic utterance of John Adams, that where annual election ends, there tyranny begins, I earnestly urge the members of this Convention to defeat this biennial election amendment, and thus strike a vital blow at this infamous system of special privilege, and its partner in hostility to democratic institutions, autocratic power, and thereby retain this made-in-Massachusetts system of annual elections, to the end that this grand old Commonwealth of ours shall remain in the future, as in the past, "dedicated to the sacred cause of liberty and of equal rights."

Mr. GATES of Westborough: I should like to make a few remarks in answer to the last speaker's claim that the common people are not for this amendment. I want to say that I represent the common people if any one in this Convention represents the common people. I am not a lawyer, nor an orator, nor an educated man. I never have been to school six months at one time in my life. But I believe that the common people are interested in this amendment. I have been a candidate for public office many times, being a member of the House, serving three years, and a member of the Senate, and a town officer of my own town for 30 years. I went out in my campaign and stated that I was in favor of biennial elections. As has been stated by the last gentleman, the corporations, the corrupt lawyers and other men of that kind were in favor of this amendment, but I never have been approached by anybody even though it was known that I was in favor of it, and if there is so much crookedness back of this amendment it seems to me that I would have been approached long ago.

I have not had any vocal exercise in this Convention in the past year, but I want to say that I believe this is one of the most important amendments that we could adopt. And why do I believe so? As the last gentleman has stated, the prominent men of this State for years have advocated this amendment. There has not been a Governor of our Commonwealth, with possibly one or two exceptions, for the last 50 years who did not advocate this amendment. The Governor whom we have at the present time in calling this Convention said he hoped that the amendment to provide for biennial elections in this State would be adopted by this Convention.

Is it any experiment? Have we got to try something that is unknown? No. We are only one State of many, and nearly all of the States, in fact all of the States except Massachusetts, have biennial elections or elections once in three or four years.

Many of those States had their annual elections, and why did they discontinue their annual elections? For this reason, among others: A Governor cannot make any reforms or bring about any administration different from what already has been in operation, because he has no time. A Governor who was elected last January, if he had not served before as Governor of this State, even now would have to be out with his nomination papers, looking for reëlection. He has to give more time to be reëlected than he does to discharge the duties of the office. And to prove that he goes all over the State, let me say this: In Westborough I have been president of what we call the board of trade. We have an annual field day, and we want one of the best speakers possible out there, and we have had one of the candi-

dates for Governor out to our field day every year for the last ten years, and why? When we send an invitation to the Governor to come to our field day he comes, because he feels if he refuses he will lose a few votes in our town. Now, a Governor is not elected to go to cattle shows and field days and sewing circles. He is elected to discharge the duties of his office, and he could discharge the duties of his office much better if he did not have to spend six months trying to be reëlected.

No business man, from a business standpoint, or corporation could succeed and do a large business if they changed their officers every year. We know that the experienced man does much better business in a business corporation; an experienced man does greater work in a public position. We heard, when we were members of this Legislature, that the first year man was of very little consequence and had very little influence, — practically none. A man who comes to the Legislature for one year stands no show of getting a bill passed. When a man has been in the Legislature year after year he has influence.

And then the expense. The expense is enormous. To-day we have been trying here to have a State budget to save the State money, and yet we are spending, according to the figures given by the Secretary of the Commonwealth, more than $1,000,000 each year for our elections, and it comes out of the taxpayer and we do not get more efficient officers, we do not get better service. It is expending practically a million dollars of the taxpayers' money for something without which we would be much better off. And since we have the State primary we practically have two elections in a year now, because we have the expense of that too.

I believe that if every member should study the question and decide it from a business point and the point of the efficiency of the officers of this State, this amendment would be one of the amendments which would pass this Constitutional Convention.

Mr. ANDERSON of Newton: The gentleman from Boston (Mr. Creed) spoke of the rejection of the amendment for biennials in 1896, that is, 12 years ago.

A DELEGATE: Twenty-two years.

Mr. ANDERSON: Twenty-two years ago. And in that time the electors of this State may have changed their mind. They were in a certain mood at that time. Very likely next November they may be in a different mood. This Convention is putting before the people a great many excellent amendments. Some of them passed here unanimously. I am sure that that will greatly influence the people in the fall and tend toward the passage of this amendment if we include it in that list. Consequently it seems to me there is very little force in the argument of the gentleman from Boston (Mr. Creed).

Besides that, we are told that the plain people are for the annual election, that there are baneful influences back of this amendment, that monopolistic business and machine politics are favorable to annual elections. I think that that argument is perhaps the most influential of any argument that is put forward. We are afraid of the invisible government, some of the liberal members of this Convention are especially afraid of it; but it seems to me that it is perfectly evident that the invisible government is not behind this drive for biennial elections, for two or three reasons. The first is that the most radical

and liberal States in the west are all of them States in which there are biennial elections, that in those States the men who are especially hostile to invisible government never have found out that biennial elections were an invention of the enemy. In those States there is no sentiment whatever for a return to annual elections. In the second place, — I have only a few moments, — in the second place, the Progressive party of Massachusetts in the years 1914 and 1915 certainly posed as the enemy of invisible government, and yet the Massachusetts Progressive party in both those years adopted unanimously a plank in its platform for biennial elections. In the third place, the ex-Governor who hails from Fitchburg, a delegate in this Convention (Mr. Walsh), who certainly was the leader for some time of the party which claims to have all the plain people in its ranks, — though some of us think there are some plain people somewhere else as well, — came out in his message to the Legislature and pleaded with it for biennial elections. I am sure that no one will say that the ex-Governor is a friend of the invisible government, or that the baneful influences of monopolistic business and machine politics egged him on to that recommendation to the Legislature. The Republican platforms of 1915 and 1916 also favored biennial elections. I do not know what the Socialists think about this matter, I have not interviewed them, but that makes all the parties in this case, with the exception of the Socialists and the Prohibitionists, in favor of biennials.

Mr. Sawyer of Ware: I know the gentleman would not intentionally misrepresent any one. He has given the impression here that the Democratic party is on record in favor of biennial elections. That is not so. He also has made a statement that Governor Walsh in his inaugural urged and pleaded for biennial elections. That plea that he made was qualified with the statement that there should be incorporated with such action the right of recall. If the gentleman wants to incorporate into this amendment the right of recall of elected officials with biennial elections, why, he has Governor Walsh on his side; but if he claims Governor Walsh on his side for biennial elections without the recall, he is taking a position that is not true to fact.

I should like to say just now, before taking my seat, that these other States that have abandoned annual elections have one after another adopted the recall of public officials. Now, if we want to abandon our annual system and take up the recall, very well; but if we do not want the recall, let us stand by the annual election.

Debate was continued Friday, July 12.

Mr. Sullivan of Salem: Without trying to make any argument either for or against the resolution under consideration, I just want to read for the information of the delegates, and let them do their own thinking, an article which appeared in the Boston Herald under date of November 30, 1917, written by William G. Gavin, whom many of the delegates in this Convention know as one of the best informed and most reliable political writers we have in the Commonwealth. The article in question, showing the tremendous expense under our present system of annual elections, is headed: "Millions of Dollars spent by the State, Cities and Towns and Candidates. Other unrecorded and unreported expenses would swell the total."

The text of the article reads as follows:

Massachusetts, to judge by the figures, takes its politics expensively as well as seriously. The cost to the State and cities and towns for State wide primaries and elections in the years 1912, 1913, 1914, 1915, 1916 and 1917 was approximately $1,500,000. Candidates for nomination, and for election and political committees expended in these years a total of more than $2,885,000 —

And by the way, the latter figure represents only the admitted expense filed with the Secretary of the Commonwealth.

Massachusetts has annual elections. A State wide primary costs the State about $20,000, and a State election costs the State about $10,000. An expert in the office of the Secretary of the Commonwealth estimates that it costs cities and towns of the State a total of about $75,000 for each State wide primary and each State election. In each of the six years mentioned there has been a State wide primary and election, and in 1912 and 1916, presidential years, there was an additional primary for the election of delegates to the Republican and Democratic National Conventions, and this year (1917) there were in addition a special primary for the nomination of delegates to the Constitutional Convention and a special election for the election of delegates.

In 1912 candidates for nominations expended $79,419.05, candidates for election $120,147.21, political committees $298,982.91.

In 1913 candidates for nominations expended $60,229.58, candidates for election $121,809.72, political committees $205,901.38.

In 1914 candidates for nominations expended $61,271.20, candidates for election $97,380.10, political committees $156,717.23.

In 1915 candidates for nominations expended $49,167.95, candidates for election $35,790.39, political committees $342,362.30.

In 1916 candidates for nominations expended $64,650.86, candidates for election $73,944.99, political committees $321,126.17.

In 1917 candidates for nominations as delegates to the Constitutional Convention expended $25,881.47, candidates for election $36,356.74, political committees $55,234.69. In 1917 candidates for nominations at the State primaries expended $35,000 (estimated), candidates for election $50,000 (estimated), political committees $100,000 (estimated).

The expenditures by candidates and committees in the year 1918 of course are not available. These figures do not include the cost of the county, city and town primaries and elections, the cost of running the legislative machinery, which is about $300,000 a year, and the cost of running this Convention. These figures as to the cost of the regular and State wide primaries and the expenditures of candidates and committees are presented as being matters of statistical interest.

Now it is up to the delegates to this Convention. Here is the information. The expense runs up to millions of dollars covering that period of six years. I simply present the foregoing information to the delegates as a matter of statistical interest. It is up to the delegates here to say whether or not in their judgment the State gets its money's worth, and whether or not it would be a good idea to change to biennial elections but not biennial sessions. I personally believe in annual sessions.

Mr. BARNES of Mansfield: I am a member of the committee on Suffrage, before which the matter now under consideration was heard. I notice upon the Orders of the Day that only one dissenter is recorded, and I recall that yesterday afternoon the gentleman from Boston in the first division (Mr. Creed) commented upon the fact that there did not appear to be any sentiment in the committee in favor of biennials except the name which appeared here. Through some inadvertence or other my name does not appear on the Orders of the Day as a dissenter, although it was my request that it should so appear; and as I recall the matter, when considered in executive session by the committee, there was a very strong sentiment in favor of biennials. It was a long time ago that we had our session, but my recollection is that there were five or six men, at least, who were

strongly in favor, and I recall at least one other who requested to be recorded as a dissenter. That is my only excuse for injecting myself into the debate this morning, as I believe the ground was extremely well covered yesterday afternoon by the gentleman from Amherst (Mr. Churchill). The arguments contained in the report which you all have before you are also very complete. It seems most significant to me that only four States in the Union now remain in which the members of the House and Senate and the Governor are elected annually.

I might advert, for a moment only, to the character of the support in favor of biennials as it developed at the committee hearings. I can recall that one of the chief proponents of the measure was the Massachusetts Real Estate Exchange, and I have in my hand a letter addressed to the chairman of the Suffrage Committee under the letter head of the Massachusetts Real Estate Exchange, in which the strongest possible support is made in favor of the measure. The committee was addressed by Mr. George F. Washburn, the president of the exchange, and I notice among the directors of the exchange the names of Eugene N. Foss, John Hays Hammond, William B. Lawrence, August Belmont, William M. Wood, John Q. A. Brackett, Everett C. Benton, Edmund D. Codman, Frederick Ayer, F. H. Prince. This measure had the hearty support of the Massachusetts Real Estate Exchange. Its president appeared before the committee and submitted facts and figures in favor of it. Appended to this letter of the chairman of the committee are a number of figures, most of which can be found in this report. It shows that the cost of government *per capita* in Massachusetts is greatly in excess of nearly all the other States in the Union, and it ascribes that fact largely to the reason that we have annual elections, with the attendant cost of primaries and elections and all that sort of thing. I am not going into detail, but I have these figures here, and will be glad to show them to anybody who cares to peruse them.

I might say, in a word, that the Massachusetts Real Estate Exchange figured that it would be in excess of half a million dollars a year saved to the Commonwealth if annual elections were abolished. Of course it is not of paramount importance, because if the benefit to the State of annual elections is to be so great the question of money should not be considered; but still it is an element which we as members of this Convention certainly should take into consideration.

I was struck yesterday very strongly by the argument of the gentleman from Boston (Mr. Creed), in which he made mention of the fact that biennials would be supported by invisible government and by all the agencies of corruption. In my brief experience as a member of the Legislature, — two years, — and in having come before the Legislature frequently since that time at committee hearings, I am most strongly of the opinion, and it was argued most forcibly before the committee at the hearing, that exactly the reverse is the case; that it might be expected that those men who can control and manipulate the Senate and the House of Representatives in order to keep their grip upon those bodies, if such a thing be possible, could do it much easier by the annual system; that they would not lose their grip upon the men, but that they could coerce them annually upon their elections and tie them up with promises and payments of money in the form of

campaign contributions, etc. It seems to me that if there is such a thing as invisible government, — and I have no doubt it exists to a certain extent, — it would be exactly the reverse.

Further, as regards the educational feature mentioned by the same gentleman, who said that annual elections would educate the people by constantly having public questions coming before them, it also seems most forcibly that exactly the reverse would be the case; that if business, big business as well as little business and all kinds of business, could only have a rest from excessive legislation, could only have relief, even for a year or six months, from the frequent "strike" bills which are brought before an annual Legislature, if they could only be saved the time and money necessary to fight the various "strike" matters that are brought into the Legislature, they then would have time to attend to their own business and educate themselves on public questions in a little more leisurely and orderly way than they are able to do under present conditions, when we find that in the 2,400 or 2,500 bills introduced into every Legislature practically every business, large and small, is affected, and that business men have to combine themselves into committees and leagues and real estate exchanges and everything else for the purpose of coming up to the Legislature and saving themselves by appearing here and fighting for their very existence, either by the way of taxation or restriction of privileges, or legislation for the benefit of a few, and all the thousand and one things which serve to harass and keep the business men constantly stirred up and harried.

The only other matter which occurred to me, which has not been brought out, that I recall now, was the fact that the officials themselves, who are forced every year to fight for reëlection, have a fight in the primary, then another fight at the polls, and before they have time to acquaint themselves with their duties they are forced into another fight. It seemed to me that the officials, the Governor, the members of the House and Senate, should have a sufficient time to acquaint themselves with their duties and with the matters before them, instead of being rushed and hurried from one election to another; and if this Convention would pass this one thing only, the time and expense of it would be more than justified by the good that would be accomplished.

Mr. Washburn of Worcester: It may be remembered by some of the delegates here present that at the last session of the Convention we had under discussion the subject known as the initiative and referendum. It was somewhat irreverently referred to as the "I. and R." It was supported by many able, conscientious, but I think misguided delegates in this Convention. [Laughter.] I was a member of the minority that opposed it, and I opposed it upon the ground that in Massachusetts the people already are very close to this legislative body. I called the attention of the members of the Convention to the fact that any citizen of the Commonwealth might cause to be introduced here a bill or resolve upon any subject that must be discussed and finally disposed of by a committee and by the Legislature before the Legislature was prorogued. I also suggested that we had what amounted to an annual recall upon our legislators by reason of the fact that we have annual elections. And then I stated that I

should oppose any effort made here in favor of biennial sessions or in favor of biennial elections.

It was the habit, a very few years ago, for many highly respectable people to sneer at our legislative bodies, both Federal and State. There was a time, I believe, not very long ago, when politics was thought to be an occupation rather beneath the attention of a serious minded person. If I mistake not, the public sentiment has changed. I observe that our National Legislature is in session now practically twelve months in a year, and I believe that we all will agree that there never was a time when the constant attention of legislative bodies to public business was more imperative than now. If there has been a time when any one has thought that we could dispense with our legislative bodies, that time has passed, — at least, for the time being. I was impressed by a suggestion made by my friend in the fourth division (Mr. Barnes), that business men want to be let alone, that business men do not want to be stirred up continually by the demands of politics. Let me say to my friend that business men and all citizens of this Commonwealth and of the Nation must be stirred up now and hereafter as they never have been before in their political activities. [Applause.] One of the prices that we pay for our form of democratic representative government, if it is to be successful, is that every citizen shall pay constant and close attention to politics. Is there any one here who now sympathizes with the sentiment entertained by certain highly respectable citizens of Russia, that the Douma was an unnecessary luxury?

It has been suggested here that if we have biennial elections it will save the Commonwealth a million dollars a year. Here again the standards of the past must give way to the standards of the present and the future. I have heard the cost of education in the Commonwealth of Massachusetts objected to. Time and again I have heard it suggested that we should exercise greater economy in our expenditures in educating the children of the Commonwealth. The public school bill in this Commonwealth for a single year amounts to about $25,000,000, the price of one first-class battleship. Is there any one here who now would criticize the expenditures for public education? Is there any one here who would remove the responsibility to his constituents of the members of the Legislature by so much as the shade of a hair to save a million dollars a year? Once we enter upon that pathway, why not go the whole extent and have a Legislature sitting once in four years, or in ten years, or in twenty years?

Mr. ANDERSON of Newton: Does the gentleman hold in mind the fact that this measure which is pending before us provides for annual sessions of the Legislature?

Mr. WASHBURN: I had not lost sight of that very apparent fact, and am sorry if I have not made that evident in what I have said. I am conscious of the fact that this is the thin entering wedge, and that when we have biennial elections we shall have strongly pressed upon us biennial sessions of the Legislature; and in the broad consideration of this matter it is impossible to speak of the question at all without speaking of it in some of its general aspects.

I hope that the Convention will sustain the report of the committee. I believe that every delegate who voted against the initiative and

referendum will be inconsistent in his course if he advocates biennial elections. The judgment of this Convention should be that at this time, above all others, when great problems are going to be brought in constantly increasing numbers before our Legislatures, the immediate responsibility of the legislator to his constituents should not be lessened in the slightest degree. [Applause.]

Mr. Underhill of Somerville: As this is a subject upon which I believe the members of the Convention have definite views, and as it has been covered pretty thoroughly, and what remains to be said can be said easily in the thirty minutes remaining, I move the previous question.

Mr. Bartlett of Newburyport: What I want to say is very brief, and I can say it in a few minutes. In my humble judgment we are suffering in this Commonwealth from too many elections, too much government and too much law; and any move toward biennial elections, even if it is the entering wedge toward biennial sessions, we ought to welcome. With all the primaries, elections, — municipal, State and special, — I think, and I hear the expression everywhere, that the people are tired of it. As for the Legislature, it long has been said that Massachusetts takes six months to make laws for the other half of the year. How long will it be before the year is not long enough to make laws for the year? There (indicating) is the gentle little volume which we are tossing out as the product of one Legislature in each year, the Acts and Resolves of 1913, a period of profound peace. That is what we are giving to the people. I am in favor of stopping the mill during a part of the time, if we cannot do any better. In 1879 and 1880 and 1881 we got along with a volume an inch thick, and who says that we did not then live and move and have our being and were as happy and prosperous and as well off as we are now? Who is there who rejoices when the Legislature sits? Who is there who does not breathe a sigh of relief when it gets through its session? If we can avoid this, have a little peace, have a little rest, it would be a great boon to the Commonwealth.

Mr. Brown of Brockton: I differ with the preceding speaker. I hope that the report of the committee will be sustained. The Constitution says frequent recurrence to the will of the people is the safety of the Republic. That word "frequent" is a comparative term; it may be superlatively less or superlatively more under certain conditions. So let us look at the conditions. Is it not less difficult to-day for a man to go to the polls annually than it was when this Constitution was framed? It is very much more easy. A man took a long time to get to the polls then, but he went once a year. You ought to go once in six months, with the comparative ability, with the comparative ease, with which you can go to the polls now. The delegate from Amherst (Mr. Churchill) seems to think that the very frequency is to bring contempt. I think contempt from frequency is not to be found in the annual elections.

We have refused to give more power to the Legislature. Why do you give more power to legislators? Surely a man has more power if he is elected for two years than he does if he is elected for one.

You say Massachusetts is the best State in the Union. Well, she has annual elections. Two and two may not make four in that case.

But prove it, because the moment you cross over to the States that are not as good as Massachusetts you find they have the long terms. Do you remember the exhibition of corruption in Ohio? Do you forget the blocks of five?

If you continue the argument of commercialism how long will it be before you say that "going to church takes too much time, is an unnecessary proceeding; let us arrange that we have prayer only once a month, go to church once a month." It is on the same line of reasoning. If you cannot have too much religion in order to be good churchmen you cannot have too much of your politics in order to be good citizens. It costs something, you say, but how does it cost anything? It simply redistributes the money; that is all there is to it. You have not wasted your money. It goes from one fellow's pocket into another fellow's pocket, and usually the fellow who gets it is the one who wants it more than the one who spends it. Otherwise he would not get it.

Mr. Dennis D. Driscoll of Boston: It is pleasant to me to hear the representatives of different organizations say that they represent the plain people and the common people on the question of biennial elections. It is more interesting to me to hear the delegate in the third division (Mr. Anderson) say the Republican party, the Prohibition party, the Democratic party, recommend biennial elections. Now, I do not know what some of the delegates present mean in saying that the boards of trade represent the interests of the plain people and the common people. I have had the pleasure in my life of associating with the people, the people of this Commonwealth, and whatever the people are they are proud of it. At every convention for twenty-seven years, — and they average about 300 delegates representing the various trades-unions of this Commonwealth, — I never have heard one union man defending biennial elections. The Massachusetts State Branch of the American Federation of Labor hold their convention annually. Every gentleman is invited to be present and listen to the transaction of the business, because there is no secrecy there. Year after year the working-men of this Commonwealth have gone on record as opposed to biennial elections. I wanted to make that explanation in view of the announcement made by the other delegates of the societies and organizations they represented. The Massachusetts State Branch of the American Federation of Labor represents about 200,000 wage-earners, men and women of this Commonwealth; and in their discussions at their meetings these important subjects are brought up, and any gentleman interested in them always will be found welcome to be given the privilege of the floor in defence of such questions as this, if he will answer questions by the delegates who sit in the Convention. I am saying this as a member of organized labor, and expressing the feeling of organized labor of this Commonwealth, — their opposition to biennial elections. We want to see representative government keep close to the people, as has been said by the gentleman from Salem in the fourth division (Mr. Sullivan), who read that well-written piece from the Boston Herald. We want to promote industry, and there is no delegate in this Convention who wants to take up biennial elections, to bring about any idleness under the false cry of economy, or to bring injury to the printer or injury to

everybody else. It does not help any political propaganda if a practical politician of this Commonwealth practices economy in spending his money in bringing about the success of his campaign.

The delegate in the third division (Mr. Bartlett of Newburyport), who put down that big volume here to illustrate his argument on biennial elections, would need to double the size of a volume of Acts of the Legislature if biennials are adopted, because candidates for the Legislature in their false promises to the people, telling them how they love and respect them and what measures they will introduce and will bring about if they are elected as their Representative, will have to put through such a vast number of laws to anywhere near carry out their promises. I trust that the delegates to this Convention will defeat biennial elections and keep our government of the people for the people and close to the people. [Applause.]

Mr. LINKE of West Springfield: Being one of the strongest advocates in the Convention for speed, I shall not take much of your time. I simply will say that I am a working-man, consider myself so, expect to remain so. I am a member of a labor-union. I am not, perhaps, a good member of the labor-union, as I do not participate in many of its meetings, do not attend any of the Central Labor meetings and never have held an office in the union. However, I do resent the statement that has been made that all union labor men in this State are against biennial elections, the same as I resent the statement that was made several times last year, and not criticized, that all union men are for the initiative and referendum. I happen to belong to a union which is classed as one of skilled labor, and a few of our men are thinking men, I believe, good citizens of their town or city and good citizens of the State. I do not think that some of the representatives of union labor in this State will claim that the union vote is going to follow them in all they say, and I for one am strongly in favor of biennial elections. [Applause.]

Mr. THELLER of New Bedford: I really have not made up my mind as to how to vote on this question, but I should like to have the final decision of it deferred, and I think there may be others who would agree with me. For that reason I want to bring to the attention of the members the fact that on the next page of the calendar there is a resolution, No. 223 in the calendar, relative to the powers and responsibilities of the Governor (Document No. 311), which provides for the biennial election of the Governor and Lieutenant-Governor. In that report, which is signed, I think, by Mr. Quincy, it says:

> Independent of action which may be taken upon the general question of biennial elections, this committee believes that the Chief Executive at least should be given a two-year term.

In my estimation we shall be in a far better position to judge of this after further debate on this proposition. At least we then can be consistent, so that I hope at any rate the Convention will pass this to another reading and not accept the committee report which has been made upon this resolution. It may be defeated easily if the Convention sees fit at a later time when we have heard the arguments which will support the proposition for the election of Governor and Lieutenant-Governor biennially.

Mr. Cox of Boston: When this question was on the ballot some years ago I voted against it. If it be put upon the ballot this fall I

may vote against it at the polls. But it is a very simple matter; it seems to me one of those matters which the people can understand as well as anything you can submit to them. We have had it stated that there are a large number of people in this Commonwealth who wish to have biennial elections. For my part I can see no harm or danger at all in submitting the question to the people, and for that reason I shall support this resolution in this Convention, although if I am of the opinion that I was when it was upon the ballot before, at the polls I shall vote against it.

Mr. LOMASNEY of Boston: Some years ago this matter was referred to the people. All the press of the State were lined up for it. But in those days we had a statesman in Massachusetts, a man who always rose to the occasion and who represented with distinction and honor this State in the Senate of his country at Washington. There indeed he always reflected the greatest credit on this Commonwealth. I refer to the lamented and the departed and never-to-be-forgotten George Frisbee Hoar. Toward the close of the contest he wrote one call to the people of Massachusetts and in it he said: "If this act be my last, let us stand together and fight for annual elections." [Applause.] And George F. Hoar, alone and almost single handed, defeated the proposition. I trust, sir, in these troublesome times, and especially at this time, without knowing how and when we may be called together, we shall not give arguments to people that should not be placed in their hands and wipe out annual elections, which form one of the safeguards of the Republic. [Applause.]

Mr. SMITH of Provincetown: I claim to be one of those plain people. I am one of a family of ten children. I have lived among the plain people and I hope I shall pass the balance of my days with the plain, common people. Now I contend in my district we are all plain people from Buzzard's Bay down. There may be a little change as you move on this way. And I know whereof I speak. They desire to have an opportunity to vote on this question of biennial elections, and but for biennial elections, compulsory voting, biennial sessions and a few of those matters which the plain people understand, you would not have had this Convention to-day.

Now my friend from Worcester (Mr. Washburn) and I view this matter from two different angles. He has been laying the brick and I have been carrying the mortar, — two different propositions. You go out among your constituents with nomination papers and you will have to approach them as cautiously and carefully as you would if you were going to inform one of them that his wife had been run over by an electric car. Why? Because they are entirely disgusted, — they are entirely disgusted with these annual elections.

The gentleman in the fourth division (Mr. Sullivan of Salem) says it has cost nearly $6,000,000 in six years. Do you suppose the plain people do not appreciate $6,000,000? The plain people cannot go out without any limit on what their wages shall be. But professional men, there is no limit, — they can go out and get anywhere from $5 to $20,000 a day. Now these men who know what the value of a dollar is are the men who believe there can be a saving in this matter of biennial elections. And when the gentleman from Worcester says: "Why, this is the sharp entering wedge," does he not thank God that we drove that wedge home when we got the Australian ballot system?

Oh, I remember; I guess I do, — when they used to stand down in our old town hall, men with the ballots, and you voted that ballot or you did not go in my vessel. That is gone, and gone forever. If we do not give the people an opportunity to vote on this question we violate the confidence they put in us when they sent us here. It was but a few days ago that I heard my friend in the third division (Mr. Lomasney), whom I always follow when I can, say: "You fooled me once, you trimmed me once, but you can't do it twice." If you do not give this to the people you fool them and you are trimming them with the rankest trim they ever had. This matter has been in the Legislature year after year and you could not get it through the Legislature because some people believed that if we got away with biennial elections, — what would follow? Biennial sessions. I do not know anything about biennial sessions; we are not talking about biennial sessions. You are raising up a bogey. A man would not refrain from building a house because he thought it was going to burn up. Certainly he would not. And I hope that now, right on the spot, without any further argument, we will give this resolution a reading and let it go to the people and let them decide for themselves. Twenty years is a very long time since they have had this question before them and you will find some changes in opinion. You did not have the Progressive party twenty years ago, and this is one of the prominent factors in the Progressive party and the Democratic party and the Republican party that has brought out the vote and made some changes. Now, I do hope that the report of the committee will be negatived and that the resolution will go along.

Mr. Gates of Westborough: The gentleman in the third division (Mr. Lomasney) referred to one man defeating the biennial election amendment. Now all men, no matter how great and how strong and influential they are, do make an occasional mistake. I believe Senator Hoar was one of the greatest men Massachusetts ever produced, but the greatest men in any country or in any State sometimes make mistakes. I believe in this case Senator Hoar was not right, and I believe that we have other men who can testify, who were situated in a better place for observing the working of this system than was Senator Hoar. I speak of such men as Governor Claflin, Governor Talbot, Governor Rice, Governor Robinson, Governor Ames, Governor Brackett, Governor Foss, Governor Walsh and Governor McCall. They have occupied the Governor's chair in this building and have been in a position to see the working of the Legislature and to know whether it is wise to elect your Representative for one year to an office to bring about reform and administer the laws of the Commonwealth as they should be administered and yet have no opportunity to do so, because as soon as he gets acquainted with the duties of his office he has to go out and campaign for reëlection and neglect his duties. No business man would hire a man for twelve months and pay him for spending six months of that time running around the country. That is what we do with our Governor. The man who is supposed to have been elected to administer the office is there only a few months when he has to go out and seek a reëlection. I sat on the same platform with Senator Hoar and I helped Senator Hoar into Congress, but the man who now says Senator Hoar was infallible was opposed to his going to Congress. [Laughter.]

Mr. RICHARDSON of Newton: Since the day when I was honored by election to this body I have been endeavoring by personal interviews with the people who sent me here to discover their opinion on various important matters which are before this Convention. As I have gone around the city of Newton and talked with the people in all walks of life whom I know there, I venture to say that there is no one major matter which is up before this Convention on which I have found the sentiment so nearly a unit as on this pending question. I do not believe there is any doubt that the people of Newton at any rate are three to one in favor of a change in the system of elections in this Commonwealth. They see it in a common-sense way. They believe that it is totally unnecessary to go through the form of electing State officers every 365 days. More than that, they believe that the Legislature would be strengthened if a man when standing for election were elected for a two-year term instead of the short term of one year. They think that it would add to the responsibility and dignity of that office, and in that conclusion and in their other conclusions I heartily agree. It seems to me that it is our plain duty to pass this matter at any rate to another reading, not kill it now, and see what the reaction of the press and the public is to our attitude. I venture to say that that reaction will be entirely favorable and commendatory.

Mr. TALBOT of Plymouth: I notice that when this amendment was defeated twenty years ago my own county, the county of Plymouth, voted nearly two to one against it. That is not the sentiment there to-day; I know that. It is rather significant that at that time the majority of the votes cast against the measure came from the counties of Suffolk and Essex. The sentiment of the smaller towns at least is in favor of biennial elections. In my mind it is significant that State after State has changed. At first all of the original thirteen States, with the exception of South Carolina, held annual elections. They gradually have changed. To-day they have biennial elections or some longer term. The same reasons that induced those States to change must affect our State in some degree, perhaps greater or less. The proposed change, to my mind, does not involve any great fundamental proposition; it is simply a question of expediency.

The arguments for biennials have been very well summed up. The frequency of elections, the waste of time and energy; the people are tired of voting so many times a year; they do not get out to the polls. The statistics of the various States where they have biennial elections show that a much larger percentage of voters now vote than when the elections were annual. And that is what we want. We want to get the sentiment of the voters. We do not get it under present conditions.

In the pamphlet which the Commissioners compiled, No. 9, on page 27, is an article by Governor Walsh which very well sums up, it seems to me, the argument against the present system. It says:

> It is impossible for those who have not been in the public service to realize how much its efficiency is impaired by the necessity of making ready and participating in the struggle of annual elections. The loss of time is great, but the unrest, distraction and diversion of thought from the channels of public service cause a still greater loss in the value of the public servant. The executive officers scarcely become acquainted with their duties before they are obliged to enter upon an elaborate campaign to defend themselves against attack and oftentimes partizan abuse, and, perhaps, are turned out of office before they have had an opportunity to prove their capacity, or to put in operation the principles or reforms upon the advocacy of which they may have been elected.

It seems to me that biennial elections will do two things. In regard to the Legislature, instead of having perhaps a third of your men inexperienced you are going to have, — at least in the second session, — every man experienced. That will result, I believe, in greater consideration being given to business; there will be more general laws and fewer acts of special legislation, and it is said that is what we want. In the executive chamber we are going to have continuity of action; that is what we want, — continuity of action and better administration. Therefore I hope this question will be submitted to the people. [Applause.]

Mr. Ferry of Northbridge: I rise to explain my position. As a member of the committee on Suffrage I dissented from the report of the committee and expected to be so recorded. I am unfortunate in not being a representative of any society or organization; I simply am here to try to represent the people of my district, and as far as I can find from talking with them, they are in favor of biennial elections.

Mr. Sawyer of Ware: I want to say as to the executive action in the committee, there was at that time in my recollection only one dissenter, the gentleman from Boston (Mr. Gallagher); and had these other two gentlemen who say they would like to be recorded as dissenters so desired, they could have had their names put on at any time, as the report has been on the calendar now for a year.

I want to quote the statement made by the gentleman from Waltham (Mr. Luce) last year: He said: "I regard our Legislature as the best Legislature in America and perhaps the best legislative body in the world." I will go a little further and say that I believe Massachusetts is the best governed State in the Union. Now if it be true, — and who is there who cares to dispute it? — that we are the best governed State in the Union, there must be some peculiarity about our government which makes us excel the other States; and the only governmental peculiarity that we have, as has been pointed out, is that we have annual elections.

I want to say that I believe we owe the excellence of our government to two things. One is our system of legislation, whereby every citizen may petition to the Legislature and no committee can pigeonhole his bill, — it must be discussed and voted on in the open; and the other is that we have annual elections. The gentleman from Amherst (Mr. Churchill), who fathers the milder of these two resolutions, yesterday was very careful to say that he believed our present system of legislation should be retained and that we should retain the annual session. I do not believe that we can retain our present system of legislation unless we retain the annual election. The effect upon the Legislature of biennial elections is the first reason why we should stand by the committee's report and vote yes and reject this proposition for biennials. It would destroy the efficiency of the Legislature by making practically a new Legislature each year. Vermont, the last year under annual elections, reëlected eleven Senators and 96 Representatives. The second year under biennial elections it reëlected no Senators and only 4 Representatives. Ohio last year, having abolished the annual elections, reëlected only one out of 28 legislators. Indiana last year reëlected only five out of 146 legislators. It means, if we substitute biennial elections, that we go either in one of two directions, — that we enlarge our House, as it is in New Hampshire, to four or five hundred

members, else the small towns never can have a Representative, or that those who come to the Legislature will recognize that they never will have a reëlection and they get all they can out of it in a single term and that is the end of it. The secret of the corruption in Ohio has been pointed out in magazine articles and spoken of here, — that they have no reëlections and that there is no reward or punishment of a member. He gets his term, and that is the end of it. It would destroy the efficiency of the Legislature by having so many green men. It would destroy the balance of representation among the small towns. In some districts there are ten or twelve country towns. Each town now elects a Representative only once in ten years. Under the biennial system they would get a Representative perhaps once in twenty years; perhaps never. It will remove your Legislature from the control of the popular will. Our annual election provides, as it has been said, until the recall has been adopted, the only means by which the people can express their approval or disapproval of the conduct of their representative.

Are we as members of this Convention prepared to take so serious a step as it would be to destroy the annual elections? In 1631 the freemen of Massachusetts Bay Colony voted that the general session of the General Court should be holden at least once a year. John Adams in his works goes on at some length and insists that Massachusetts shall have annual elections. And in our Constitution it is specifically safeguarded (Declaration of Rights, 22d article):

> The Legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws, and for making new laws, as the common good may require.

The people passed on this question in 1896 and by a majority of 50,000 stood by our time-honored position. You say that they have not had a chance to pass on it since then? Why, it has been in the Legislature several years and been voted down by a large majority. In 1914 the resolution went into the Senate and was defeated by a vote of two to one. The next year it came into the House and was rejected by a vote of almost two to one.

Last night it was said that the political parties were in favor of abolishing annual elections. The Republican party as a whole party in this State, with the exception of one year, never has gone on record in favor of biennial elections. In 1896, when the great fight was made, there was one of the biggest fights ever made in a political convention in the committee on Resolutions of the Republican State Convention. The fight for biennial elections was led by Senator Lodge and Mr. Justice Moody. A protest was sent in signed by Senator Hoar, ex-Governor Boutwell, Joseph H. Walker and many men of kindred standing and experience, and after a long discussion the committee voted 15 to 13 against putting it into the Republican platform, and the Republican party has taken that position every year since then until two years ago. Two years ago it came out and said: "We are in favor of biennial elections." Why did it take that position? Because Governor McCall wanted the support of the statesman of Walpole, Mr. Charles S. Bird, and one of the *sine qua nons* of Mr. Bird's support was that that should go into the platform of the Republican party. That is the only time that the Republican party has gone on

record in favor of abolishing annual elections. The Democratic party never has gone on record in favor of abolishing annual elections.

They tell us there is too much politics. What is politics? What is a political campaign? It is simply a summons, a challenge to the people to exercise the prerogatives of citizenship, to take an interest in the public business; and can there be too much of that? Yesterday the gentleman from Amherst (Mr. Churchill) gave it as his opinion that if we had less frequent elections there would be more interest in the elections. I want to quote from a little book on "Biennial Elections" by a gentleman who is known to you all, Mr. Raymond L. Bridgman. Mr. Bridgman has been a reporter in this State House 41 years. He has watched proceedings here with the eye of an experienced and intelligent observer. His book should have been mentioned in the pamphlet given to us by the Commission. And he makes this wise observation:

> Now, political judgment grows by exercise. Is it reasonable to suppose that in the line of mental endowments here is an exception to the rule which demands exercise for the promotion of strength? It is so clear that it needs only attention to make it certain that political faculties, like other mental qualities, are promoted by exercise. The issues at stake in a political campaign are the most important in a man's existence, except those involved in his personal relation to his Maker. They demand the utmost fund of information, the most thorough knowledge of public men and public events, the ability to discern between the true and the false, determination to adhere to the right, no matter what man or party calls upon him to subordinate his judgment or his conscience, unselfish activity for the public good at the expense of ease or pocket. Once in a year is none too often for giving large attention to public concerns. Once in a year is none too often to exercise the freeman's right and prerogative of passing judgment upon the men and measures of the times. It is the exercise of the power which makes it effective.

The figures of the cost of annual elections were given to you. Do you know how much it is *per capita?* The figures are less than half a dollar, and if you abolish annual elections you may save perhaps a third of that. Twenty cents, perhaps, you will save *per capita* to your people by abolishing annual elections. Is twenty cents a year too much of a tax to put upon the people for the privilege of their reviewing the acts of their representatives at the State House each year?

There is one more thing. This is an important question, a public question that has been agitated long in our State. This year our voting electorate will be smaller than for years. Thousands and thousands of our boys and young men who have lived in this State all their lives are away. It is unfair to our soldiers, who are away from this State and unable to cast their vote upon this proposition, for us to act upon the question in their absence, and make so great a change in our system of government as going from the system of annual elections to the system of biennial elections. I trust the Convention will stand by the report of the committee.

By a vote of 95 to 111, by a call of the yeas and nays, Friday, July 12, the Convention refused to reject the resolution (No. 126), as had been recommended by the committee on Suffrage; and, accordingly, it was placed in the Orders of the Day for a second reading.

The resolution was read a second time Tuesday, August 6.

Mr. Dennis D. Driscoll of Boston: Before stating the reasons for my opposition to the question of biennial elections, now before the Convention, I wish to say that I am sorry that all the delegates to

the Convention are not here, because a question of such importance as this should not be passed or rejected, as the case may be, in the absence of any of the representatives of the people.

I made a statement a few weeks ago, on behalf of organized labor in this Commonwealth, in opposition to biennial elections. I call to the attention of the delegates to this Convention the fact that I have in my possession now the proceedings of the thirtieth annual convention of the Massachusetts State Branch of the American Federation of Labor, held in the city of Lawrence, September 10–13, 1917. I have looked through the resolutions that were passed there to see if there were any in relation to biennial elections, and I cannot find one. But I do find, — and I say this without directing any sarcasm toward any member of this Convention in regard to any past statement made here as to the action of that convention last year, — I do find that that convention adopted about 72 resolutions, and the proceedings of that convention comprise 103 printed pages. The initiative and referendum was discussed for fifteen or twenty minutes on the opening day of the convention, two delegates speaking in favor of it. Mr. Henry Sterling, legislative committee agent, was one, and I was the other. We were waiting to hear the report of the committee on Credentials, and thereafter a resolution in favor of the initiative and referendum was unanimously adopted. Resolution No. 5, in opposition to prohibition, was brought up, and that took twenty minutes to discuss. That resolution was indorsed unanimously by the delegates there, four delegates speaking on that subject. The rest of the day was devoted neither to the initiative and referendum nor to anything in connection with rum; so that any statement made on the floor of this Convention by anybody to the contrary belittles the representatives of the trade-union movement and casts an insinuation upon them. But I am sorry to say that I do not find among the resolutions adopted at that convention one which they have had for over twenty years in opposition to biennial elections.

I also interviewed the officers of the State Federation of Labor, and they told me that that organization, through its executive board and joint legislative committee, is opposed to biennial elections. At a meeting of the Central Labor-Union, at which I was present as a delegate, a resolution introduced by Henry Abrahams opposing biennial elections was adopted. I can say that I have attended these conventions for thirty years; I have not missed one of them. For sixteen years I was an officer of the convention, and during the balance of the time I went as a delegate and did my duty there, except last year when this Convention was in session, and then I went there for one day, — on the Monday that the Convention did not meet here.

As I say, I participated in the proceedings of that convention last year, beginning on Monday, September 10, and I was there again on Wednesday, and during that time great questions were discussed relating to the interests of organized labor, — health and other matters. But the question of biennial elections the State Federation of Labor did not discuss. They had discussed it yearly up to a few years ago; and it was discussed in meetings of the various central labor-unions up to a few years ago, and those unions always were in opposition to it. I am saying this as a labor man and not as a demagogue. I do not know whether I am a leader or not, but I always look

a little farther than the point of my nose, and I have thoughts and ideas as well as any college graduate, as I am a man who has worked for wages, and I have not always followed the leadership of others, because of course every man has a right to have his own opinion. I am pleased also to read in the press of the action of the various labor-unions on this subject.

I want to say, however, to the delegates to this Convention that, of course, all the members of organized labor are not in accord on this matter, there being over 200,000 members in this Commonwealth. I want to say also that I do not believe the delegates who sit here understand the labor movement. They do not know the formation of international unions with power over their local unions; that is, the only power and authority over a local union connected with any trade or calling is that of the international union. The State branches are voluntary organizations. The central labor-unions are of the same nature, to which representatives are sent to discuss public questions concerning the interests of the country and the interests of the men and women who work and those who do not work for wages in this Commonwealth. But, to repeat, you will find that there are a few men in every organization who disagree with the majority, and of course they have a right to their opinion. So that I do not think that every man who carries a union card is opposed to this measure. Also I do not think that because a man carries a union card he is a thorough trade-unionist. He is entitled to his individual freedom of opinion as an individual. But all the labor conventions which I have attended for the past thirty years have opposed biennial elections.

You heard the statement made by the gentleman in the fourth division (Mr. Sullivan of Salem), when the question was under discussion before, at the time that magnificent piece of itemized expense with reference to annual elections was read, and at the time the gentleman in the third division (Mr. Bartlett) took that volume and showed what annual sessions meant if the Convention adopted biennial elections and opposed biennial sessions. I say do not stop that big document from being created and going on as it has in the past. Every man knows that biennial elections means biennial sessions, and why fool the people of this Commonwealth by a political propaganda that we will have biennial elections but annual sessions of the Legislature or of the General Court. Why not face the issue and say to the people of this Commonwealth: "We are in favor of biennial sessions and biennial elections," so that the people will know what the issue is.

I want to say again to the delegates here that everybody knows that biennial elections will mean the bringing about of biennial sessions, and I feel that the people of this Commonwealth do not want biennial elections.

The delegate from the first division (Mr. Richardson) said, in favoring biennial elections, that the public press should have an opportunity to express its feeling as to whether or not it is in favor of biennial elections. What has the public press done since this Convention voted to adopt biennial elections? One or two papers, perhaps the Boston Herald, may favor biennial elections. The Boston

Post had an editorial in to-day's issue, which I read. How about the rest of the newspapers? Do they favor biennial elections?

I hope the delegates to this Convention will defeat biennial elections. I hope that they will keep our government so close to the people that when we have men who betray the people while in public office, we shall have annual elections to send new men in their places. I say this not as a representative of organized labor, because I have no authority to represent organized labor, although I have been asked by the officers of the labor movement to oppose this proposition in their interest and in their behalf, and I am making that explanation so that if biennial elections come, the people who are loyal to the trade-union movement, — and we all are loyal, no matter if we do disagree on questions that arise in our labor conventions, — there will be found on the public platform this fall orators showing the people their interest in their welfare.

I trust the votes of the delegates to this Convention to-day will defeat biennial elections, thereby continuing to keep the government of our old Commonwealth close to the people, in the interest of the people and for the people.

Mr. Gates of Westborough: I offer an amendment, inserting in lines 11, 26 and 37, in the blank which appears in each place, the word "twenty," so as to make biennial elections come on even years, the same as our Presidential elections, — 1916, 1920, 1924, our Congressional elections also coming in even years, so that biennial elections shall come in the same years as Presidential elections and Congressional elections.

The reasons why this amendment should be adopted by this Constitutional Convention are that when the Convention was called, and before it was called, there was a demand that three great questions should be settled by this Convention and sent to the people. The first was what was called the "Anti-aid" amendment; the second the I. and R., or the initiative and referendum; and the third was biennial elections.

Those questions have been before the people for a long time and have been before the Legislature for many years. A bill providing for biennial elections has passed both Houses of the Legislature, by more than a two to one vote, more than twenty times, and there has been a public demand all over this State for biennial elections.

Those who were opposed to this measure at the last reading called attention to the fact that in 1896 biennial elections went to the people for their indorsement, and at that time there was not a majority in favor. But I want to say that conditions are very different at the present time from what they were in 1896. From 1865, after the war, the Republican party was so strong in this State that there was practically only one party; and when one party has an overwhelming majority year after year, that party gets into ruts and into a condition whereby one or two leaders control the party. At that time, Senator George F. Hoar, who had been United States Senator for many years, said that biennial elections should not be passed; and as he was the greatest leader in the party at that time, that remark changed a large number of votes and biennial elections were not adopted, although, under those circumstances, there were

four counties that voted in favor of biennial elections, and if it had not been for the vote in Boston and vicinity, the measure would have passed. But outside of Boston, in the vicinity of Boston there was less than 15,000 majority against biennial elections in a total vote of 300,000.

Originally, all the States but one had annual elections. Those States, one by one, have done away with annual elections, and have biennial elections, or elections less frequently. Of the 47 States, there are 31 States in which the Senate is elected for four years, and 42 States in which the House is elected for two years; and in every one of those States the Governor would say and testify that not one of those States would for a minute consider going back to annual elections. They get more efficient officers; they get a greater interest among the voters, and, to prove that, we find in bulletin No. 9, which has been furnished to the Convention, that the States that have biennial elections have a larger percentage of voters at the polls than Massachusetts has. In looking over the statistics of the twelve States given in bulletin No. 9, you will see that of those twelve, Ohio, in 1914, cast 85 per cent of its registered votes, while Massachusetts cast only 60 per cent. The average for the twelve States mentioned in that bulletin is over 69 per cent, which is 9 per cent more than Massachusetts.

If this biennial elections amendment passed, we would not need the compulsory voting measure that was passed last week, although I believe that something of that kind should be done, but this would remedy it generally. If we keep elections before the people continuously for twelve months in the year, many, many voters lose their interest. That is shown by the Presidential election in 1916, when the candidates for Governor in this State received 537,000 votes, while last year the candidates for Governor received only 387,000. That shows that if elections were less often, we should have a greater interest and a greater number of votes cast in this State.

I spoke a moment ago to the effect that the Governors of all the other States have indorsed biennial elections, or elections once in every three or four years. The Governors of this State for the last fifty years, with one or two exceptions, have recommended to the Legislature each year that it should submit to the people a biennial elections amendment. The State convention of the Republican party in 1915 and 1916 unanimously indorsed biennial elections. The Progressive party, in its conventions of 1914 and 1915, adopted the same resolution. Governor McCall, in recommending the calling of the Constitutional Convention, said the delegates should pass this amendment allowing the people to express themselves, and there is no question but that the people should be allowed to express themselves.

I cannot understand how a member of this Convention who thinks he believes in the I. and R. can refuse to allow the voters of this State to say when they shall have their elections. I noticed on the second reading that men who think they are progressive and talked to this Convention in regard to the "dear people," keeping the government near to the people, voted, 34 of them, against trusting the people, in whom they believe; and it seems to me that if there is

any matter as to which the I. and R. ought to operate, it is our State elections.

Many of the progressives think they originated the progressive ideas. I want to say I have been a progressive all my life, and I was progressive years before some of them were born, and nearly every plank in the Progressive party in the State was a plank that had been in the Republican party time and time again. I believe that this question, of all questions, should be submitted to the people, and that is all we ask. I was not at the time so enthusiastic as some members in regard to the I. and R., but I have learned to trust the people, I voted for the I. and R., and I believe if any man who voted for the I. and R. is consistent, he will vote for biennial elections to be submitted to the people this fall.

The last speaker spoke of the expense, about which I spoke during the debate on the previous reading. Now, I do not consider the expense all important. As has been said in this Convention, the State is not in business to make money. We know that; we have evidence of it. It does not make money; it is in business to spend money; and it has been so successful in spending money that in the last two years the tax rate has jumped so much and increased so much that every man in the State is trying to figure out how we can stop the tax rate from increasing. It has increased from four million, in 1908, until now it is nearly twenty million; and the Legislature last winter spent weeks trying to find some item that they could keep out of our State expense and save taxes. Now, in this one item you can save a million dollars; you can save, next year, enough to pay the entire expenses of this Convention and have more efficient officers. To prove what I say, I will quote what Governor Walsh said. Governor Walsh asked the Legislature of which I was a member to vote for this amendment on biennial elections and submit it to the people. He asked that, he said, for the reason that the Governor no more than got in his chair and got a little bit accustomed to his duties than he had to go out and campaign for reëlection and answer abuse from politicians, and his efficiency was so affected that it was impossible for any Governor to bring around the reforms he advocated in his campaign, and that if we would only give a Governor a chance to show his capacity by keeping him in office more than one year, the State would be the gainer.

So I say that we can save this money for the taxpayer and have more efficient officers; and all I ask is that you do what you were sent here for, — to send this amendment back to the people. The member in the first division (Mr. Driscoll) says he always wanted the I. and R., so the working-man could have a chance to see how we stand on different questions, and that is all we want this time.

Mr. ANDERSON of Newton: This is a measure for biennial elections and annual sessions of the Legislature. When the gentleman from Boston in the second division (Mr. Dennis D. Driscoll) says that this means biennial sessions of the Legislature, that is an unjustifiable and unprovable suspicion. I have heard nothing from the supporters of biennial elections in favor of biennial sessions. This is a debatable question, and the proof is that it has been debated for many years, and it will be debated until it is settled right. The right settlement

of this issue will be biennial elections, and the proof of that is that in all States in which biennial elections are the rule the debate has ended.

Now, there are two sides to this question. Our solution of it, whichever way it goes, will be a mere matter of probability, as all decisions in this Convention. All of life goes on probability, whether we go into business, or whether we get married, or whether we run for office, — it is all a matter of probability. If in some conservative's heart there arises the cry, "Why, he wants us to take a chance," I wish to say to that gentleman that every man takes as great a chance, or greater chances, by staying where he is than by going ahead. The only question is whether the change to biennial elections really is going ahead, whether it is real progress.

I see that there are at least three parties in this Convention who oppose biennial elections. The first of them are the labor leaders, who want to keep the Legislature under their thumb, and, if I mistake not, — I may be mistaken, — also some representatives of certain interests in this State who want to do exactly the same thing. Then there are the politicians. I do not use that word in any derogatory sense. There are some men who enjoy politics, and I must say that I find it a most interesting game. I do not know but that I might become a politician myself, if I did not have more important business to do. Some of these politicians enjoy the game so much that they want it to go on all the time. Consequently, they are in favor of annual elections. Other men who have become leaders in politics favor annuals because they find this million dollars every year very convenient indeed for maintaining their organizations. I do not mean to say that they use it wrongly, but they find it very convenient for merely legitimate expenses in oiling their machines. In fact, they could not run the machine so well if it were not that they had these annual elections with the accompanying money. And what would the poor lobbyists do if they did not have a new membership in the Legislature oftener than every two years? Some of them would starve, I fear; and yet we must consider that no great gain is ever won without some small loss.

Besides these, there are among the opponents of biennial elections some of the very noblest and finest members of this Convention, men of the grand old Puritan stock, one of the finest breeds that God ever created, sane, useful and intelligent citizens. They are immersed in the Massachusetts tradition; they were born, bred and nurtured in it, and it has become to them a prejudice, a guide, a superstition. I say a superstition, for, after all, their advocacy of annual elections is against common sense. I use that phrase, "common sense," in the technical meaning of the words; that is, the sense of the very great majority. All the States of this Union have come to the conclusion that biennial elections are best for them, and Massachusetts holds out alone. That does not make any difference to some of these delegates, for many of them are accustomed to live in select company.

Massachusetts standing alone against all the rest of democracy in this matter reminds me of the story of the old Scotchman. He lived in quite a town, and he was very religious. They asked him how many he supposed would be saved, and his answer was: "I, my wife, my son John and his wife, we four and no more, — and sometimes I have my doubts about John."

In this matter of annual elections, Massachusetts has no wife (or no husband), and no son John, and of course no daughter-in-law; she has only a couple of first cousins whom I have not heard mentioned in this debate so far, perhaps because people are ashamed of them, — New York and New Jersey, which annually elect the lower branch of their Legislatures. The lower branch of those Legislatures usually is painted pretty black, and, if I recall correctly my brushes with the legislative committees at Albany, none too black. If annual elections are the cause of Massachusetts having a Legislature which is better than any other in the country, then it is strange that annual elections have not done the same thing for New York and New Jersey.

We are wont to talk a little about the traditions of the fathers, especially of John Adams. John Adams said, in 1776: "Where annual elections end, there slavery begins." That was not true, in the first place, because biennial States like Michigan, Iowa and Kansas are not now in slavery; and, in the second place, John Adams was in the process of changing his mind, because, in 1787, he said he thought annual elections were on trial, and, in 1808, he opposed the change from biennial to annual elections of Congress on what seems to me to be excellent ground. Not all of the thirteen States were for biennial elections. South Carolina was biennial, and before the eighteenth century was out Tennessee followed her, and it very soon became the fashion, — a fashion which never has changed, for no State which has ever adopted biennial elections has ever afterwards had any agitation for annual elections.

I was curious to see how Massachusetts voted on this matter in the United States Constitutional Convention of 1787. If you will look at the Journal of that Convention, under date of June 21, you will see that the question was whether Congress should be elected triennially or biennially. By a very narrow margin triennial elections for Congress were defeated and then biennial elections were adopted unanimously. Massachusetts unanimously voted for biennial elections in the Convention of 1787.

Now, we hear a good deal about Governor Long, for whom I have the very highest regard, and Senator Hoar, a man whom we all honor, and James G. Blaine, and "Tom" Reed, as opposed to biennial elections; but when that list is exhausted, there do not seem to be any other very great men opposed to it. In fact, I want you to notice that all those men are dead.

There are really three questions which underlie this matter, and the first of these is: Will annual or biennial elections interest and educate the voters the more?

Now, there are two psychological principles, which run diametrically opposite to each other, which may be urged on one side or on the other. The first is that the oftener we make an impression, the deeper and more lasting it becomes and the more interest the person takes. For that reason, we send children to school five days in the week instead of one, and every sensible teacher wants to have his class five days in the week instead of one if he possibly can. On the other hand, there is the other principle that when things become too common, we lose our interest in them. For instance, if a great singer comes to this city every two or three years, the largest hall in the city is packed with music lovers, the tickets are sold at very high

prices, and there is great excitement and interest in the town. But if she should sing every night in the week, very soon the city of Boston would be tired of her. We see the working of this principle in the weariness of the electorate with reference to our elections. When annual elections began in this State there was only one annual election, but now there are at least four annual elections, namely, a State primary, a State election, a city primary and a city election. No wonder that they have become weary of these four annual elections.

We could debate these two psychological principles until doomsday and never get anywhere. We must appeal from philosophical opinions to facts; and these facts are shown, as the gentleman from Westborough (Mr. Gates) already has noticed, on page 13 of the information on biennial elections furnished to this Convention. There are twelve States scheduled there, with the ratio of legal voters present at the polls, and Massachusetts, in 1910, was number seven among the twelve; in 1912, it was number ten among the twelve; in 1914, it was number nine among the twelve; in 1916, it was also number nine among the twelve; and in 1917, it was number twelve among the twelve. That shows a progress downhill, it seems to me, in the last few years. Of course, it is to be noticed that in Massachusetts we have our educational qualifications for voters, and that naturally diminishes the per cent of those who vote in Massachusetts; but it would not put Massachusetts more than one peg higher if all those voters were counted. That table absolutely proves that annual elections do not interest and educate the voters more than biennial elections. I do not believe you can get around that fact. There are the figures; and they prove the case.

The second great question which comes is this: Are annual elections or biennial elections more favorable to efficiency in the State government? In reference to that, it seems to me that there can be hardly any doubt. Biennial elections certainly do stand for efficiency. They stand for the efficiency of the executive, — the Governor, and all the State officers. Almost all the Governors of the Commonwealth have stated that to be the fact. No sooner is the Governor elected than he has to begin to think about how he is going to be reëlected; and we all know that by the first of July politics begin to get hot in this State and the Governor during the rest of the year is practically diverted to a large extent from his duties, striving to get his policies continued during a second term at least.

In reference to the Legislature, this also is true. Biennials will dignify the Legislature. A longer term always dignifies a legislative body. That is one reason why the Senate of the United States is more dignified than the House, because a Senator has six years, a member of the House only two. Moreover, any man who is elected to the Legislature in this State expects to run for reëlection, to be a member for at least two terms; but if he tries that under our annual system it will cost him twice as much as under the biennial system, and the result is that able men without very large funds are kept out of the Legislature and do not appear in the councils of the State, to the State's very great detriment. Moreover, it is with the legislator just as it is with the Governor. Just as soon as he receives the congratulations of his friends, he has to begin to think of that district of his and how he is going to gain a reëlection; and the result is uncer-

tainty, restlessness and the impossibility of attending to public business.

What a fine thing it would be to have biennial elections and men really attending to the public business for a year and six months and then giving six months to their own political business! What a great thing it would be! This restlessness and uncertainty which now run through this State House all the time would be half cut out. It seems to me that the spirit in this building is very accurately symbolized in the title of that popular song being sung in the trenches. The legislators hardly get into their place before they ask: "Where do we go from here?"

In the last place, biennials will give continuity of public policy by the executive, by all the elective officers, and by the Legislature itself. Of course, you may say: "Well, they are largely reëlected now and there is considerable continuity of policy." But that is not a complete answer. In those States that have biennial elections there is a continuity of public policy which we do not see in Massachusetts, because in those States there is a concentration of interest over a longer period.

Now an objection has been raised that fewer members of the Legislature are reëlected in biennial States than in Massachusetts. The gentleman from Ware (Mr. Sawyer) quoted from a paper against biennial elections, which he was kind enough to show me and which was sent to all the members of the Convention. I have investigated this paper and found its statements absolutely false. For instance, we are told in this paper that in 1890, Vermont, under biennial elections, returned no Senators and four Representatives. As a matter of fact, in 1890, Vermont reëlected 25 Senators and 34 Representatives. It said also that in 1916, Vermont reëlected no Senators, while as a matter of fact it reëlected 27 Senators out of 30.

The member from Ware made the statement also, getting it from this document on which he seems to have relied, that only three members of the Ohio Legislature ran for reëlection, — perhaps it was the Ohio House; I do not remember, — and that only one of them was reëlected, and so they had a Legislature in Ohio with only one reëlected member. I could not believe that. I asked the State Librarian if he would telegraph the State Librarian in Columbus, Ohio, to find out what was happening this year in Ohio. The reply is that out of 36 Senators, 18 were reëlected, and out of 128 Representatives 57 were reëlected.

I want to call attention to the table on page 15 of bulletin No. 9. Here we have ten States. Reducing Massachusetts to a biennial basis, — that is the only fair way to do it and the only correct mathematical way to do it, — putting Massachusetts upon a biennial basis and taking the average for eleven years, 103 members were reëlected, which is ten more than one third. In this table of ten States, Illinois, Missouri and Pennsylvania, with biennial elections, exceed Massachusetts in reëlected members on the basis of biennials, and Illinois has a Senate quadrennially elected. Also Connecticut and Nebraska are just about the same as Massachusetts, and West Virginia and Ohio only a little less. I am sure that those figures prove the case that just as many legislators are reëlected in biennial States as in annual States.

The third question is whether biennials remove legislators and other State officers further from popular control. We do not wish to deny that the people have twice as many chances to recall their legislators under a system of annual elections. But it by no means follows that annually elected legislators are twice as sensitive to popular opinion. Men elected for two years and with another two-year term to hope for have more at stake in each election. Their whole term of two years will be under public review. It cannot be soberly contended that any outstanding failure of duty or any corrupt action would be forgotten by the public or by an alert opponent after the brief space of two years or less. The actual loss of sensitiveness to public opinion would be very small indeed, if anything, in actual practice.

Suppose we concede the general principle that frequency of elections is necessary to responsiveness to the popular will. The question immediately arises: What do you mean by "frequency"? If you take one year as a standard and say that a two-year term makes a legislator only half as democratic, would a semi-annual election make him twice as democratic and a quarterly election four times as democratic? Of course, this reduces the proposition to absurdity, and shows that all these merely mathematical considerations fail because other factors enter in to change the very essentials of the problem. The fact is the legislator in biennial States is just about as amenable to his constituents as in Massachusetts.

I cannot understand how the conservative opponents of biennials can be influenced by this argument. In the debate on the election of judges, they maintained that a judge, who never was to face a reëlection by the people, was nevertheless sensitive to public opinion and in the end would be found in line with the spirit of the times. How can they then consistently take the position that a legislator, who must make an accounting to the people at the end of two years, will not be sufficiently under popular control? Are mere legislators so much inferior to judges? Will they forget in two years, with a judgment day to come, what a judge never will forget in a lifetime with no judgment day at the end?

Nor can I understand how the convinced liberals and radicals can oppose biennials. All the great liberal and radical States like Michigan, Minnesota, Washington and California have biennial elections and not the slightest symptom of any movement toward annuals. In the height of the Progressive excitement, when Progressive platforms demanded all sorts, varieties and shades of reform in the heavens above and in the earth beneath and in the waters that are under the earth, not a single friend of the people in those States happened to think that biennial elections were of the devil or were instruments of the interests. Indeed, our own Massachusetts Progressives in 1914 and 1915 demanded biennials, and surely they were for the people with a big P.

Still, certain of our labor leaders and certain less conspicuous but just as active private interests hold to annuals because by them they keep the Legislature absolutely under their thumb. Now I think that my representative should let me know before election how he stands on certain great issues, and should understand that by my vote I make him my agent to put these principles into law. Still, I

trust him on other questions and even on the details of the issues on which he has pledged himself, to use his own independent judgment; in fact, I want a man and not a jumping-jack to represent me in the Legislature. All of you who have had assistants or responsible employees know that the way to get the best service is to allow a certain measure of liberty. If you watch your employee as a cat does a mouse, or keep him under your thumb from morning to night, you make him uneasy, suspicious and inwardly rebellious, and deprive yourself of the advantages of his initiative and ambition. In other words, too close a watch on him makes him the worse and not the better servant. I do not believe in keeping a Legislature *in terrorem*. A proper sensitiveness to public opinion legislators should have. They certainly should keep their preëlection pledges, but they should be treated with confidence and honor, and a true manly independence should be encouraged.

We must trust our American democracy. While I have no patience with the fulsome and bombastic praise of our Massachusetts institutions, I have even less patience with the pessimists of this Convention, who look upon the people as an ignorant mob, the Legislature as a set of scheming politicians, whom it is not safe to trust out of your sight, and the Governors as tyrants and demagogues. A Prussian publicist would find delicious pickings for a diatribe against democracy in the debates of this Convention. As for myself, one of my great ambitions in life is to see things exactly as they are, not too rosy or too dark, unless they are really rosy or really dark; then I want to see them that way.

After all is said and done, after all our dreadful mistakes and failures have been admitted and all our discouraging difficulties squarely faced, I believe in our American representative democracy with all my heart. Taking it all in all, it is the best form of government that men have yet discovered, and, all in all, it has produced the best results. And its greatest excellence, to my mind, is that it is founded on a hopeful view of human nature, on a belief in its inherent good sense and its real virtue, when nurtured in an atmosphere of education and religion. But this does not rest alone in theory. The events of this war prove the superior excellence of democracy. War indeed is foreign to the spirit of a republic. Democracy belongs to a stage of civilization which has outgrown it, and looks upon it as a strange and hateful thing. Yet, summoned all unprepared to meet a world crisis, America in one year has organized herself to meet the foe. The American army is only a cross-section of American life, truly representative of our country, the manifest product of our democracy. And that army is not only God's reply to our prayers; it is the vindication of our form of government. That army is our answer to all the sophistries of Kings and Kaisers. There never has been an army like it in all the history of the world. It is sane, chaste, temperate and brave. It holds the highest ideals. It fights for them with enthusiasm. It lays down its life gladly, not for increase of territory or for trade advantages, nor primarily in self-defence, but for great principles of right, humanity, democracy and liberty, which, please God, shall bless all the world as well as ourselves. And this army, hastily gathered, hastily trained, is battering to pieces the great military machine which autocracy has been fifty years in building, and

it is doing it just because it is a democratic army inspired by the loftiest and most unselfish American ideals.

The gentleman from Waltham (Mr. Luce) says that he is voting for anything which will strengthen the Legislature. Let him then vote for biennials. The gentleman from Brookline in this division (Mr. Walker) protests against the pessimists of our Convention and wants to untie the hands of the Governor, and to abolish the restrictions on the Legislature. Let him also prove his faith by his works and vote for biennials. If we are really democrats, let us play the democratic game, not half-heartedly and distrustfully, but in a large way and with every possible sane confidence in each other.

Surely, biennials tend to efficiency and to continuity of policy, and will save the Commonwealth a million dollars every other year. Every State in the Union but Massachusetts thinks it safe to trust a legislative body for two short years. The opposite view has its root in a long vanished past nervously jealous of tyrants, and is antiquated, prejudiced, unworthy and picayune.

Mr. Clark of Brockton moved that the resolution (No. 126) be amended by inserting between lines 46 and 47 the following:

All elected State officers, Councillors and members of the General Court shall be subject to recall after one year of service under such regulations as the General Court shall make and provide.

Mr. Clark of Brockton: Whatever expression has been made in regard to the recall in this Convention has been made in connection with an independent proposition. The amendment I here propose is to amend the resolution regarding biennial elections by including a recall provision. I do this because I am well aware that there are a large number of voters in this Commonwealth who are absolutely opposed to biennial elections unless the recall is coupled with it. Hence, the amendment that I here offer and that has been read by the Secretary is very simple:

All elected State officers, Councillors and members of the General Court shall be subject to recall after one year of service under such regulations as the General Court shall make and provide.

I am not going to take the valuable time of this Convention to discuss this matter, or to discuss the general proposition that now is before us, for this reason: It is a clean-cut proposition, and I believe that every delegate sitting here now, — there are only a few of us, and I regret to see more empty seats than occupied ones, — but those who are here, I believe, have a clear and definite idea as to how they shall vote or purpose to vote on this matter. Hence, it would be an imposition for me to take up valuable time this morning when we are starting out, I believe, with the purpose of doing a good round week's work, in discussing a proposition that is so clean-cut in our minds and upon which I believe we all are ready to vote.

Mr. Chase of Lynn: Since the opening of this Convention in June, 1917, I have been in my seat at every session. I have listened to all the speeches of all the members of this Convention. The matter before us, — in fact, all the matters upon this calendar, — have been debated thoroughly in their previous stages. There are some members who take every occasion to speak upon almost every subject. In talking with the members of this Convention, I find there is a dis-

position to get through this work as expeditiously as possible. Now, if there are any new facts to be brought out on these subjects, I believe they can be brought to the attention of this Convention in a few brief, concise sentences which will sink deeper into our minds than the long speeches to which we have been accustomed to listen. In order to test the feeling of this Convention upon this subject, I move the previous question.

Mr. James H. Brennan of Boston: I trust that the previous question will not be ordered on this matter. This is a far-reaching step, if adopted, and a radical change in the system of government of our Commonwealth. I do not believe that this Convention ought to pass on this question with snap judgment. I believe that it is a complicated question, it is a question of vital concern to the entire people of the Commonwealth, and I trust that the previous question will not be ordered and that we shall have a full and deliberate discussion of this important matter.

I do not feel that with a small attendance, such as there is here to-day, and with such a limited discussion as we have had on this matter, we ought to come to a vote and submit or reject a proposition of such great importance as this matter is.

The people of Massachusetts twenty-two years ago had an opportunity of passing on the question of biennial elections, and they overwhelmingly defeated that amendment by a plurality of over 50,000 votes, and since then at no time has such an amendment been passed by any Massachusetts Legislature. Bearing those facts in mind we ought to go very slow on this great question before we pass it along without mature discussion.

Let me call to your attention, gentlemen, the fact that on this question in 1896 there was a great discussion, and some of the ablest minds of that time vigorously opposed the adoption of the amendment, because, as they maintained, it was a matter in which were wrapped up the rights of the laboring men of the Commonwealth, the prosperity of the business men of the Commonwealth, the concern of the Legislature itself, and it was a radical and fundamental change that should not be brought about. Let me read to you from a paper that was published in Fitchburg at that time, the Fitchburg Sentinel, printed on April 18, 1896, an editorial against the adoption of this amendment. Some of the ablest minds and the keenest minds, men who were statesmen in that day, were in opposition to the biennial election amendment. Here is one of the paragraphs of that editorial, gentlemen:

> One of the several documents issued by the Anti-Biennial League is issued over the names of George S. Boutwell, President, Henry L. Dawes, George Frisbie Hoar, John D. Long, John E. Russell, George Fred Williams, George E. McNeil, Elihu B. Hayes and Gamaliel Bradford.

Those are some of the names that are to be respected in the annals of Massachusetts government, — names to be conjured with!

Mr. Dellinger of Wakefield moved that the resolution (No. 126) be amended by adding a new article of amendment, as follows:

> The General Court shall assemble biennially on the first Wednesday of January succeeding its election, and shall proceed at that session to make all the elections, and do all other acts which are by the Constitution required to be made and done at the annual session which has heretofore met on the first Wednesday of January in each

year. And the General Court shall be dissolved on the day next preceding the first Wednesday of January in the second year next succeeding its first assembling, without proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as it shall judge necessary, or when called together by the Governor.

Mr. DELLINGER: Since this matter has been discussed fully at an earlier stage and the previous question has been moved I have nothing further to say.

Mr. LUCE of Waltham: From the reading of the amendment I was not quite clear whether this was an amendment that gave biennial sessions of the Legislature.

The PRESIDING OFFICER: Yes, sir.

Mr. LUCE: I rise to a point of order.

The PRESIDING OFFICER: The gentleman from Waltham will state his point of order.

Mr. LUCE: That the resolution under consideration is a matter relating to biennial elections, and that the motion for biennial sessions is not germane.

The PRESIDING OFFICER: The Chair rules to the contrary, that the motion of the gentleman from Wakefield is germane to the resolution under consideration.

Mr. JAMES H. BRENNAN: I should like to read further from the editorial of this newspaper, which was printed in 1896, before the rejection of this amendment by an overwhelming vote, in which it said:

The biennial amendment found its great strength in the corporations and in the corporation lobby at the State House. This was a striking effect of the progress of the contest in the Legislature. It is true that there was a powerful lobby of business men. The united movement of the mass of the people, as was shown by the vote, was against it.

Now, let me call to your attention the fact that in 1910, from returns of the State election, it is shown that only 58.4 per cent of the entire voting population registered their will at the polls, only one-half of the total. In 1916, a presidential year, only 57 per cent of the entire voting population registered their will at the polls. And yet you want to adopt a proposition that would bring about elections every two years instead of every year. You would not have 30 per cent of your population voting. You are going to submerge your State issues into National issues. You are going to submerge questions of State importance into Congressional and National issues. You are going to submerge all of the individual initiative of Massachusetts into National questions and National issues. Business men say to us that we should have biennial elections because they do not wish to be disturbed every year by elections, and some few selfish politicians who hold public office do not wish to be disturbed; but if you said to the business men: "You shall have biennial returns in your corporations, you shall have biennial accounting of your condition, you shall have biennial directors' meetings of your corporations," the business men would be the first ones to object and to say: "No, the year is the regular division of time. We must have an annual accounting of our business, or it will not be a success." We are here conducting the State's business. Our Legislatures are the board of directors for our Commonwealth, and they should make an annual return to the people of the Commonwealth.

Mr. Giddings of Great Barrington: In 1896, when this matter was submitted, my own county of Berkshire returned a substantial plurality in favor of biennial elections. I believe that still is the sentiment of the western part of the State. I think the last speaker has confused the question of deciding between rival, hostile candidates and a discussion of public questions. The people cannot have their minds too often on public questions, but they can have their minds too frequently on the claims of rival candidates. I believe that biennial elections will make for good in the public service, but that the annual sessions should be preserved.

The main question was ordered.

Mr. Hart of Cambridge: The elements of this question can be discussed in a very few propositions and in a very few minutes. We are here to facilitate the public business. We are prone, perhaps, in our discussions to consider whether a proposition is likely to affect an existing governmental agency, whether it will strengthen the Legislature or diminish the power of the Governor, or *vice versa*, or enlarge the power of the judiciary. I submit that we are here in order so far as is in our power to suggest means by which the whole public business may be better done. We are here to represent the voters, the citizens, of Massachusetts. So far as the public business extends, it goes on from year to year. The Governor is in session every year, and all the year. The courts are in session a good part of every year; the legislative business recurs. It is perfectly true that in a considerable number of States in the Union the Legislatures meet only once in two years, and I think there are some in which they are bunched up and set on the shelf lest they should meet oftener than once in four years. At any rate, there are States that are not willing to have their Legislatures sit every year.

Whatever fault may be found with the Massachusetts Legislature, nobody can accuse it of inattention to public business. The trouble, as has been pointed out before this Convention, and as is still to be developed by certain amendments which will come before us, is that the Legislature legislates on too many matters that might well be left to other organizations; for instance, to executive or administrative bodies, to commissions and so on, instead of their doing the small-change work that ought to be left to other people. Nevertheless, the people of Massachusetts are interested in their Legislature. I should be sorry, therefore, to see, and could not vote to establish, for me to vote for, any system which would prevent the Legislature from meeting every year. The year has its seasons. Business has its twelve months. Most corporations, most railroads and banks and so on, have the same recurring cycle.

It is, however, an entirely different question when we come to the periods of election. All the assertions that public interests will be destroyed if people vote only once in two years are negatived by the experience of other States, and furthermore we must face the issue that there is going to be some kind of annual State election in Massachusetts every year, whatever the term of the members of the Legislature. That is not the issue. Under the initiative and referendum we must expect a constant outpouring of a few propositions every year. There will be constitutional amendments, and those amend-

ments presumably will be voted upon in the fall of the year in which they are proposed by the Legislature or proposed by the initiative.

Mr. CREED of Boston: Do I understand the trend of the gentleman's argument to be, then, that if the biennial election resolution is submitted to the people and they mistakenly should adopt it, we still would have elections every year for the initiative and referendum amendments?

Mr. HART: It seems on the face of it, although the initiative and referendum amendment does not from a casual investigation distinctly so provide, that an amendment must be submitted to the people in the year in which it is passed upon by the Legislature or when the action of the Legislature comes in by the initiative. That is a fair proposition. But it does not reach the question of the desirability of a term of two years for the members of the Legislature. There ought to be a four-year term for the Governor. There is no more reason why the Governor of Massachusetts should have a term of one year than why the President of the United States should have a term of one year or two years. Furthermore, there is no reason why the Legislature should not be just as efficient if it were elected for two years, with the added efficiency which comes from a sense of a larger opportunity. A man with a two-year term has more chance to do what is in him to do for his constituency and for the public, for he has more time in which to reach his stride. The fact that we are left alone in the family of forty-eight sister States in this matter is a conclusive proof that nearly all the people in the United States of America find it to their interest that the term of the members of their Legislature should be at least two years.

Mr. MURLEY of Boston: I wish to ask the gentleman from Cambridge who is now speaking if it is not true that in those States where the men are elected to the Legislature for two years, at the expiration of their terms they generally are defeated, with the result that every two years those States have green legislators; whereas in States like Massachusetts, where we have annual elections, it is a gradual change and we always have trained legislators who know how to do their work properly, as they always have done it in Massachusetts.

Mr. CHURCHILL of Amherst: I desire to add only a very few words to what I said in the original debate upon this question. This is a subject upon which argument is needed less than on most of the subjects that have been raised before this Convention. There are only one or two points that I should like to call once more to the attention of the Convention.

I have tried in dealing with this subject in my own mind to regard it as far as possible as absolutely apart from any other arrangements that have been laid before the Convention, utterly irrespective of the effect that it might have upon any resolutions which have been passed or are going to be passed. The issue before us, as I tried to say when I first spoke upon this question, is, it seems to me, simply this: By what means shall we best bring the people of this State to a fuller conception and a fuller carrying out of those duties in regard to elections which we all appreciate and about which we all agree? There is nothing that has been said on either side of this question in regard to those duties with which I do not agree. I do wish very deeply that every member of our voting body were sufficiently interested to

give his attention and could give his attention year after year fully and thoroughly to the problems put before him by the various persons who are running for election, and by the various measures upon which he may have an opportunity to vote. I want to declare as emphatically as possible that I am at one with these gentlemen to whom I have referred in that desire, but I want to ask members of this Convention not simply to listen to arguments but to take counsel of their own experience and their own observation. Do we secure by our annual system that interest and that attention which we all think should be given and which we all desire?

The statistics offered by my friend in this division who spoke a few moments ago (Mr. Anderson of Newton) make it clear that under the annual system we do not secure that interest and that attention. The main, I might almost say the sole, reason why I am interested in this proposition is that I firmly believe that if we do not overpress our electorate, that if we give them the necessary amount of time and the necessary amount of freedom from the constant pressure of personal elections we shall have in every two years a fresher interest, a better attention and a better and more intelligent understanding of what they are doing, that we shall have a fuller and more intelligent opinion of our electorate upon the measures put before them, that we shall have more real interest in the men who are put before them for election, and that the profit to the State, the profit for development, the profit for expression of public opinion, will come to us if we do not call upon the public for an expression of opinion too frequently.

It is not a conclusive argument, perhaps, that Massachusetts is the only State that keeps annual elections, but one thing is perfectly sure. All the States of this Union, the most conservative and the most radical, in which the same status appears that appears in Massachusetts, the same varying and contending desires for control, the same desires for accomplishment in all these States, so different in their natures and conditions, — all of them have at least biennial elections, and nowhere from any side appears any drive for a change. There is no reason, therefore, to think that here in Massachusetts the change to biennial elections will have an ill effect upon the purposes of any party or any body of men. The question is solely of the effect upon our common purpose and desire of thoughtful and intelligent political action.

Mr. Brown of Brockton: I see the issue differently from the learned gentleman who has just taken his seat. This government is not old compared with the age of other governments. Our fathers had before them the history of republics and one which had stood for 600 years. They knew why any governments had fallen; it was the misuse of power. If we have any traditions that we can cherish, whether we are in overalls or broadcloth, it is the wondrous judgment of our fathers in delegating and distributing power of the people so that the power should not be misused against the people. That is the fundamental condition we should deal with here. They balanced the delegated powers one with the other, and they said frequent recourse to the will of the people was the safety of the republic. Is that old? Is that to be forgotten? Agitation for biennial elections dates back in the eighties. Then the agitators were in the Republican party.

Benjamin F. Butler was elected Governor, and then the Republicans were thanking God that they did not have biennial elections. You may keep a good man two years under an annual election; you cannot get rid of a bad man in less than two years under a biennial election.

Do you say there is no interest in the elections? Why? Because there is no issue. It is not caused or cured by annual or biennial elections. Place the blame on your public men and party policies. For more than thirty years the two leading political parties have been trying to see how they may dodge issues. Political leaders have been trying to see how they may dodge issues. As a result, what is the difference between the Democratic and the Republican parties to-day? Come now, get up and define the issues which divide them. If you cannot do it, why do you suppose the people are going to be interested when the real question is whether Jack or John gets the office? Enunciate principles which the people favor or oppose and you will see very quickly they will vote at annual elections.

I wonder, Mr. Member in the third division (Mr. Anderson of Newton), why you did not have a word to say about what was said for the annual election in the Massachusetts Conventions that had the subject before them. The debate ran very strongly against delegating power for long periods.

Mr. ANDERSON of Newton: The gentleman is under a misapprehension. I was quoting from the United States Constitutional Convention of 1787.

Mr. WILLIAM H. SULLIVAN of Boston: It seems to me that everybody who believes in the initiative and referendum ought to be in favor of annual elections, because frequent elections are for the best interest of the people. I believe that everybody who was opposed to the initiative and referendum, and gave as a reason therefor that the Legislature is close to the people, should be also in favor of annual elections. I contend that every delegate who opposed the initiative and referendum "because Massachusetts has the greatest body of legislators that the world ever produced" ought to stick to the same old system which has given us such a galaxy of stars. Perhaps some delegate can sympathize with the office-holder who believes that he ought to stay in office two years without going to the expense and inconvenience of speaking to his constituents every year; but I question if anybody has expressed sympathy for the poor old office-holder who has been elected for two years to a job about which he knew nothing, which he dislikes and from which he cannot escape. We have the finest illustration of that state of affairs right here in the Constitutional Convention, where more than three hundred men were elected to serve for an indefinite period, and about one-half of them have got sick of the job and left, coming only periodically to collect their salaries. Now, how is the poor fellow who is elected for two years going to give up his office without betraying the people who elected him? He cannot do so. He may be excused from attendance or from roll-call, or he may find some more important personal duties to perform, and still continue to collect his salary, leaving his people unrepresented. Is that fair to the man who is tired of public life? Is it fair to the people who elected him? It seems to me that that phase of the question ought to appeal to those who are in-

terested in the citizenship of Massachusetts and in the welfare of the State.

In this last vote, which was somewhat close, many voted "No," thinking that they were voting against biennial elections. The proposition presented to them was: Shall the resolution be rejected? and many who learned by inquiry that the subject under discussion was biennial elections voted "No." I cannot believe that it is the desire of the Democrats and other delegates close to the people, in this Convention, to take away any rights the people have at the present time. The government ought to grow closer to the people every day. The question is: Shall we take away from the people rights which they have now? Many men go year after year at every election to vote. They have the highest conception of the duty of an American citizen. I care not for the so-called "business man," too busy, too arrogant or too tired to vote, but I am fighting for the men in my district who, though they work long hours to support their families and educate their children, at great personal inconvenience and some hardship arise before daybreak in the coldest weather and wait patiently at the polls, that they may perform the highest duty of an American citizen.

The amendments moved by Mr. Gates of Westborough were adopted, by a vote of 88 to 53.

The amendment moved by Mr. Clark of Brockton was rejected.

The amendment moved by Mr. Dellinger of Wakefield was rejected.

The resolution (No. 126), as amended, was ordered to a third reading Tuesday, August 6, by a call of the yeas and nays, by a vote of 97 to 92.

It was read a third time Wednesday, August 14, in the following form, as changed by the committee on Form and Phraseology (No. 421):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

SECTION 1. The Governor, Lieutenant-Governor, Councillors, Secretary, Treasurer and Receiver-General, Attorney-General, Auditor, Senators and Representatives, shall be elected biennially. The Governor, Lieutenant-Governor and Councillors shall hold their respective offices from the first Wednesday in January succeeding their election to and including the first Wednesday in January in the third year following their election and until their successors are chosen and qualified. The terms of Senators and Representatives shall begin with the first Wednesday in January succeeding their election and shall extend to the first Wednesday in January in the third year following their election and until their successors are chosen and qualified. The terms of the Secretary, Treasurer and Receiver-General, Attorney-General and Auditor, shall begin with the third Wednesday in January succeeding their election and shall extend to the third Wednesday in January in the third year following their election and until their successors are chosen and qualified.

SECTION 2. No person shall be eligible to election to the office of Treasurer and Receiver-General for more than three successive terms.

SECTION 3. The General Court shall assemble every year on the first Wednesday in January.

SECTION 4. The first election to which this article shall apply shall be held on the Tuesday next after the first Monday in November in the year nineteen hundred and twenty, and thereafter elections for the choice of all the officers before-mentioned shall be held biennially on the Tuesday next after the first Monday in November.

Mr. QUINCY of Boston: I merely want once more to call the attention of delegates in the Convention to the fact that they will have an opportunity under the next number on the calendar, if they desire to do so, and if they vote down No. 323, to vote in favor of giving a two-year term to the Governor and Lieutenant-Governor. The gentleman from Hudson (Mr. Glazier) has moved an amendment, printed in the calendar, that the Secretary, Treasurer and Receiver-General, Auditor and Attorney-General should be included in the two-year term proposition with the Governor and Lieutenant-Governor. When the matter is reached, so far as I am able to do so, I shall accept that amendment, because it seems logical that the other State officers now elected by the people annually should be elected once in two years if the Governor and Lieutenant-Governor are to be so elected. I merely want to call attention to the issue between those who favor the comprehensive biennial proposition now before us, including biennials for members of the Legislature and for the State officers, and those who would vote in favor of biennials for State officers, but are unwilling to vote in favor of biennials including members of the Legislature. I find that there are some delegates to the Convention, at least, who sympathize with my own attitude. I feel obliged to vote against the pending resolution, No. 323 on the calendar, because I do not see my way to favor biennials for members of the Legislature. I desire to vote, however, in favor of biennials for State officers. If we should pass No. 323, and State officers should be included with members of the Legislature, I fear that it would endanger the proposal of separate biennials for executive officers before the people, which I believe might otherwise carry. I therefore feel constrained myself, and perhaps some other delegates share my attitude, to vote against the comprehensive proposition contained in No. 323, embracing both members of the Legislature and executive officers; but if that resolution is voted down I shall advocate and vote for resolution No. 253, with the amendment proposed by the gentleman from Hudson (Mr. Glazier), which would secure biennials for all the officers now elected annually by the people.

Mr. DENNIS D. DRISCOLL of Boston: It is not my intention to take up too much time of this Convention on these questions, on which I have spoken on the floor in opposition. I still am strong in believing that if the delegates to this Convention believe in biennial elections they will support the resolution that is now here; but I would rather see them kill the whole business, defeat the present proposal and defeat the rest of the proposals, and state that our annual elections, more especially at this time, be left to us, than to adopt this resolution.

Even with the absence of so many delegates in this Convention

I am a little bit surprised at the last vote upon a question so important as that of biennial elections. I think about 187 votes were cast, and there were 100-odd men absent, many of them men who you may say do not believe in biennial elections. It is true that in the district I came from I sent a circular out to the voters of the ward that I have the honor to represent, and told them that if I was elected I was opposed to biennial elections, and the people of that ward must have felt that way, because they elected me to come here as a delegate to this Convention.

There are tricks in this proposition, and you want to think them over seriously. I believe that if you adopt the amendment for biennials you will force the labor organizations in this State to go on the public platform this fall in opposition to it. We might as well seek coöperation to support some other measure connected with our Constitution. I trust that the delegates to this Convention will defeat the resolution now before us. I do not hear anybody say that he believes in biennial elections and annual sessions; but if the proposition of biennial elections was presented to this Convention with a proposition for biennial sessions and the power of the Governor to call the members of the government together under a per diem, the people of this Commonwealth would have something to discuss. It is true, I believe, that the labor movement of this Commonwealth is strongly opposed to biennial elections, and I predict that in the labor convention three weeks from to-day they will form an organization throughout this Commonwealth to go before the people and bring about its defeat. One of the great clubs that they can use on the public platform is: If you want biennial elections why do you not favor biennial sessions and save a million dollars to the Commonwealth, not put out a little seed to make it grow stronger and later bring about biennial sessions in this Commonwealth?

Under the conditions in the country to-day, and with the feeling of the delegates to this Convention who are present, I am of the opinion that the question of biennial elections, with the committee's report by the gentleman in the second division, should meet defeat. I trust that the delegates to this Convention to-day will defeat biennial elections, and not only defeat it for State officers and members of the Legislature, but defeat it for State officers, and let us go along with the peaceful annual elections, which are nearest to the people, for the people and by the people.

Mr. Churchill of Amherst: I had not intended to take up the time of the Convention by speaking again upon this subject. A proposal has been made to us, however, this morning, with a distinct attempt to influence the votes of the Convention, which it seems to me ought to be met so far as it can be met. The delegate from Boston in the second division (Mr. Quincy) knows very well that I am in favor of a longer term for the Governor and the Lieutenant-Governor. I cannot take any attitude to the contrary in that. But it is also true that if we have a system of biennial elections simply in order to bring about biennial terms for certain men we lose a very considerable amount of what we should gain by having a thoroughgoing biennial election. We shall lose practically, if not quite, all the advantage of the saving to this Commonwealth of $1,000,000 a year. We shall have the same or nearly the same expense to the public in general, to

the Commonwealth and to the towns, if not to the candidates, every year, and we shall be asking our electors to come to the polls, as now, every year, and we very clearly shall be diminishing the call of duty to those men. The proposition comes down to this: In the odd years they will have before them only the Senators and Representatives. Now, if I could believe that such a situation would conduce to a great deal more interest on the part of the people as regarded their Senators and Representatives, I should call that in itself an advance. I cannot believe, upon the record of our observation of what does take place, that if we remove from the people's interest every other year all our State officers we then shall be able to depend upon a sufficiently large turn-out at the primaries in the nomination of our Senators and Representatives.

We need to remember in considering this question that in at least 180 districts of this State the choice of Senator or Representative is made not at the time of election but at the time of the primaries; and a nomination, Republican or Democratic as the case may be, in 180 districts carries with it the practical certainty of election. And what do we have now under our annual system? We have at the best about one-third of our voters turning out to make these nominations. In these districts if a man had to make his choice it would be a great deal better for him to attend the primary and be absent from the election, because upon the election there is only a ratification of the choice which one-third of the voters, or less, have made. Now, to divide our situation in this way, — to have biennial elections for those officers with regard to whom the people do, and naturally, take the most interest, and to have in the off years simply primaries and elections for Senators and Representatives, — it seems to me will inevitably conduce to less attention to the very thing that I take it the gentleman from Boston (Mr. Quincy) is aiming at in his advocacy of annual elections for Senators and Representatives, — more scrutiny of their work, more review of it, a greater readiness to say after a year's term, if necessary, to the man who has not come up to the mark: "You shall go and a new man shall take your place."

Mr. Washburn of Middleborough: I am disposed to agree with the position taken by the gentleman from Boston in the second division (Mr. Quincy), but I disagree with him as to the way and manner the result should be brought about. The proposal is to kill the pending resolution, document No. 126 (Calendar No. 323), and then when we reach the following resolution (Calendar No. 253), to adopt the proposal of the gentleman from Hudson (Mr. Glazier). Where would that leave us? The proposal is that the administrative officers, including the Treasurer and Receiver-General, be given a two years' term. The Constitution now provides, in Chapter 2, Section 4, Article 1, that no man shall be eligible as Treasurer and Receiver-General more than five years successively. What may then happen? Should the Treasurer and Receiver-General be elected for a third term of two years, is he to retire automatically in the middle of that third term? I prefer the resolution as drawn by the committee and reported by the gentleman from Amherst (Mr. Churchill), if we can have an opportunity of voting on the two amendments separately. The first one takes into account the existing Constitution by providing that all provisions of the Constitution inconsistent with the amend-

ment be annulled, and it provides further that a person shall be eligible as Treasurer and Receiver-General for three successive terms, and no more. This is, in effect, the same limitation that we now have. Therefore, if it be in order, I should like to move that the original resolution, comprising as it does two amendments capable of division, be divided. Such a request was made, as I understand, under Rule 43 on the preceding stage, and the ruling of the Chair was that it was not in order; but I take it a motion formally made at this stage would be in order. I therefore make it, so that those of us who desire to vote for a two-year term for administrative officials, and at the same time are reluctant to give members of the Legislature a longer term than they now have, may have an opportunity to record our preference.

Mr. QUINCY of Boston: May I simply say, in the gentleman's time, that I have no objection at all to the general idea which he suggests; but I would suggest to him, in view of the present form of the resolution before us, which does not as easily permit of dividing the two propositions as the former amendment did, that the way to accomplish the object which he has in view, — which would seem to me entirely proper, although I did not want to make the motion myself, — would be to move as a substitute for the pending resolution a form of that resolution which strikes out all provisions except those relating to executive officers. The form, as the gentleman from Middleborough (Mr. Washburn) says, as reported by the committee on Form and Phraseology, is better than the original form which we would reach in the next number in the calendar.

Mr. WASHBURN of Middleborough: I am quite willing to accept the suggestion made by the gentleman from Boston (Mr. Quincy), and I therefore ask unanimous consent to withdraw my motion.

Mr. ROBBINS of Chelmsford: In consequence of the order which has been adopted I find myself more limited in time than I had expected.

By virtue of a municipal office which I have had the honor to hold for the last fifteen years, I have had occasion to observe at close range matters pertaining to elections. I have been placed also in a position to sound the sentiment of the several classes of the electorate concerning their attitude regarding biennial and annual elections, and I find a large portion favoring the more infrequent method.

The argument advanced that the voter would lose interest in public affairs after a lapse of two years I think is without foundation. On the contrary, I believe when the two-year period had elapsed there would be more interest taken in elections regarding both men and measures by the average voter.

Much of the evil which we seek to correct by the proposition which this Convention yesterday sent up for engrossment, — I refer to the matter dealing with compulsory voting, — I think would be eliminated by the biennial system of elections if it was adopted. Another matter, which the Convention rejected yesterday, would be taken care of, at least in part, if elections and sessions were held biennially.

I need not go over the ground already covered by other speakers concerning lack of attention to duty occasioned by constant campaigning by men already in office. Much time thus spent would be

devoted to the business for which the officer was elected. The great expense to which this State is put by annual elections would be saved. There is no question as to that. Annual primaries are now as expensive and as disturbing as the regular elections. In fact, with the preliminary circulation of nomination papers and the classification of the voters as to political party, I think more time and expense is involved in the primary than in the election. This proposition would afford relief at least every other year, and I believe the people at large in the Commonwealth would welcome such a respite.

Some talk has been made about automatic recall by annual elections. I tell you no man elected is going to persist in following a course contrary to the wishes of his constituents just because he is sure of two years in office. There are other ways to make life unpleasant for such an officer than by holding up the threat that he will be defeated for reëlection at the end of a one-year term. Do not deceive yourselves into thinking that you are listening to the majority of the voters of the State when you hear some of those who profit by annual elections advocate the defeat of this measure.

Massachusetts stands alone at the present time in adhering to the annual custom of electing the Governor for a one-year term. It is no more or less than political obstinacy for the Commonwealth to persist in annual elections. No State that has adopted the plan of biennials has returned to annuals. Arguments showing action of western States upon different matters are not sound sometimes when applied to Massachusetts, on account of changed conditions caused by wide differences in location and character of population. But here we have the spectacle of Massachusetts surrounded by every other State in New England, and all of the others have broken away from the antiquated idea that to have efficient government we must stir up political affairs every twelve months by elections.

In the pamphlet that was sent out by the commission to compile information we are told that Maine voted in 1879 an amendment to the Constitution providing for biennial elections. New Hampshire in 1902 adopted the same method, Vermont in 1870, Rhode Island in 1911, Connecticut in 1884. Is not the fact that 45 States and Territories are holding biennial elections significant? Is it reasonable to suppose that Massachusetts is right and all the rest of the States are wrong?

What is the opening sentence in Article 8 of the Massachusetts Constitution? It is this:

> In order to prevent those who are vested with authority from becoming oppressors, the people have a right to return their public officers to private life, etc.

Is there a delegate here who believes the danger of oppression by our public officers is so great that it is necessary to resort to frequent elections to safeguard ourselves? Knowing that a candidate who seeks office would be elected for a two-year term, would not the selection of that candidate be more careful, and would not the qualities of two or more candidates seeking election for the same office be more closely scrutinized by the voter? If this is so, would not the whole system of government be improved?

This Convention has been circularized to a certain extent by opponents of this proposition. Let us see what they argue.

In the first place, I agree with what is said here regarding health and strength to the State as a whole, justice to the highest possible degree for all classes and all persons, the highest opportunity for State development on progressive lines. These must be the standards by which to judge the relative value of annual and biennial elections.

Mr. James H. Brennan of Boston: I sincerely trust that both the proposal for biennial elections of the Legislature and biennial elections of State officers will be defeated by this Convention, because there is no public demand except from a few selfish individuals in this Commonwealth for this drastic change. Annual elections have been as much of a Massachusetts institution as has been that honored title that we refused to strike out of our Constitution, — "the Great and General Court."

We must not sacrifice the fundamental principles of our government for so-called efficiency. We have seen an example of efficiency in the present world war where the human element has been eliminated by German militarism and the machine-made individual has been substituted. We are fighting that menace now. We are here not as a business corporation but as representatives of the people, and we are elected to give them a proper representation and conduct of the affairs of the Commonwealth. The people of Massachusetts for over a century and a quarter have held annual elections, and there is no reason at this time why that great principle should be abolished. It amuses me to hear some of the delegates who opposed the election of judges, and who said that the fact other States elected their judges or appointed them for a limited term was no reason why Massachusetts should adopt that system, and yet the same members stand on the floor of this Convention and say we should adopt biennials because we are the only State in the Union that holds an annual election for public officers. In this State was born the town-meeting system, an annual meeting of the people of the towns of the Commonwealth, and in fact throughout New England, to have an accounting of their elected officers and returns from their public officials. If you abolish annual elections you are repudiating a system which has proven to be valuable to the American people in determining their affairs, — the annual town-meeting. We hear so much of business men demanding this change. What business man do you know of who would consent to a biennial election of the directors of his corporation, who would submit to a biennial return of the financial condition of his corporation or who would agree to an official holding office for two years without rendering an account to the principals whom he represented? Yet those are the only persons who want this great change in State affairs, — the selfish business men and the selfish politicians.

Let me read to you what Senator George Frisbie Hoar said in a great argument in 1896 against a similar proposed amendment:

> I have little respect for that temper of mind which feels the constantly returning duties of self-government as a burden. Certainly no man of business, no patriot, no lover of liberty can turn from a survey of the history of any other country in any other quarter of the globe to that of Massachusetts and grudge any contribution of labor or money he has ever made or ever can make in her behalf. None of us in this generation except the veteran of the war can truly say, "For a great price obtained I this freedom." [From Biennial Elections documents on file in the State Library.]

These are the words of a former great statesman of our Commonwealth, who had no sympathy for and who had no respect whatsoever for those citizens who felt that annual elections were a burden upon the people of the Commonwealth.

We talk about our fight for democracy, my friends. Let us be consistent. Let us not remove from the hands of the people an annual check on their elected public servants, and let us retain an institution that is as sacred to the people of Massachusetts as Plymouth Rock and as revered as the Sacred Cod that hangs over this chamber, — typifying the wisdom, the sincerity and the far-sightedness of our ancestors in providing annual elections.

Mr. Ross of New Bedford: I trust that this measure and the next one will be defeated. It seems to me that Massachusetts has the best laws of any State in the Union. It seems to me I have heard men connected with the labor movement boast of the legislation in the interests of the people in Massachusetts. It seems to me I have heard men who were not so active on that side but active on the employers' side boast that Massachusetts had the best laws. I am not going to take issue with that statement, but I want to say this: If it be true, it is because Massachusetts has annual elections and annual sessions.

I am not fooled with the statement that biennial elections do not mean biennial sessions. In the past I have heard them coupled almost always; that is, I have heard biennial sessions of the Legislature coupled with biennial elections, and I think that is the custom in States that have biennial elections. And so I am going to speak to that point, because I believe that that is the ultimate result of biennial elections.

I want to say that the great check on the purity of the Legislature, the personnel and the legislation, is due to the fact that they are accountable to the people annually and not biennially. In my experience I have seen legislation which has taken years and years to pass. I am not going to quote to you figures, — there is not time, — of the difference between biennial elections in other States and annual elections, except to say this, that the figures show that in about every case, — I think in every case, — under biennial elections many more men are elected to the Legislature who have had previous service than in States under the system of annual elections. I have seen legislation which under our annual system required ten or twelve years to pass. Let me refer you to the over-time bill, a bill which I doubt if many men in this Convention would vote against to-day, — a bill to prevent women and children from being employed in industries until late at night and then having to return to their homes at ten, eleven or twelve o'clock at night after having worked all day and part of the night. In later years a law was passed to limit the time of night employment to ten hours. But even that required too long hours for the women and children to be employed in our large industries under the conditions under which they labored. And yet, under annual elections and annual sessions it required twelve or more years to secure through the Legislature amelioration of that condition and the passage of the law prohibiting night-time employment. I believe that under biennial elections and consequent biennial sessions of the Legislature it would require twice as long plus

the lack of interest created by biennial elections as compared with annual elections.

Mr. Smith of Provincetown: This is the same question, almost, — it appeals to the people the same, — as the one that we passed along yesterday. This is one on which they know how they want to vote. And when the young gentleman in the third division (Mr. James H. Brennan of Boston) says there is no popular demand for this, I wonder what has been the scope of his circuit. Has he been out of his own ward? There is a popular demand for this from one end of the State to the other, and I am surprised at his statement after all the effort and study he has put into that speech of his, which was eloquent, but it was not based on facts. We want the plain unvarnished facts. We want to go to the people with them.

Now, as far as the proposition of the gentleman who sits in front of me, the ex-mayor (Mr. Quincy of Boston) killing this amendment and adopting the other to provide for biennial elections of State officers and annual elections of the Legislature, why, the only proposition we want is to give the people some relief. He does not seek any relief for the people at all. In the matter of efficiency, does not training produce efficiency? If men come here and serve two years are they not better men for the district? Does not the State derive more benefit from them than it does if they are changed every year? There is no argument against that. We hear a great deal said about military training, — a good thing; but what cuts us right here in this Convention is when some of the men from the metropolitan district, from Boston, stand up here and tell us we are unpatriotic, — unpatriotic if we advocate biennial elections. The trouble with them is, they are going to lose political training. That is what they want and that is what this annual session means, — political training.

The gentleman in the first division (Mr. Dennis D. Driscoll), for whom I have the greatest respect, says the labor organizations which he represents want annual elections. Well, you would think that settled it, and I do not know but what it will if you do not wake up. Now, the organization of labor that I represent is a voluntary organization and we are three to one of his. His is artificial, for the reason that you do not know where to find them. Go down to Brockton to-day. But ours is a voluntary organization. Out of 125,000 members of organized labor in this State how many do you suppose we have? More than 50,000.

Now, I take it among you lawyers and almost everybody who works, — I never have had a great deal of brain work to do, but I always have worked physically, and I have worked physically as hard as that man, and I say it for a fact, and it is the truth, that there is a sordid motive underneath this. These men who come here and call us unpatriotic are the mouthpieces of labor because they are hired. My good friend in this division (Mr. Ross) who has been here twenty years served in the Legislature because organized labor said he could come. Of course he has got to do this thing. But now here is another proposition. Every man who belongs to any organization in this State, whether it is a secret organization, a church organization, a Legislature or a Constitutional Convention, knows that there are a few men who do the work. The gentleman who sits in the third division is one of the few. And when they gather

in rooms, instead of nine or ten there should be four or five hundred. They pass resolutions and try to say it is the voice of organized labor. That is absolutely wrong. There are men who are opposed to this who hold the district in their hand, working hard, friends of mine, frightened of this. They are trying to tell the voters of this Convention and the people of this State that it is for biennial sessions. It is absolutely wrong.

Mr. Washburn of Middleborough: I desire to offer a substitute for the pending amendment as reported by the committee on Form and Phraseology, the effect of which will be to strike out all reference to Senators and Representatives, — in other words, members of the Legislature and also Councilors, — and limit its scope merely to a provision for a two-year term for executive officers, namely, the Governor, Lieutenant-Governor, Secretary, Treasurer and Receiver-General, Attorney-General and Auditor. I ask that the substitute as offered be read for the information of the Convention. It presents a clear-cut issue and as to form, at least, it is an amendment of the committee on Form and Phraseology. It has had the benefit of their revision.

Mr. Glazier of Hudson: I move the previous question. [Applause.]

Mr. Newton of Everett: I am opposed to biennials for two reasons. I am glad the previous question is ordered, because if I once got started to talking I am afraid I would take more time than I ought. The first reason is this: I believe that the oftener an individual is obliged to return to his constituents to account for his work the better both for the individual and for the constituents; and, second, because I believe the educational effect of annual elections far outweighs any objections to the necessity of the people going to the polls too often. We have a community here in Massachusetts that needs the education and discussion that come from annual elections. Therefore, as one of the members of the committee on Suffrage, the majority of whom reported against this resolution, I hope that we shall vote down biennials and keep our old system of having the individual return to his constituents and of educating the public upon these subjects upon which they need education. [Applause.]

Mr. Gates of Westborough: Several amendments have been offered to the resolution which I believe are not friendly amendments, because we want biennial elections, but we do not want biennial sessions. The resolution in regard to electing the Governor and the Lieutenant-Governor for two years was the resolution that I introduced in the committee on the Executive, because it was the only resolution that naturally would come before that committee, — which I believe is much better than not to adopt any amendment. But the main and important resolution is biennial elections, and we have not heard one argument that really is sound against biennial elections. No one here has said that we get better officers from annual elections than we would if the elections were less frequent. If we do, why do we not elect our Congressmen every year? Is a Congressman less important than a State officer? Why do we not elect our President for a shorter term? Why do we elect our Senators for six years, which is more important than any State officer? Knowing that we elect our most important officers for a longer term, it is important to

know that we can trust the men whom we elect; and I believe that we would get more efficient officers in the Governor's chair. It has been said when some persons have been candidates for Governor that it was not important that we exert ourselves in an off year to elect a Governor, because if he did not prove satisfactory he was in for only one year. Now, we would be more careful and would get more satisfactory Governors if we elected less frequently.

They say the only argument which has been brought up here at all is to keep the government near the people. Now, do we keep the government near the people when we have annual elections and the people do not cast their vote? In 1916, when we had a Presidential election, there were 537,000 voters who went and voted. Last year there were only 387,000, — nearly 200,000 who did not cast their vote. It is proved by other States which have biennial elections that they get a larger per cent on biennial elections than we do on our annual elections, and the per cent of the average of the States is 17 per cent more than we get, and there are States that cast 33 per cent more than we do.

Mr. Knotts of Somerville: One of the favorite methods of obstructionists from the days of Saint Paul, when his raging antagonists threw dust in the air, has been to follow their example. This morning I think that these tactics have been resorted to again. It has been stated here that Massachusetts has the best code of law of any State in the Union. I am perfectly willing to accept that premise as fact, although I do not know whether it is true. But to the dust throwing: The theory is advanced that the preëminence of our laws in this Commonwealth is the result of annual elections.

Now, I accept the premise that we have the best code of law in this Union, but I reject the reason offered. The reason that we have the best code is that we have had the best legislators. The reason that we have had the best legislators is because we have had the best public opinion. The reason that we have had the best public opinion is because we have had the best methods of education.

I think we ought to face this matter as it is and disabuse our minds of anything that confuses us upon this issue. I have had something to do for a number of years, in each community where it has been my privilege to live, in arousing the voters from their apathy, in trying to get the voters to the polls; and again and again it has been said to me, until I have come into this Convention with a deep conviction on this matter: "We have too many elections; let us alone for a while. We shall improve our legislators, and we shall improve legislation, if we reduce the number of elections." And I am in favor, gentlemen, of this measure as it stands.

Mr. Linke of West Springfield: I have but a few words to say. I have the honor to represent, with my colleague from West Springfield, what is known as the "Shoe-string District," comprising 14 towns in western Massachusetts, stretching from the northeastern corner of the county along the Connecticut State line and into the Berkshire Hills. Many diversified trades and industries are in this district. Starting from the small farmer who ekes out an existence in the rocks of the foot-hills of Berkshire to the skilled engineer on the railroad who gets a good weekly stipend, I have yet failed to find a man in western Massachusetts, especially in my own district, who

is not in favor of biennial elections. I am strongly in favor of biennial elections, and at the present time opposed to biennial sessions. Do not lose sight of the main proposition, — biennial elections. How are the people going to vote on this proposition? I for one certainly do trust the people. I feel that the voters in my district will vote for this proposition. The railroad man, — how can he get to the polls? We have to go down to the roundhouse or down to the yard to get him off his engine. Many of them are on the road in Boston or in Albany the day we vote; they cannot get to the polls. The farmer, — how does he get to the polls? He is busy in farming, getting in his harvest, looking after his stock, and so forth. It is a very difficult job to get the farmers to the polls. Many of them live miles from the polls, a great many miles. I am strongly in favor of any legislation or constitutional law which favors the laboring man; but when organized labor opposes legislation which relieves a burden from the shoulders of the ordinary working-man, the man of intelligence, the backbone of this country, I certainly shall oppose organized labor.

The main question was ordered.

Mr. Underhill of Somerville: I trust the amendment of the gentleman from Middleborough (Mr. Washburn) will be rejected by the Convention. The gentleman desires simply to have the executive officers of the Commonwealth elected biennially, according to his amendment. Now, sir, what will be the result? It is going to result every other year, the off-year, in a lack of interest. The friends of some good fellow who has a pull in the community are going to get out and, by a light vote, elect him to the Legislature, the most important branch of our government. On the even years, or the years in which the Governor is elected and a great interest is taken, a heavy vote will be cast and it will not be so easy for the light-weight.

Now, sir, I voted against biennial elections; but if there is an effort to confuse the issue, if there is a combination to defeat this proposition, I am going to change my vote and vote for biennial elections for *all* officers. [Applause.]

I trust if we are to have biennial elections we shall have biennial elections for all officers and not establish a favored class, a clique, but that all will be placed upon a level footing and that we may have the kind of elections the people want, if we refer this to them, — either biennial or annual.

Mr. Harriman of New Bedford: If there has been any one matter which has come before the Convention regarding the interest of all the people, it has been the Workmen's Compensation Act. For years the workmen, whether organized or not, came to the Legislature asking for some such legislation. Certain steps have been taken, every year they are being improved, and I say now that that great act, while it is not doing the work which it ought to do, is doing the work which it is doing because several changes have been made which met the conditions which arose. Two years hence would have been too long; it would not have given the people what they needed. And when people rise in this Convention and say that a man who for twenty years has faithfully represented his constituency in the Legislature and at whom not the finger of scorn can be pointed is but the voice

of others, I rise in protest. I say that labor men, whether they be organized or not, do not contain all the virtue there is in this Commonwealth; but if there is any organization in Massachusetts to-day which has labored in season and out of season, not only for its own benefit, but for the benefit of every man, woman and child who ever will live in the Commonwealth of Massachusetts, it is that of organized labor. And while we have made mistakes, let me tell you that our heart is with the people; and when men belonging to that movement come here and say that they believe and that they know that the men behind them believe in annual sessions, we are not the mere mouthpieces of certain organizations, but we are giving expression to our thought and our belief as free American citizens who have the interest of the entire Commonwealth at heart.

Mr. MONTAGUE of Boston: If there is any question coming before the Convention at its entire session which seems to me to be peculiarly one to be submitted to the people, this is the question. If we could submit it to the people without passing any vote here, I should be entirely satisfied with submitting it to the people and let them say, because of all the questions, the question whether they desire their officers elected once every year or once every two years is comparatively simple and easy for them to pass upon. But in order to get it before the people we must pass on it one way or the other.

While I was a member of the Legislature here I voted every time I had a chance for annual elections. But, Mr. President, I have come to the conclusion that the people, — or at least so far as I am in touch with the people, — have come to prefer biennial elections.

I should not be in favor of biennial sessions of the Legislature. I believe in the Legislature meeting every year, and that is what this resolution calls for. They meet every year but are elected once in two years. And I have come to believe that the people of the State would welcome that change. As some of you know, I have been somewhat actively interested in politics in at least one portion of this city. I know what it is to get out the vote, to dig right down underneath and get out our vote. When we do go around digging out our vote they do not ask us: "Where have you been so long?" but "Why do you come so soon?"

I believe this indicates that our people would be glad if they had the opportunity to vote once in two years instead of every year.

Mr. ANDERSON of Newton: I am opposed to the amendment of the gentleman from Middleborough. I hope the Convention will not pass that amendment. It does not give us biennial elections. It gives us annual elections, at one of which only members of the Legislature are to be elected. It is hard enough in the off years now to get the voters out to vote for State officers and members of the Legislature, and I am sure that the election in the off year, at which only members of the Legislature would be elected, would be almost a farce. I trust that we shall not pass this amendment, but that we shall pass the amendment given us by the committee on Form and Phraseology.

Mr. BALCH of Boston: I came to this problem with a fairly open mind. I have followed the debates closely, and I am impressed more and more in favor of biennial elections of the executive, but I have been impressed with the failure of those arguments, with one excep-

tion, as applying to the elections of the House of Representatives and the Senate. I think the gentleman in the fourth division (Mr. Underhill) has brought forward the only real objection that there is to that. I appeal from that theoretical objection to the actual experience in New York. New York has tried this system, and so far as I can learn it has not worked out in the distressing way that the gentleman believes it would work out here. I hope, therefore, that the Convention will adopt the amendment offered by the gentleman in the third division (Mr. Washburn).

I think the best way would have been to send these two propositions separately to the voters. Apparently it is now impossible to do that. If, however, we adopt the amendment offered by Mr. Washburn, it may be possible later to adopt the other as a separate proposition, thereby giving the voters a chance to adopt one or the other or neither or both, which, I think, is the right they ought to have, in order to avoid practically disfranchising part of them; because if that is not done the voters of the Commonwealth will either have to vote for both propositions or they will have to vote for neither, and those who believe in one and not in the other will be practically disfranchised. I trust, therefore, the amendment offered by Mr. Washburn will prevail.

Mr. Murley of Boston: The gentleman from Boston in the first division (Mr. Montague) made the argument that we should pass this resolution, not because we believed in it, but to give the people of the State the chance to vote for it. To my mind that is a ridiculous argument. To follow it out to a logical conclusion, we should not have debated the questions that have arisen here; we should have submitted every question directly to the people.

A short time ago I heard the eloquent gentleman from Waltham in the first division (Mr. Luce) make a brilliant and eloquent speech in this Convention, and he called upon the delegates in this Convention to rally to the defence of the people. Incidentally at that time he made a speech in favor of the initiative and referendum; and to my mind, at least, it was the best speech for practical purposes ever made in this Convention for the initiative and referendum. He said that because of a certain act of ours the people of this State felt aggrieved and that they were looking for succor, they were looking for help, — to what? Why, to the initiative and referendum. I hope when that gentleman goes to Congress, — and I sincerely hope that he will go if he is a follower of our great President Woodrow Wilson [applause], — I hope if he goes to Congress he will advocate the rights of the people.

Now, in regard to this specific question. A short time ago I read a statement in a pamphlet issued to the members of this Convention, and it was the best argument that I ever read in favor of annual elections, and it was made, not by a member of my party, but by the great Tom Reed of Maine. I say to the people of this State, to those men who say we are behind the times, that we are the only State having annual elections. Just look back a few weeks. What have you heard in this Convention? You heard men here arguing in regard to the merits of our judicial system, and they said that while Massachusetts was the only State that believed in the appointment of judges for life, yet it was the best judicial system in the

country; and I agreed with them and voted with them. And I say to you in regard to this question that the system of annual elections is the best system; it is best for the people because it keeps their public servants close to the people. Annual checks are kept upon their actions in the Legislature, and that is best for all concerned. It keeps an active interest in the great questions of the day. And furthermore, under the system of biennial elections in those States that have biennial elections, what happens? At the end of two years, when the men are seeking reëlection, nearly all are defeated and you have one green Legislature after another. Now, in Massachusetts it is a gradual change. About one-half of the members are returned annually. You always, under the Massachusetts system, have an experienced Legislature. Furthermore, you never hear of any great demand on the part of the people for the recall. So to-day I call upon the delegates to this Convention to rally in defence of the people and vote this resolution down and continue our system of annual elections. [Applause.]

Mr. Robbins of Chelmsford: I want to say just one word in opposition to the amendment offered by the gentleman from Middleborough (Mr. Washburn) in this division. In 1917 the State expended for elections $53,798.90; and this, you understand, is in addition to the great expense now borne by the cities and towns in elections. The State bill for the preparation of ballots alone was over $33,000. And if the amendment of the gentleman from Middleborough is adopted this expense would be exactly the same for the preparation of ballots no matter how many names were on the ballot. It is as great when there are few names as when there are many.

In connection with the matter of expense, let me state that the item of expenses should not be considered if there is adequate return for the money spent; but in this matter, the yearly holding of elections, I believe the return is so small that the money is virtually wasted. Massachusetts continues to spend money like a drunken sailor while her neighbors save and smile. If through the action of this Convention this proposition is recommended to and passed by the people, and Massachusetts falls in line with the other States of the Union, that one act alone justifies the existence of this Convention.

Mr. Pillsbury of Wellesley: I have but a word to say. The pending resolution is a straight resolution for biennial elections, for which the Convention has already declared, but, as I hardly need remind its friends, by a narrow margin. Now, there is some reason to apprehend that in the confusion occasioned by the introduction of the amendment offered by my friend from Middleborough (Mr. Washburn) the Convention may go astray and the resolution may be lost. Accordingly, whatever might be said in favor of that amendment on its merits if it could have appeared at a more fortunate time, I trust that the Convention will now take the short and direct road to what I believe to be the desire of a majority by rejecting the amendment and passing the resolution to be engrossed, — a course which has the additional advantage of disposing also of the next number upon the calendar.

Mr. Sawyer of Ware: I want to call the attention of this Convention to the fact that we have over 130,000 boys in military service. By next fall's election we shall have over 150,000 boys in military service, and we are going to take away one-half their political rights

in their absence if we pass upon this amendment. Now, our duty to the boys who are fighting for their country is that we should safeguard rather than take away their political rights.

The amendment moved by Mr. Washburn of Middleborough was rejected.

The resolution (No. 421) was passed to be engrossed Wednesday, August 14, by a call of the yeas and nays, by a vote of 116 to 108.

On the following day Mr. Sawyer of Ware moved that the Convention reconsider the vote by which it had passed the resolution to be engrossed.

Mr. SAWYER: As this Convention knows, the committee on Suffrage unanimously voted against this resolution, and it was intrusted to me, as one of the committee, to report, and therefore members of the committee and those who favor the present system have felt that it was right that I should make this motion to reconsider. I know that there are some who feel that they will vote against reconsideration on general principles, but let me remind them that we are now so near the end of our business here that such objection no longer need prevail. Also let me remind them that on page 3 of to-day's calendar, item No. 334, there is a matter that was reconsidered after a larger adverse vote than we had on this, so we have precedent for reconsideration.

I do not know that any charge of unfairness ever will be raised against this Convention in considering the matter of biennial elections *vs.* annual elections, or unwillingness on their part to thoroughly consider it, but I think this Convention ought to be jealous of its reputation, that it leave no opening for any such charge to be raised. I want to remind this Convention that it has given thus far very scant time to the consideration of this very important matter, a matter that is uppermost in the minds of many people. The previous question was moved on all three readings of this matter, and on two of the three readings moved after a very brief discussion. It will be easy, if we refuse reconsideration, for those who favor annual elections to go before the people and to state that this Convention was unwilling to adequately consider and deal with this great matter.

On the general question I want to say just this: That one of the arguments that influenced your committee in reporting adversely on this change from annual to biennial elections was the argument that it would result in a green Legislature for each session, or each term. When I stated the figures at a previous reading to show that, they were questioned later. Since then I have fortified myself with the rosters of several States, all of which bear out the figures that I made in my first declaration. The Vermont Legislature, by the roster of 1917, shows of 30 Senators previously elected none reëlected, and of 245 Representatives only 15 reëlected. The Clerk's manual for New York, where they have annual elections, against that shows 108 reelections out of 150. In North Dakota there were 10 reëlections out of 49 Senators, and taking all the figures together there were only 38 reëlections in both Houses. And so the rosters of these several States show that it is the custom in these States that have abolished annual elections not to reëlect their men, and to have green Legislatures at each term of service.

Now, we are in time of war. The world changes over night, and it is no time to put a longer space between our elections. Never would

it be so unwise to do that as at present. When our soldiers are away we ought not to pass an act that will so seriously affect their political rights. In all justice to them we cannot, and when we are so concerned with these matters of the war we ought not to burden our people with a political campaign such as will be waged in this matter.

Again, to pass this resolution means, if it is adopted by the people, that we will have no election on State issues save at those elections where National issues will overshadow them, especially in the next few years. I trust the Convention will reconsider.

Mr. CHURCHILL of Amherst: I always am willing to accept the result of a fair vote of this Convention. Sometimes I have been very much disappointed by what I have considered to be a fair vote of this Convention. All of us are anxious, or should be anxious, to have the real sentiment of this Convention made plain to the people, and to have questions submitted to the people in such manner that they may understand fully what was the attitude of the Convention.

Now, what is the case with regard to the controversy and the vote upon this very important matter? We have had three test votes, and in each case a majority for the proposition, but a narrow majority. That majority has increased slightly, only very slightly, as time has gone on, but the majority has been held, and it has been held in an increasing vote of the Convention. The vote which was taken yesterday was one of the very largest votes, I think I am right in saying the largest vote, that has been taken upon a roll-call for some weeks. Two hundred and twenty-five men voted, and in that large vote the majority, narrow still, was slightly increased.

What is the reason that we should reconsider that particular vote? If I had reason to believe that actually a majority of this Convention were opposed to this measure, if I had reason to believe that a fair vote had not been taken, if I had reason to believe that the possibility for a larger vote still of this Convention were not before us, however much I might be disappointed at the result of the vote on reconsideration, I should be in favor of it; but that is not the case. We have another stage upon this amendment, the question of submitting it to the people. It is known that that is to be before us, everybody who is interested in this question may be heard, and upon that we may have a fair vote, and for one I shall be willing to accept the result of it, whatever it may be. But what we have proposed to us this morning is, after a vote so large as we had yesterday, with efforts on both sides to bring in men in order that we might have a full opinion, we are asked without warning, in a smaller Convention, with fewer men here, to vote for reconsideration. In other words, we are asked to submit this vote to a test which, I submit to the Convention, will not be so fair as the test that we had yesterday.

Whatever our opinion upon this subject may be, we ought to remember at the same time two things: One is that we now are left with this proposition alone. If we wish to give our Governor and Lieutenant-Governor and other State officers longer terms, if this is defeated that proposition now is defeated also. Consequently I think we ought to be willing, all of us, to admit that if there is any question upon which it is reasonable to expect the real opinion of the people it is this question; and I deem it a fair, and it ought to be a persuasive, argument, to some men who are in doubt about the wisdom of this

proposition, to suggest to them that if they are in doubt after such a vote as we have had three times, including the vote yesterday, they may reasonably feel that now at least it is fair for them to allow this measure to go on to its final vote and to be submitted to the judgment of the people.

As I recall the arguments that were offered last year in this room, I want to repeat one of them. Is there any question, gentlemen, upon which it is fairer to take the opinion of the people, more reasonable to take the opinion of the people, than upon this question? The issue is clear. Men have thought about it for years. In my opinion they are very much interested in the matter. Is there any question which we, if we have any doubt whatever as to its wisdom or unwisdom, ought to be more prepared to submit to the opinion of the people for their decision? I trust that this Convention will not reconsider this vote, but will take a final vote upon submission under the best possible circumstances.

Mr. GATES of Westborough: I will take up just one or two minutes. All I ask for is a fair deal and fair play. This subject has been debated in this hall four days, or parts of four days. We had an expression of 225 members yesterday, and those in favor of biennials succeeded in obtaining a majority. I do not think it is fair play for those who were beaten after a debate of this question for four days to allow a small Convention to decide on this matter. The reason I believe it is not fair play is that the country members believe in biennials, but that the city members as a whole believe in annual elections, and it is not a fair expression of opinion to spring this on the Convention without giving fair notice to those who come from a distance. I ask those who voted against biennials yesterday to give us a square deal. The leader in this Convention, one of the leaders in this Convention, in the third division (Mr. Lomasney), said when he was beaten, he acknowledged being beaten and did not cry baby, and I hope there is no one in this chamber who will cry baby because he was beaten on a fair deal.

Mr. Ross of New Bedford: I have taken thus far very little time of the Convention, and I am going to take but little more. I want to say with regard to this matter that I would have been willing to have let matters go according to the vote, but I am not willing to play a game with a man and have him win always regardless of the results of the game. I believe that some of the delegates who have spoken this morning against reconsideration and asked that it be defeated because of the fact that a decisive vote has been taken, voted for reconsideration on some other matters. Within a week or two I remember a matter having been passed with a much larger vote, twice the majority this matter had, and having been reconsidered the next day, advantage being taken of the men who could not be here on the last day of the week, and the matter having been brought up again on reconsideration after having been killed the day before. Now, all I have to say on this matter is this: It is a very important matter. As to its reference to the people, I would be willing, again, to have all matters referred to the people; but I am not willing to have referred to the people matters that I believe in and have the matters my opponent believes in not referred to the people. Let us play the game fair if we are going to play the game. As to being

beaten, I never am beaten, and if this matter is defeated to-day I am ready to take up the fight again next week. I do not admit that I am beaten, on this or any other matter. I have got to be beaten before I am beaten. I have got to be squelched to be got rid of. I trust that this matter will be reconsidered. It will take very little time, and I do not believe that this Convention will be lengthened a day, or half a day, or an hour, by the reconsideration of this matter.

Mr. SMITH of Provincetown: I will take but a minute of the time of the Convention, but there has been a great deal said about fair play. Do you not know there are some members of our Convention who will lay great stress on fair play and giving them a square deal? Now, that is what this proposition is, to give the people of this Commonwealth a square deal. We have got along so far, and the people wanted it, and if they agree to O. K. it, accept it, and if it comes back, it is all right, and if it does not that is all right. That is all. I have made this fight so that the people might be used right.

I want to just read a few lines of an article that was sent here by Raymond L. Bridgman. I am just going to read a line or two:

> In a democracy the final reliance must be on the intelligence and patriotism of the mass of the voters. Few voters seem to realize the extent and the danger of the present popular ignorance and indifference to public affairs.

In God's name, where did that come from, annual elections or biennial elections? This man has had an experience of forty years on Beacon Hill, and now he tells you that future reliance must be not on the ignorance and indifference of the voters of this Commonwealth, all of which has been brought about and has grown up through annual elections. Is it not time that the people should have an opportunity to say? Well, now, this whole pamphlet is built upon the same proposition. A man can take a text of any six lines in it and talk for days and days in reply to the argument that has been put up in opposition to allowing the people, — not to have biennial elections; I do not know that we will have them, — but to allowing the people to say whether or not they want biennial elections.

I hope that this matter will not be reconsidered.

The motion to reconsider was negatived, by a vote of 24 to 100.

The Convention voted, Tuesday, August 20, by a vote of 132 to 104, taken by a call of the yeas and nays, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 142,868 to 108,588.

XXII.

BIENNIAL SESSIONS OF GENERAL COURT.

Mr. J. Warren Bailey of Somerville presented the following resolution (No. 40):

Resolved, That it is expedient to alter the Constitution of the Commonwealth by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall assemble biennially on the first Wednesday of January succeeding its election, and shall proceed at that session to make all the elections, and do all the other acts which are by the Constitution required to be made and done at the annual session which has heretofore met on the first Wednesday of January in each year. And the General Court shall be dissolved on the day next preceding the first Wednesday of January in the second year next succeeding its first assembling, without proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as it shall judge necessary, or when called together by the Governor. The Governor, Lieutenant-Governor, Councillors, Secretary, Treasurer and Receiver-General, Auditor, Attorney-General, Senators and Representatives shall hold their respective offices or places for two years next following the first Wednesday of January after their election, and until others are chosen and qualified in their stead. The meeting for the choice of Governor, Lieutenant-Governor, Councillors, Secretary, Treasurer and Receiver-General, Auditor, Attorney-General, Senators and Representatives shall be held on the Tuesday next after the first Monday in November, biennially. The Governor, Lieutenant-Governor, Councillors, Secretary, Treasurer and Receiver-General, Auditor, Attorney-General, Senators and Representatives, who shall be chosen at the election at which this article shall be adopted, shall hold their respective offices or places for the term provided by the existing Constitution, and no longer; and thereafter the Governor, Lieutenant-Governor, Councillors, Secretary, Treasurer and Receiver-General, Auditor, Attorney-General, Senators and Representatives shall be elected and hold their respective offices or places comformably to the provisions of this article. No persons shall be eligible as Treasurer and Receiver-General for more than three terms successively. All provisions of the existing Constitution, inconsistent with the provisions herein contained, are hereby annulled.

The committee on Suffrage reported that the resolution ought NOT to be adopted.

It was considered by the Convention Friday, July 12, 1918; and it was rejected the same day.

THE DEBATE.

Mr. BROWN of Brockton: It is useless, of course, to argue this matter in view of the vote already passed, but I cannot refrain from the philosophy of extracting a little sunshine from a cucumber and feeling somewhat rejoiced in the vote just taken. There is one thing in my opinion that labor wants that it has not got, and that is a political issue so plain as this one. It is all very well here, I suppose, on some great matters like woman suffrage and prohibition, and certain other things, because some people did not want to go on record as they would like to have it. I know it is said here there was no politics in getting rid of it. Perhaps there was not. Those who think otherwise have a right to their opinion, and they have a right to the underground current that they have set running. But I am undertaking to say this: In the very nature and order of events, how is this going to turn out? How about the people who we are claiming are for the initiative and ref-

erendum; that they are for the initiative and referendum because they want to take a larger share in government? Will they stultify themselves by in one breath voting for a larger share, and in the next minute voting to divide their share in halves by exercising it only once in two years?

Then what next? Men running for office will be asked to go on record on this great matter. It will be a big political question. Some one says: "I am ready to send this thing down, though I am going to vote against it." Why do you not do the same on all measures? You have not; therefore it is upon you to decide whether or not the liberties of the people are served better by annual elections than they are by biennial elections.

I am sorry that there was a roll-call. Every man, after he is put down in black and white, does not like to change his mind; but he might have had a different opinion with a different argument.

It is the system that should be considered. The biennial election will perpetuate the system of corruption. The gentleman from Ware (Mr. Sawyer) has pointed out how it works in other States. A man gets in just once, and if he has got a yellow streak in him he will make the most of it. It has been said if you had an election of judges that a judge could not attend to his business because he continually would be wondering how it was going to affect his election. But a judge is different from a legislator. A legislator should have his ear to the ground to determine what the people think. Is not that what he is elected for? Should he not listen to the voice of the people, or do you want to fix it so that he is under no necessity of listening to the people once he gets power? Annual elections too frequent! At a time when you are complaining that your whole structure is in a condition that it ought not to be! Too frequent, — at a time when the people have so many wrongs that there is not time enough to right them! The people, says the Constitution, have a right to a speedy redress of wrongs. They have got a right to try to redress them once a year. Now it is proposed that they shall wait two years before they shall have the chance to right them. The people are not asking for biennial elections.

Mr. Underhill of Somerville: For the reasons which I gave to the Convention about forty-five minutes ago, I move the previous question on this matter.

Under this heading I may not be out of order if I give the Convention a little information which may be of interest. We have on our calendar of twelve pages thirty-nine matters, all of which probably will be debated. There are four matters that are analogous, and it consequently brings the number down to thirty-five. There are eleven working days for this Convention between now and the first of August. When the Convention reconvened this summer it was supposed we might get through by the first of August. But, sir, if you will remember, we have taken over four days discussing subjects for the benefit of some of our members who may be candidates for office this fall, and who wish to get their remarks in the record. We also discussed for one full day one matter which had just one vote in the Convention when it came to a vote.

Now, sir, some of these thirty-five matters will be debated, not only once but twice; and if we are going to carry out the policy of ad-

journing anywhere from five to twenty-five minutes early each day, simply because we have worked hard or because we have discharged a number of matters from the calendar, and carry out a policy of extending debate, we are going to be here somewhere into November, — at least up to election time. Now, I am not averse to that if the members of the Convention wish to take that attitude. My objection this morning to extending the remarks of the gentleman in this division (Mr. Sawyer) was not because I opposed the gentleman, for I voted with him, but because the practice has crept into the Convention of extending the time of every man who is interesting.

Now, that is not right. We are the only parliamentary body which requires a quorum for debating a question, and any man can delay the Convention anywhere from fifteen minutes to three-quarters of an hour by questioning the presence of a quorum. I trust the Convention from now on will work the full four days a week, that it will devote what time is necessary to the intelligent discussion of the question, and that without fear or favor, "with malice toward none and charity to all," in the future I shall be "the goat" of the Convention and move the previous question whenever it seems that the Convention has all the information necessary.

Mr. Knotts of Somerville: This is a question of personal privilege. The delegate from Brockton (Mr. Brown) made a statement that I was a little surprised that he should make. If it was nothing more than a liquid flow of fluency heard by this Convention I would not rise; I would consider what he said in regard to this Convention having passed over the prohibition resolution and the woman suffrage resolution as one of those incidental and pestiferous things "like flies of latter spring that sing and sting, and lay their flimsy eggs and die." But since the proceedings are to take permanent form, and perhaps somebody one day may read some of these remarks, I rise to make this statement.

Those questions over night became Federal issues. They shifted their base. There are men in this Convention who are bound together by cords of moral fiber and strength, and I am sure that none of these men, no one of these men, could be manipulated by political interests or by politicians, and they all would join together and say:

> Come one, come all, this rock shall fly
> From its firm base as soon as I.

Mr. Luce of Waltham: The resolution under consideration, in view of our recent action in the matter of annual elections, now has importance simply in the matter of the sessions of the General Court. I would remind the Convention that the committee on The General Court, if I remember right, was unanimously opposed to the change from annual to biennial sessions, and that we are supported in this matter by an equally unanimous view of the committee on Suffrage. Therefore two committees of this Convention, containing thirty members, after study of the question, have expressed their belief that this change ought not to be made. Believing therefore, sir, that this judgment is likely to prevail, I do not desire to take the time of the Convention in presenting the reasons why the committee on The General Court, at any rate, took this position; but if by any chance I have misread the temper of the Convention I certainly, on some later occasion, shall present the views of the committee in this regard.

Mr. PILLSBURY of Wellesley: It probably is idle to take the time of the Convention in any attempt to seriously discuss this subject. Indeed, under the operation of the previous question that cannot be done; and it is a subject upon which there is such a curious and, to me, unaccountable difference of opinion among men generally of intelligence and sound judgment —

Mr. O'CONNELL of Boston: Mr. President —

The PRESIDENT: Does the member yield?

Mr. PILLSBURY: For what purpose?

Mr. O'CONNELL: It is impossible to hear the gentleman when he talks in that low voice. He does not talk to the Convention up here. Now, we like to believe that we are of some consequence up here. Instead of having to move down there to him, I should like to ask him if he would not be good enough to raise his voice so that we may hear him.

Mr. PILLSBURY: It is not that I regard my friends in the rear as of less consequence, but that I regard what I have to say as probably of no consequence at all. [Laughter.]

I was attempting to say, Mr. President, that the subject is one upon which there is such a difference of opinion among men of good judgment, that no man can have entire confidence in his own; and yet I have had for many years a clear conviction that Massachusetts is perpetuating one of the most serious of her political mistakes in clinging to the absurd, antiquated, archaic, unnecessary and objectionable system of annual elections and annual sessions of the Legislature. I say that out of a closer knowledge of the Legislature, perhaps, for a longer period of time, than that of any other member of this Convention, for I was first a member of the Legislature forty-two years ago, and have had it under close observation at every session ever since, and have had occasion in the meantime to view it from almost every different angle, official and unofficial.

Between these two reforms, the adoption of biennial elections, in which I heartily concur, and the adoption of biennial sessions of the Legislature, the latter is vastly the more important. I hope that the Convention, having declared in favor of biennial elections, will now accept the logical corollary of that action and declare also for biennial sessions of the Legislature. The cost of annual elections, the tumult, the hubbub, the annoyance, the interference with business, unnecessary and objectionable as they are, are a bagatelle in comparison with the constant tinkering of the laws, the principal thing which we ought to get rid of. Probably there is not a local community on the face of the earth except our own that keeps its law-making body in session half the time, year in and year out, and probably there is not a community on the face of the earth that is so over-legislated for as this Commonwealth of Massachusetts, nor a community anywhere which tolerates so much petty, inconsequential and unnecessary legislation, of which the Blue Books from year to year are the conclusive proof.

I have no idea how the fate of the present resolution will be affected by our action on the last, but the thing to do now is at least to refuse to reject the pending resolution, so that we may have the whole subject of biennial elections and biennial sessions before us for further consideration, and this I sincerely hope the Convention will do.

Mr. W. H. SULLIVAN of Boston: It is amusing to-day to observe

the attitude of those delegates who did not trust the people when we were discussing the initiative and referendum. At that time their reason for voting and speaking against the I. and R. was that we had a most perfect Legislature in Massachusetts; it was close to the people, and Massachusetts was the greatest State in this country. Such a glorious Legislature! And now, when they are confronted with the question of biennial sessions, they do not trust the Legislature. But the real fundamental reason for their position is that they do not trust the people. They do not want the initiative and referendum because they say the poor, ignorant working-man is not qualified to vote. They do not want the poor ignorant voter to vote for the Legislature or the legislator more than once in two years; and this glorious Legislature, — they do not want that to sit more than once in two years.

Now, the gentleman from Worcester (Mr. Washburn), in a delightful and effective speech, said that those who opposed the I. and R. ought to be against biennial sessions and against biennial elections because their opposition to the initiative and referendum was founded on the belief that the people, by annual elections, had such effective control over their representatives that the I. and R. was not necessary. This argument, however, will not appeal to those who believe themselves to be the ruling class and God's appointed agents to legislate for the people; and the very modest if somewhat patronizing way in which the gentleman who preceded me (Mr. Pillsbury) has told us what he thinks of the Legislature, and what the people ought to do, and what the Legislature ought to do, and what laws should be made, and how they should be made, fixes his position with the ruling class. The Legislature should make our laws, as it has done in the past, personally conducted and advised, — advised judicially and judiciously by the gentleman from Wellesley, who appeared as counsel for different corporations before the legislative committees.

Now, the real question is: Are you going to distrust both the Legislature and the people? Are those who spoke against the I. and R., who opposed it because we had such a glorious body of legislators, and because every year the legislators will get better — will they vote now for biennial sessions of the Legislature, or will they say to the people —

Mr. Pillsbury: This is the first time, I think, that I have interrupted a member in debate, but I cannot resist the temptation of asking my friend from Boston how any man who voted in this Convention for the initiative and referendum, on the ground that the Legislature cannot be trusted to make the laws, can now vote to continue to keep the Legislature in perpetual session. [Applause.]

Mr. Sullivan: I am glad the gentleman from Wellesley asked the question, and it affords me great pleasure to make answer to those who applauded. My reason for believing in annual elections and annual sessions is that I have so little confidence in the wisdom of the Legislature that I believe in limiting the term of office to one year. That is my reason for believing in annual elections and annual sessions. Let us pass upon the records of the Representatives and Senators every year. In that way we will make for a better Legislature because of this restraining influence.

Mr. Luce of Waltham: I find it incumbent upon me to break my

resolution not to address the Convention on this question, by reason of the fact that the statements of the gentleman from Wellesley in this division (Mr. Pillsbury) ought not to be perpetuated for the consideration of future generations without at least a brief presentation of the other side.

After a somewhat earnest and prolonged study of the reasons why American Legislatures have fallen into disrepute, I have reached the conclusion, definitely and positively, that the chief cause is to be found in the notorious, illogical, dangerous and harmful tendency of the American people to close the doors of the halls of justice, to lessen the opportunity for the redress of grievances, to prevent change, to keep the world stagnant. Our friend complains of the volume of legislation. Let him take the Blue Book and show me one law for which no reason could have been expressed. The argument will not hold that a bill could have passed both branches of this Legislature and received the approval of the Governor if behind it was no reason.

My friend forgets that this is not the year 1818. He still thinks it is Napoleon who is warring on the battlefields of Europe. He forgets the locomotive, the steam railroad, the telephone, and a hundred other inventions, which have changed the very face of society. He has not yet wakened to the fact that the complexity of human life has increased tenfold since you and I were born. He expostulates because men come to the halls of legislation and ask for redress, ask for change, ask that the institutions of society shall be adapted to new conditions. He desires that we shall still live in that peaceful, quiet day when every man was a farmer and there were no such things as factories, railroads, telephones, wireless telegraphy, aëroplanes, and everything else which has contributed to the enormous, almost inconceivable, diversification of interests that compels constant legislation.

The Congress of the United States has reached that point where it must be in almost continuous session, and yet the people ever complain because Congress does not attack one tithe of the questions confronting it. In the Parliament of Great Britain, in the National Assembly of France, in the Reichstag of Germany, in every legislative body of the world, the same condition exists, — the necessity of greater and more extensive study of public problems than mankind ever before saw.

If he would but read the story of the southern and western States, if he would but read the statements of the Governors of those States, among them especially those of one of the ablest, Governor O'Neal of Alabama, who has discussed these questions at length in print, he would understand that there is spreading gradually through the country a realization of the fact that the greatest harm ever wrought to the legislative branch was wrought by the movement to throttle it and to prevent it from meeting the desires of the people.

Sir, it is true that there is a great deal of trivial legislation enacted that ought not to vex the time of the General Court. I already have assured him, and I will assure him once more, that I will do all I can to attempt a remedy for that situation. But, at any rate, until the situation is remedied, is it reasonable or logical to say the Legislature shall not do the work that now comes before it? The cure is not to be sought in giving less opportunity to do the work. Imagine a board of directors that found its corporation in hard straits and said to its

stockholders: "We will relieve this situation by meeting only once in two months instead of once a month." [Applause.]

Mr. UNDERHILL of Somerville: I should say to the gentleman in the first division (Mr. Pillsbury), and also to the gentleman in this division (Mr. W. H. Sullivan), who have brought in the relations of the Legislature and the I. and R., that if we are to have the I. and R. the safety of the Commonwealth of Massachusetts depends upon the annual sitting of the Legislature. There will be mistakes made through the I. and R. that only the Legislature can correct, and if the Legislature does not sit each year we are going to find ourselves in a dangerous position.

Mr. SAWYER of Ware: Little needs to be said in answer to the argument of the gentleman from Wellesley (Mr. Pillsbury), so well answered by the gentleman from Waltham (Mr. Luce). The delegate from Waltham (Mr. Luce) in one of the debates here referred to the fact that it took seven years to pass the direct inheritance tax, because the Legislature did not have time to properly consider the matter, and at the same time properly attend to its regular docket of business. How long would it have taken the Legislature to have enacted taxation reform if it had had biennial sessions?

This resolution goes beyond the other resolution simply by adding biennial sessions. The resolution already adopted would give us biennial elections with annual sessions. The resolution now before us goes the "full hog" and gives biennial elections and biennial sessions. I want to quote against that one or two statements in addition to what the gentleman from Waltham has said.

In a statement by ex-Governor John D. Long, he said:

> For many years I have had a close acquaintance with the acts of the Massachusetts Legislature, and I can say that there has not been one of its sessions that could have been omitted without serious harm to the people of the State of Massachusetts.

In 1886 the Knights of Labor put forth this definition of a Legislature: "A meeting of a committee for the common good of the State." And that is just what our Legislature, the General Court, is, — a meeting of a committee for the common good of the State, and it is not too often for them to meet annually.

In addition to taxation reform, we might state many beneficent laws on our statute-books as the result of annual sessions and annual agitation, — such laws as the Employers' Liability Act, the Workingmen's Compensation Act, the Security of Savings Bank Deposits, the Australian Ballot System, the Regulation of Public Service Corporations, the Improvement of Working Conditions in Factories, the Protection of Women and Children in the Factories, Savings Bank Life Insurance, Mothers' Pension Aid, and many others which do not occur to me now. These and hundreds of others are the result of that constant agitation which can come only with annual sessions.

I am sure that this Convention does not want to go any farther than it went in the preceding resolution, and that they will vote "Yes" on this and accept the report of the committee, and kill the resolution right here.

XXIII.

APPORTIONMENT OF MEMBERS OF THE GENERAL COURT.

Mr. David Mancovitz of Boston presented the following resolution (No. 85):

Resolved, That Part the Second, Chapter I, Section II and Section III as amended by the twenty-first and twenty-second Articles of Amendment to the Constitution of the Commonwealth are hereby repealed, and the following Articles substituted therefor:

CHAPTER I, SECTION I.

THE GENERAL COURT.

House.

A census of all the inhabitants of each city and town, on the first day of May, shall be taken and returned to the office of the Secretary of the Commonwealth, on or before the last Monday of June in the year nineteen hundred and eighteen; and a census of all the inhabitants of each city and town, in the year nineteen hundred and twenty-five, and every tenth year thereafter. In each city the enumeration shall specify the number of inhabitants in each ward of such city. This census and enumeration shall determine the apportionment of Representatives for the periods between the taking of the census.

The House of Representatives shall consist of two hundred and forty members, which shall be apportioned by the Legislature, at its first session after the return of each enumeration as aforesaid, to the several counties of the Commonwealth, equally, as may be, according to their relative numbers of inhabitants, as ascertained by the next preceding special enumeration; and the town of Cohasset, in the county of Norfolk, shall, for this purpose, as well as in the formation of districts, as hereinafter provided, be considered a part of the county of Plymouth; and it shall be the duty of the Secretary of the Commonwealth to certify as soon as may be after it is determined by the Legislature, the number of Representatives to which each county shall be entitled, to the board authorized to divide each county into representative districts. The board of special commissioners in each county, to be elected by the people of the county, or of the towns therein, as may for that purpose be provided by law, shall, on the first Tuesday of July next after each assignment of Representatives to each county, assemble at a shire town of their respective counties, and proceed, as soon as may be, to divide the same into Representative districts of contiguous territory, so as to apportion the representation assigned to each county equally, as nearly as may be, according to the relative number of inhabitants in the several districts of each county; and such districts shall be so formed that no town or ward of a city shall be divided therefor, nor shall any district be made which shall be entitled to elect more than three Representatives. Every Representative, for one year at least next preceding his election, shall have been an inhabitant of the district for which he is chosen and shall cease to represent such district when he shall cease to be an inhabitant of the Commonwealth. The districts in each county shall be numbered by the board creating the same, and a description of each, with the numbers thereof and the number of inhabitants therein, shall be returned by the board, to the Secretary of the Commonwealth, the county treasurer of each county, and to the clerk of every town in each district, to be filed and kept in their respective offices. The manner of calling and conducting the meetings for the choice of Representatives, and of ascertaining their election, shall be prescribed by law. Not less than one hundred members of the House of Representatives shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.

Senate.

A census of all the inhabitants of each city and town, on the first day of May, shall be taken and returned into the office of the Secretary of the Commonwealth, on or before the last day of June, in the year nineteen hundred and eighteen; and a census of all the inhabitants of each city and town, in the year nineteen hundred and twenty-five, and every tenth year thereafter. In each city said enumeration shall specify the number of inhabitants in each ward of said city. This census and enumeration shall determine the apportionment of Senators for the periods between the taking of the census. The Senate shall consist of forty members. The General Court shall, at its first session after each next preceding special enumeration, divide the Commonwealth into forty districts of adjacent territory, each district to contain, as nearly as may be, an equal number of inhabitants, according to the enumeration aforesaid: *provided, however*, that no town or ward of a city shall be divided therefor; and such districts shall be formed, as nearly as may be, without uniting two counties or parts of two or more counties, into one district. Each district shall elect one Senator, who shall have been an inhabitant of this Commonwealth five years at least immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen; and he shall cease to represent such senatorial district when he shall cease to be an inhabitant of the Commonwealth. Not less than sixteen Senators shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.

The committee on The General Court reported that the resolution ought NOT to be adopted.

It was considered Tuesday, July 9, 1918, and was rejected, by a call of the yeas and nays, by a vote of 117 to 64.

THE DEBATE.

Mr. JAMES H. BRENNAN of Boston: I have moved substitution of document No. 85 for the report of the committee on The General Court. There are several amendments of a similar description to document No. 85, but in order to facilitate matters and save time I am going to address the Convention on that document, which is very similar to the others.

The documents that I have introduced personally are No. 80 and No. 79 as they appear respectively on the calendar. As they are identical in their phraseology with document No. 85 I shall address myself to that document.

I will explain briefly what this amendment provides. It provides that the Constitution be amended whereby our Legislature at present is apportioned on a basis of legal voters, and a basis of population substituted therefor. It simply changes the Constitution in reference to the apportionment by striking out the words "legal voters" where they appear in the Constitution, and substituting therefor the word "inhabitants." That is the whole sum and substance of the amendment. The purpose of the amendment is to create an apportionment of our Legislature on the basis of the entire population of the Commonwealth instead of a minute fraction thereof. That is the whole situation briefly and I have a few facts and figures here to try to impress upon the Convention the importance of this great step which I believe is in the right direction.

The present method of reapportioning Representatives and Senators is unfair, unequal and indefensible. The idea of apportioning on a basis of legal voters is absolutely contrary to the intent of the Constitution. It is simply a subterfuge, enacted through a constitutional

amendment in 1856 and 1857 by strongly partizan Legislatures and adopted in 1857 by an intensely partizan electorate for the sole purpose and intent of keeping the control of the government in the hands of the narrow wing of the then dominant party. At that time there had commenced to flow to our shores that great stream of present-day American life blood, — immigrants and immigration. In order to deprive the foreign-born elements of our Commonwealth of their just representation in the halls of legislation, the cute and crafty minds of that time devised this unequal method of defeating the will of the people, — representation on a basis of legal voters. What is a legal voter? The ordinary interpretation of the term is, a citizen of the United States who is not a registered voter; note the distinction, — one who is not registered but who is eligible. The only proof required of the presence of a legal voter when the census was taken in 1915 was the personal statement of the man himself or of the landlady who gave to the census enumerator the names of her male lodgers. Accordingly, foreign-born residents, who had not become citizens of our country yet, were not recognized, even though the Constitution guarantees them a government of the people and not based upon artificial and imaginary legal voters.

According to the 1915 census the population of Massachusetts was 3,639,310 people, and out of that number there were only 775,889 legal voters in the whole State, or about one person in every five. Yet, one-fifth of our population, supposed to be legal voters, are reckoned on and the other four-fifths of the population of the State, or to be exact, 2,917,421 individuals of our population, are not given any consideration whatever in making up legislative districts and legislative seats. Is this a republic, where the majority is supposed to rule, or are we in Massachusetts a vest pocket edition of some foreign dynasty where the minority rules? I have shown to you where our Legislature is made up on the basis of one-fifth of our entire population, and yet we brag and boast about our government by the people.

Now let us consider the figures in Suffolk County and see what they show. By the census of 1915 the population of Suffolk County was 826,801 people and the legal voters were estimated at 175,890, or about one in every five people, or a fraction more. The remaining four-fifths, or 650,911 people, residents of Suffolk County, are not recognized in our present method of reapportionment. And yet our forefathers fought against taxation without representation! Every one of these men, or a great majority of them, are taxed, either on a poll tax or on a property tax. And yet on the basis of apportionment they are not recognized. Is not that taxation without representation, taxing residents of our Commonwealth and taking money for the conduct of the Commonwealth out of their pockets and yet not recognizing them in the fundamental frame of our government?

No doubt some one will say: "These legislators that we elect represent the people as a whole." If so, why not apportion on the basis of those whom they are supposed to represent, — the whole people, — and not a minute fractional part thereof?

To point out further inconsistencies and irregularities of the present method, let me quote a few figures showing the unfair conditions in some of the Boston wards and sections to-day. For instance, ward 5,

with a population of 77,573 people, has three representatives. Ward 7, with a population of 35,084, or less than 50 per cent of the total of ward 5, also has three representatives; and yet our census tells us that ward 5, with 77,000 population, has only 7,900 legal voters and that ward 7, with a population of 35,000, or 42,000 less, has three thousand more legal voters, — figures that I personally do not believe are authentic. Yet that is the condition and it is a simple illustration of the irregularity of our present apportionment system. Ward 7, with 42,489 less people than ward 5, gets the same number of Representatives, yet we talk about equality of representation. Another interesting situation is the contrast between ward 7 and ward 8, ward 8 being now the Back Bay ward, formerly ward 11 of the city of Boston. The population of ward 8 is greater than that of ward 7. Ward 7 has a population of 35,000, legal voters amounting to 10,000, and three Representatives. Ward 8 has a population of 38,000, or three thousand more people than ward 7, and yet the census says that they have legal voters to the number of only 7,700. While they have 3,000 more people, the census says that they have 3,000 less legal voters. And yet ward 8, in my opinion, should have more legal voters with its greater population, because of its stable and permanent population, than ward 7, the neighboring ward, which is a lodging-house section to a great extent, with a floating population.

To me, those figures are mighty strange and I do not know any way that they can be verified.

South Boston, with a population of 59,737 people, has four Representatives, while ward 7, with 24,000 less people, has three Representatives.

Now those are only examples of the inconsistency and the unfairness of our present method of apportionment. These figures ought to be convincing proof to any fair-minded man that we are being legally robbed to-day by apportioning on a basis of legal voters, and it is about time we made a drastic change so that we may have a return of the government to the hands of the people and not by a small minority of the people. We are operating our government now under a system of class rule.

Mr. Underhill of Somerville: I was rather curious to know, in view of the figures which the gentleman has just quoted, and also his contention as to the vast number of people who are not represented because they are not voters, how the conditions would be improved by the I. and R., for which he voted and which he advocated earlier in the session.

Mr. Brennan: I do not know how the I. and R. will operate so as to remedy this situation. However, it might be initiated by the I. and R. to bring about such a change as I believe we ought to bring about here, — a constitutional amendment whereby the people of the Commonwealth, as in nearly every other State in the Union, should be considered in the fabric of making up our Legislature. This is the only State in the Union where a cute little scheme has existed of apportioning on a system of legal voters, and I believe it is time we had a change. We are supposed to have a government of the people and for the people and by the people, but we are having government by only a fractional part of the people. And that is why the 1918 Legislature of Massachusetts of which the gentleman who has just

spoken was a member, was made up as follows, — and I believe that these figures will be sufficient information for him and for any fair-minded man to realize that the present method is not fair and not just and not democratic in the economic sense of the word: Last year's House of Representatives contained 171 Republicans and 58 Democrats, or a proportion of over three to one. The Senate of Massachusetts contained 34 Republicans and 6 Democrats, or a proportion of almost six to one. The Governor's Council contained seven Republicans and one Democrat, a proportion of seven to one; and yet there are those who say that we are operating under a representative form of government!

Mr. George of Haverhill: I am very much interested in the last analysis of the gentleman's statement as to conditions of our Legislature. As I understand it, this is a proposition to change the Constitution in order to make the State more Democratic? [Laughter.]

Mr. Brennan: It is not a proposition to make the State more Democratic in a political sense; it is a proposition to make the State more democratic in a government sense. And I believe that we ought to make the State more democratic, because I believe that our State Legislature to-day is not representative of the people and it does not represent the people, — and I do not believe we ought to consider this matter from a party standpoint whatsoever. I am quoting these figures simply to show that our condition of government to-day is unequal and unfair. It does not matter to me what the political complexion of the Legislature is as long as there is a near division of the dominant parties instead of an unequal division of seven to one, six to one or three to one, as exists in the Governor's Council, the Senate and House of Representatives.

The Constitution of our State to-day is contradictory. Chapter 1, section 3, article 1 of our Constitution says:

> There shall be, in the Legislature of the Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

Does the gentleman from Haverhill think that our Legislature to-day is founded upon the principle of equality or does any fair-minded man, whether Republican or Democrat, think that our Legislature to-day is founded upon the principle of equality? There is not anybody here who can say there is a nearness, or any approach to nearness, to the equality that was intended by our Constitution.

Furthermore, I maintain that to-day our Legislature neither represents the people of Massachusetts nor is based upon the principle of equality our Constitution intended. Therefore it is time for a change, so that the Legislature may be brought back to the control of the people. And that is why we witnessed during the last session of this Convention the passage of an amendment providing for the initiative and referendum, because our Legislature had not been representative of the people of Massachusetts. That is why an initiative and referendum amendment has been adopted by this Convention, and in my humble opinion, it was the principal reason why this Convention was called together, so that the General Court would be brought to its senses and realize that we should have a representative government here and to impress the General Court that it was elected to represent the people and not private interests, as they have heretofore.

I speak from experience. I served in four Legislatures and I know the methods and means that are employed in those bodies, and I believe that the adoption of the initiative and referendum is the best proof in the world that our people are dissatisfied with the present method of apportionment and the present method of representation that we are getting from our Legislatures.

Now I want to give a few more figures on this great subject.

Mr. UNDERHILL: Replying to the gentleman's own statement, this vast population in the different wards of Boston is now represented in the General Court, in some instances by two, in some instances by three and in others by four representatives, representing all the people. I believe he mentioned that South Boston had four representatives. Now, sir, under the initiative and referendum all these men for whom he is advocating this change have absolutely no representation, because they are not voters, and those who are voters, this minority of one to five or one to four, carry out their own wishes without respect to the great majority of the people for whom he is now pleading.

Mr. BRENNAN: I cannot see any comparison between the two subjects at all.

Why should we not apportion on the basis of people? Our Representatives to Congress, — the Congress of the United States, — are apportioned on a population basis, and so are the majority of the Legislatures of the other States of the Union, — notably the greatest of all, the State of New York. If Representatives and Senators are intended to legislate for the people, why not apportion them and elect them on that basis?

Now in order that the gentleman from Somerville may not feel that I am making a statement simply from the standpoint of Boston, I am going to branch out into a wider field and let him realize for himself that the counties of Massachusetts are suffering under the same handicap that many of the Boston wards are. For instance, Barnstable County has a population of 28,818 people; they have three Representatives. Nantucket, which, under the Constitution, is entitled to one Representative regardless of her population, has 3,166 inhabitants, with one Representative. Twenty-eight thousand inhabitants in Barnstable, 3,000 inhabitants in Nantucket, a proportion of nine to one, and yet Barnstable has three Representatives and Nantucket has one, a proportion of three to one. Is not that a discrepancy?

Compare Berkshire County and Bristol County. Berkshire County has a population of 114,000 people, Bristol County has a population of 346,000 people, or three times as many. Bristol has 19 Representatives and Berkshire has 8. If that proportion were to hold true and we were apportioning on a basis of mathematical accuracy, Bristol would have 24 Representatives instead of 19, while Berkshire would have 8; then it would be in the same ratio as their population.

I also want to point out to you that four counties of this State, — namely, Bristol, Essex, Middlesex and Worcester, — have 125 members of the Massachusetts House of Representatives. Four counties out of the fourteen have over 50 per cent of the total membership, and if Suffolk County was added to the total it would make 179, — a total of 179 Representatives in five counties out of fourteen counties in the State, in a total membership in the House of 240. Is that mathematical accuracy? I cannot see where it is mathematically ac-

curate, and I defy anybody to prove that five counties in this Commonwealth, with an aggregate of 179 members out of 240 Representatives, is a democratic form of government. Nine of our counties have only 61 members of the House of Representatives while five counties have 179 members! Is that equality?

Another inconsistent part of our Constitution is this: We have a Governor's Council. For the information and benefit of those who believe that this is a facetious argument and should not be taken seriously, let me read from the Constitution with reference to the makeup of our Governor's Council. The 16th article of amendment says:

> Eight Councillors shall be annually chosen by the inhabitants of this Commonwealth, qualified to vote for Governor. The election of Councillors shall be determined by the same rule that is required in the election of Governor. The Legislature, at its first session after this amendment shall have been adopted, and at its first session after the next State census shall have been taken, and at its first session after each decennial State census thereafterwards, shall divide the Commonwealth into eight districts of contiguous territory, each containing a number of *inhabitants* as nearly equal as practicable —

not legal voters, but *inhabitants*. If you make up your Governor's Council on a basis of inhabitants, why not your House and Senate?

In reference to the Congress of the United States, the United States Constitution provides: "Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective numbers," counting "*the whole number of . . . persons,* . . . excluding Indians not taxed" — which latter proviso is an obsolete phrase in so far as it refers to Massachusetts. But there is the Constitution of the United States. Your Congressmen are apportioned according to the whole number of persons in each State, and a Congressman of the United States, a Representative to your National Legislature, your National law-making body, is at least as important; indeed it is more important in the affairs of the Nation than a delegate in this Convention or a member of the General Court. Furthermore, if the United States of America feels that all of its citizens and all of its residents and all of its inhabitants should be considered in making up our great Congress which decides whether we shall enter war or whether we shall remain at peace, a momentous question of far greater importance affecting each and every inhabitant of the United States, and if we ourselves elect our Governor's Council on a basis of inhabitants, why, then, should we not be consistent and elect our Senators and Representatives on a basis of inhabitants?

Let me say to you that population was the basis of representation in this Commonwealth between the year 1840, when the 13th article of amendment was adopted, and the year 1857, when the 21st article of amendment was adopted. Why was the change made, — why was this legal voters' amendment adopted in 1857? Because, as I have said, there started to flow to our shores that great stream of immigrants who have helped largely to build our railroads, who have aided in building our canals, who have helped to build our docks, who have contributed to the building up of our water front, who have been the hewers of wood, and the drawers of water, and the tillers of the soil; whom to-day we are glad to have in our midst, because there is a shortage of labor all over the United States, and if it were not for the

presence of these strong, willing, honest immigrants who are deprived of their just consideration in apportionment by our State Constitution, the United States of America to-day would be in a dire position and possibly might be in a condition of distress. Those are the honest laborers of yesterday who have produced the brilliant sons and daughters of America to-day, the sons and daughters of the first and second generations who are the doctors, lawyers and the business men of our country, and of whom 60 per cent, — sons of immigrants, — are in the ranks of our army and navy. Still we say that those men are not to be considered in the scheme of our government; we are going to set up class rule against the mass, and the legal voters are to dominate those men. Why do we allow them to come here? Why do we say that this is a land of opportunity and equality and liberty, and then set up a privileged class? I contend that we owe our very existence to-day to the immigrants; that we owe our existence here to the immigrants from Ireland, England, France, Italy, Spain, Russia, Sweden and the various other European nations from which they have been coming. We owe our very existence as a Nation to the men whom we deprive to-day of just recognition. We are the only State in the United States of America that says to these men: "We welcome you here; we tax your property, — we tax your property whether you are a citizen or not; you contribute to our treasury, and yet when we are making up new legislative districts you are not to be considered; you are classed as nonentities. We are here, and we certainly welcome you because we need you for certain purposes, but you are not to become part of our government."

Let me say to you, gentlemen, that it is a difficult thing to become a citizen of the United States. I have had considerable experience with men who have come to this country, who are honest and ambitious and willing and earnest and who have been deprived of an education in their former European homes; and they come here and they study, they work and they try to bring themselves along, and they have to live in this country five years and then get two of their neighbors and friends to take a day off from their employment that they can ill afford and go to the court.

These men have difficulty in becoming citizens of this great country. They are compelled to go to that court, as I have said, with two of their neighbors and friends, poor working-men, who sacrifice that day's pay, and questions are asked of them that are difficult for a high school graduate to answer, — questions as to the number of generals in the civil war; "What was the principal battle in the civil war?" "Name ten Presidents of the United States." Boys who have just graduated from high school would have difficulty in answering those questions. If that were not difficult enough, Congress recently has enacted a bill forbidding admission into these United States of any immigrant, no matter how honest he may be, no matter how clean his soul or his heart or his mind may be, unless he can read and write the language of his own country. I believe that that was a step backward. I do not believe the test of qualification or the base of fitness for citizenship in this country should be a literacy test. I believe the only test should be: Is the man of good character and of sound body and mind? And if he is, let him come in. Many an educated rogue, an agent of an enemy country, well educated in state-

craft and well educated in plotting, bribing and murdering, if necessary, comes into our country because he can read and write. He comes in freely and mingles with our people. But a poor immigrant who comes here and has been deprived of education in his own country, from which he comes to seek betterment in this land, because he cannot read and write, although he may have within him a cleaner heart and mind than the man who is educated and who walks down the gang-plank ahead of him, — he is deprived of admission to this country. That condition, gentlemen, should not prevail, and I do not think Congress acted in pursuance of the fundamental principles of the American government when they denied honest immigrants that opportunity to enter the United States. We have built ourselves up as the greatest Nation in the world by welcoming to our shores those who were oppressed and those who were downtrodden, those who sought betterment and they who sought religious and political freedom. In spite of this fact, at this late day, when we have 110,000,000 people within our boundaries, we shut the doors to those men. Many such men, as I have stated, have become our best citizens. They have formed the bulwark of this Nation. The transfusion of that new blood into the American people and American Nation has invigorated and stimulated our race and enriched the American people, so that to-day we have the advantage of the vigorous blood of all the former European subjects who have come here, and the best blood they had has been merged into ours, and that is why we are strong and great. Therefore I ask you, — I ask the delegates to this Convention, — to consider seriously this amendment, because I believe that in order to be fair and just we should give every man in this Commonwealth the same opportunity and consideration and recognition that he is entitled to under our Constitution. It is expressly provided in our Constitution that all men are created free and equal. If they are equal, why do we in Massachusetts set up a barrier barring them from consideration in our basis of government? This is an inequality that has existed in this Commonwealth for a great many years. I believe it ought to be eradicated. You men have all heard of Elbridge Gerry, you all have heard of the gerrymander; and yet after 50 or 60 years of gerrymandered Congressional districts and gerrymandered Representative districts and with an unequal proportion of representation in our halls of legislation, no step has been taken to bring about a change whereby a political equality may be reached. I think it is time that we took some action, and therefore I trust that this amendment will be adopted or this resolution substituted for the report of the committee on The General Court, so that we really and truly, like every other State in the Nation, may have an apportionment on a basis of population and not on a basis of imaginary legal voters, as they are in hundreds and thousands of cases. Therefore I trust that this resolution may be substituted so that we in this Constitutional Convention may show our constituents and show the people of the Commonwealth that we are here to make our government more representative, more democratic and more responsive to the will of the people of Massachusetts. [Applause.]

Mr. Quinn of Sharon: I hope that this resolution will be rejected, its rejection being recommended unanimously by the committee on The General Court. As you all are aware, the resolution provides

that representation be based on the number of inhabitants rather than on the basis of legal voters as at present. The passage of this resolution would be very unfair to the districts which have a small and stable population and would be advantageous to those populous centers, manufacturing centers, which have a large floating population. These districts will increase their membership, whereas the small and stable towns, the small communities, will decrease their membership. Take, for example, the city of Lawrence. One-half of those eligible for military duty under the registration act were aliens. Now, that is the condition which confronts us. This matter of apportionment was debated at great length in the Convention of 1853, and the ultimate result of the deliberations of that Convention was the passage in the Legislatures of 1856 and 1857 of the present amendments to the Constitution, Articles 21 and 22, which provide a basis of representation based on the number of legal voters. I therefore certainly trust that this resolution will be rejected in justice to all citizens of the Commonwealth, in order that there may be a true and equitable representation from all districts in the General Court.

Mr. SAWYER of Ware: I offered a resolution of my own to correct the very injustice that this one seeks to correct, and the merits of this one have been set forth so ably and eloquently by the gentleman who moved it that I am very glad to second his resolution and to ask that it may be substituted. He set forth before this Convention the injustice and unfairness of the present arrangement, and it may have occurred to some of you to ask yourselves: Why was such an unjust and unfair arrangement put into our Constitution? In the original Constitution the General Court was made up on the basis of ratable polls. In 1836 a different arrangement as to the number of ratable polls was made, but still ratable polls was continued as a basis. In 1840 a constitutional amendment was adopted, however, making inhabitants the basis of representation in both House and Senate. That arrangement worked happily and justly and fairly. It was in accord with the rest of our Constitution, inhabitants being the basis of the choosing of councilmen and of choosing the members in the Federal Congress. It was in accord with the basis of representation in the other States in the Union. Why, then, was it disturbed? It was disturbed because of two factions that got together and that had sufficient influence to get the present arrangement through the Legislature and ratified by the people. One was the Know Nothing movement, and the other was the anti-Boston movement.

At that time we know how active the Know Nothing movement was, the distrust of the immigrant that was in the air; and so in order to curb the growing power of the immigrant it was put before the people and the people in the country sections were asked to ratify the amendment for no other purpose than to curb the growing influence of the immigrant. Now, that distrust of the immigrant was laid by for all time within twenty years in the great civil war. Further, that distrust of the immigrant was buried by this very Convention last year, when we passed the anti-aid amendment. And if there were still any doubts in the mind of any one, he has but to read now the rolls of our army to see how the sons of the immigrants are fighting for democracy. Take your rolls and look at the French names, the Polish names, men who were good enough for us to register to

fight for us, and they are going forth to fight for us, but we do not consider in our Constitution that they are good enough to be considered when we choose a Representative and a Senator. Is that fair? Is that just? Why should not this Convention take the same splendid ground that it took last year, and say: "We will bury for all time the ghost of the distrust of the immigrant, and will repeal this amendment, or at least give the people a chance to deal with this amendment which is now in the Constitution."

The second argument that was used in our country localities and smaller cities to secure the insertion of the present unjust arrangement was that Boston was growing too much in power and influence. The same situation prevailed in other great States. In the State of New York they distrusted the city of New York, and so they made a constitutional arrangement that the number of Senators in the city of New York never should be greater than the number of Senators in all the rest of the State, so that the power of the great metropolis might be curbed. They went to our smaller cities and our towns with the same argument, and they said: "Boston is growing, and Boston will rule you unless you put this amendment into the Constitution." Whatever people may feel toward Boston, this cuts deeper than Boston. It cuts an injustice not only to the city of Boston but to so many of our smaller cities and towns. Look at the city of Lawrence, the city of Lowell, nay, all of these great textile towns, — Fall River, New Bedford. All of them are discriminated against. Injustice is done to all of them.

Mr. Hart of Cambridge: May I ask the gentleman whether I understand that it is his proposition that immigrants into Massachusetts who have the opportunity to become citizens and who in no way seek that opportunity, in no way qualify, who take not even the first steps toward qualifying, — whether he thinks they also ought to be counted in adjusting the representation?

Mr. Sawyer: The number of immigrants within our State who do not seek to become citizens is very few. There is a large number of immigrants in our State who cannot become citizens, but they are here and are going to live here, — as long as they live they are going to live in this State. Their families are here, they are working in our mills, their families are working in our mills, their wealth is here, their interests are here, and they ought to be considered when we make up the basis of our representation.

I trust that as the gentleman from Waverley says, justice may prevail in this Convention, and that we shall substitute this resolution for the adverse report of the committee.

Mr. Leonard of Boston: I feel much as did the gentleman from Newton (Mr. Anderson) in the third division, when he moved reconsideration this morning of another subject, when he said that the committee on The General Court had not proposed to the Convention any affirmative or constructive measures. I feel in that way regarding this proposition. I believe that a measure on this subject should come before the Convention. I do not agree with a great deal of what has been said by the gentleman from Boston in the third division (Mr. James H. Brennan). Perhaps my reasons for wishing that this matter be brought before the Convention are different from his, but I believe it is a matter that should receive consideration.

The Convention of 1853, which has been referred to, spent a very large proportion of its time and of its talents upon this question of the apportionment of representative districts. In that Convention, it was largely a contest between the delegates from the small towns, who claimed that each town should have at least one Representative, and those who, on the other hand, believed that the representative districts should be based upon some equality either of voters or of inhabitants. Their proposal on this matter, like all the proposals of the Convention of 1853, was rejected, but four years later the 21st amendment was adopted. The 21st amendment provides that in all the counties with the exception of Suffolk County the apportionment shall be made by the county commissioners, and in Suffolk County the apportionment shall be made of representative districts by the mayor and board of aldermen of the city of Boston, as they act as county commissioners for the entire county of Suffolk, or in the alternative it shall be made by a board of special commissioners, and I believe a board of special commissioners may be elected in any county of the Commonwealth.

Now I want to refer to the apportionment that has last been made in Suffolk County. And I am not going to do this for the purpose of stirring up any embers that may be sleeping regarding the contest we had over the last apportionment, but to illustrate, if I may, how under the interpretation of the law by the Supreme Judicial Court I believe that there is need of the Convention giving attention to this matter of apportionment, so that we may provide for the future.

Mr. William S. Kinney of Boston: Before the member takes the time of the Convention discussing the apportionment of Representatives in Suffolk County will he kindly explain to the Convention how in any sense the apportionment of Representatives by the boards of the several counties is germane to the subject in question?

Mr. Leonard: It seems to me that is absolutely the matter in question. I think that the question before the Convention is: How shall we apportion the representative districts of the Commonwealth? What is the method by which we shall do it? Are the existing methods the proper methods? Can they be reformed? I think they can.

In the last apportionment of Suffolk County five of the special board were chosen from the city of Boston and four from the towns of Chelsea, Revere and Winthrop. The five chosen from Boston were gentlemen selected in the Democratic primary, whose names all commenced with either A, B or C. Now, I do not say that with reflection on all of the members. I know the gentleman in the third division (Mr. J. H. Brennan), who was the chairman of the board, had ample experience and qualification for assuming that duty. But here is an illustration of a matter I want to point out further, the habit and the tendency where there is not a vital issue connected with the candidates, of selecting those candidates who have the favorable positions on the ballot. These men, the five men chosen from Boston, were in the first letters of the alphabet. One of them never had held public office before and was a young man of some 21 or 22 years of age. He was one of the members of a board assigned to do a duty which the language of the Supreme Judicial Court characterizes in this manner:

Nothing can more deeply concern the freedom, stability, the harmony and success of representative republican government, nothing more directly affects the political and civil rights of all the members and subjects than the manner in which the popular branch of the legislative department is constituted.

That was the way the board was chosen, and they undertook to apportion the districts, and I suppose, according to the prevailing methods that have existed in this Commonwealth for some generations past, the gentlemen of the political faith that dominated in that board undertook to secure, within that measure of discretion which they felt they had the right to use, an advantage to their party. The first two apportionments that they made were so manifestly and clearly unfair, as based upon the number of legal voters, that they were set aside by the court and a third apportionment had to be made. It was after that third apportionment that I happened to take some little part, because I then was an aggrieved party. The first two apportionments that they had made did not affect my own particular ward; but when the third apportionment came it tied up my ward, or the new ward that was made, which I thought was a ward that might be slightly Democratic, with another ward, and made my district entirely and exclusively Republican. [Laughter.] Although I was not a candidate for office myself, I felt that there were others. We had developed in West Roxbury some men in the preceding ten years, men like the present mayor of the city, men like Salem Charles, men like Mr. Horgan, who is sitting here in the Convention, John M. Minton, John A. Callahan, John J. Conway and others. There is now no opportunity or chance for any young man of my political faith at the present time entering into public life by elective office from that district, because of the apportionment then made; and the result of that apportionment was that the gentlemen who had control of the board in Charlestown and East Boston and the north and west end sections of the city secured by the use of their discretion [laughter], — and that has been defined by the court; the court says that the members may use their discretion within certain limits, — for these wards that are contiguous on the north side of the city they secured a representation in the General Court larger than the several contiguous wards on the southern side of Boston, — notably Dorchester, West Roxbury and Brighton. The ratio of Representatives is less, very much less, in the wards on the northern section than those on the southern side. And in approving this third apportionment by the Suffolk Commission I hold that the Supreme Judicial Court have approved of a latitude of discretion that may plague us in the future, and is in effect a greater discretion than an apportioning board should possess.

Mr. James H. Brennan: Now that the delegate from Boston (Mr. Leonard) has explained so very ably these three apportionments in Suffolk County, I should like to have him explain to the members of this Convention how it is that a recess committee of the Legislature has so arranged sixteen congressional districts that there are only four Democratic congressmen elected.

Mr. Leonard: I am coming directly to that. I am glad the gentleman has brought it up.

I think, as I have said, that in the use of this discretion that the members of that board possessed they undertook to try to offset the system that has existed outside of Suffolk County in this Common-

wealth since the time of Elbridge Gerry, to whom the gentleman refers. And Elbridge Gerry, by the way, was Governor in 1811. The story of the derivation of the word gerrymander was something like this: They were making up the congressional districts at that time, and there was hanging in the office of a newspaper editor a map of Essex County showing the new districts. Gilbert Stuart, the artist, saw the districts there, and he with a pencil drew a few lines on one particular district and he said: "There is a salamander." The editor of the paper said: "Don't call it a salamander; it is a gerrymander," and the word has existed since that time. Now, gerrymandering was not born in this Commonwealth, though it here received its name and has been practiced by the prevailing and by the dominant party since that time up to the present; and when the gentlemen of Suffolk County undertook to try to offset that in any way they were undertaking an impossible job. It could not be done, because the gerrymandering of the past was too skilfully and artfully done and had extended through too long a period of time for one board to do it. But now I think I am indicating that there is necessity of bringing this matter before us.

The 21st amendment refers to the board of aldermen of the city of Boston. The board of aldermen of the city of Boston is now an obsolete term. We have no board of aldermen, and we do need, the city of Boston in particular needs, some new method of apportionment.

I do not think that the exact method by which we are going to apportion the districts is going to solve the entire problem. There are other matters that enter into the consideration of it. I think we opened up some of those matters in the discussion this morning. Have you ever had the curiosity to look at our election laws, — the election laws as they are on our statute-books and on our Blue Books? They are wonderfully and fearfully made. The chapter on election laws occupies in the Revised Statutes something over one hundred pages. I grant its importance. But on the other hand, look to such subjects as the descent of real property. There you have one page. Matters like common nuisances have two pages. The rights of husband and wife occupy four pages in the Revised Laws. And, gentlemen, all the vast catalogue and category of our criminal offences and of their procedure is comprised in eleven chapters, and in those eleven chapters are defined all those peculiar things of which man may be guilty, — treason and murder and arson, the stealing of a dog collar, the ringing of a church bell, the engaging in a duel, being a gambler at a fair. All of these crimes are minutely set forth and discussed, defined, and also what it is to be an accessory before or after the fact. Yet all those chapters on criminal law are of less volume than what we have to say about elections. Then, again, not satisfied with that, every few years we have to codify and change the whole system. In 1907 we had a codification that occupies 150 pages in the Blue Book of that year. In the codification of 1914 there is another 150 pages. And there are laws added year after year.

I heard some reference made to an election expert in the Convention not long ago. The only election experts are those who are directly in employment and in contact with the proposition of election laws. If you were to ask an attorney a question on almost any matter of civil law, within a reasonable time he probably could give you an answer; but if you ask him some little thing on the election law,

if he is a wise man he will go to the Secretary of the Commonwealth, and he will confer probably with Mr. Boynton, and he will get the information, but he never will attempt to dig it out of our statutes in our Blue Books.

And yet, in spite of all this, the number of our elective officials is a gradually diminishing ratio, almost a vanishing decimal point. Prior to 1855 the House of Representatives was composed of some six or seven hundred members, and now it is reduced to 240. It is the same with our cities. We have not got the large numbers of elective officials we formerly had. And despite all the accumulation of election laws it seems to me that the glamor and the interest and the picturesque features of our old American political campaigns have departed gradually and are very much on the wane. The last real picturesque campaign that I recall out in my district was when a gentleman ran, not in my party, but in the other party, for the congressional nomination. He was considered at that time a rank outsider, who had no business to butt in on the gentleman whom the "powers that be" felt should receive the nomination at that time. I recall that campaign very well because it was so thoroughly organized. They had all the staffs of officers, both the coms and the non-coms, and the supply sergeants, and a fully equipped commissary department for the relief of the tired and hungry workers. Everything went well. It was successful, and everybody enjoyed it, except for the unfortunate circumstance that the candidate was not elected. In the cold gray dawn of a morning or two after the campaign one of his neighbors said to him: "Gene, I think I saw considerable mention of your name in the papers lately." He said: "Yes. Yes, I guess you did." He asked: "Were you a candidate for some office?" The other replied: "Yes." "Well," said the neighbor, "did you enjoy your experiences?" "Well, now, old boy," was the answer, for that was an expression he had [laughter], "your question reminds me of the Illinois farmer who read in the market reports that the price of hogs had advanced, so he gathered together a certain number of head of his hogs and he drove them to the market. The weather was hot, and the journey was long, and the hogs were lean. By the time the poor farmer arrived at the market the price had dropped, and he concluded that the best thing he could do was to drive the hogs back home again, which he accordingly did, finishing the round trip in something less than a week. He met one of his neighbors casually, just as you happened along this morning, and the neighbor said, 'Well, Farmer John, I understand you went to the market lately.' 'Yes.' 'Well, did you enjoy the trip?' 'Yes,' said the farmer, 'yes, fairly well. You see I had the company of the hogs all the time.'" Now, that kind of marks about the epoch of the passing away of the picturesque feature of our campaigns. I believe that we do not treat the candidates for office in quite the proper fashion. It is not the same way with the appointive officials. You do not find anything in the statute about appointees or men holding appointive offices, and in the meantime their family and their number have flourished like the proverbial banyan tree.

What is the substance of all this? Simply this: It seems to me that if we gave a little bit of the attention to trying to get the expression of the people that we give to trying to circumvent the candidate for office, if we gave 10 per cent of the amount of attention, we

would accomplish more results. We tell the candidate not to do this and not to do the other thing. Why, up to a few years ago it was the practice in this Commonwealth when a man was tried for murder to have three judges sit in judgment in that case. That practice was abolished some time ago. But along in 1914 the Legislature said: "If a man violates the Corrupt Practice Act there shall be an inquest held on him on the complaint of his fellow-citizens and three judges shall sit at the inquest," — not an inquest on the man's body, but an inquest on the poor shriveled-up soul of the individual who would violate some of the various and multitudinous provisions of the Corrupt Practices Act. I saw that sort of performance myself a year or two ago, when a gentleman who had been elected, — I think to the Legislature, — probably had spent more than the tariff provided for by law, and some of his fellow-citizens who had not been taken care of complained of him, and had three judges sit in judgment on him. I do not know what finally came of the case. It is altogether, as I said, different with the appointive official. He is not subjected to any such thing as that. To illustrate the difference that marks the elected from the appointed official, there is a little incident that has gone the rounds of the legal profession for some time which perhaps is old enough not to impeach the reputation of any one now living. It tells of a gentleman from one of the rural communities, — and I use that term with all respect, — who received an appointment to the bench. I do not know whether it was the Superior Court or the Court of Common Pleas, as they may have called it at that time. This gentleman came to Boston to pay his respects to a senior member of the bench. After the introduction and some casual exchange the senior Justice made an interrogation to his brother something in the nature of that which the Governor of North Carolina addressed to his colleague, the Governor of South Carolina, and the two gentlemen adjourned to that portion of the hotel where liquid refreshments were dispensed. The senior Justice introduced his brother to the gentleman who mixed the drinks, and he extended his hand with great comradeship and with the possible hope that here was a future patron of the house. The senior Justice asked: "What will you have?" Well, the newly appointed one was a little bit embarrassed, and he replied: "Anything that satisfies you will satisfy me." "No, no," said the senior Justice, "not at all, but name your own drink. Have anything you want." "Well," he said, "if it is all the same I will have a little rye whiskey." "All right, Judge. All right. George, you mix Mr. Junior Justice some rye whiskey, and give me a glass of milk." Ah, if such a thing should have happened in an election contest and be a subject of complaint, — picture for yourselves the result!

I said in the beginning of my remarks that I think if the Legislature paid some of the attention to achieving the will of the people and less to trying to circumvent the candidate they would make more progress, and I refer to the A, B, C selection made on the apportionment commission in Suffolk County. That A, B, C habit prevails all through the Commonwealth. If our Ballot Law Commission or some of our State bodies were given the power so that a man whose name is on the ballot could have an equal chance with his fellow-candidate, I think we would get away with a whole lot of this inequality that is spoken of and the lack of interest that people take in candidates. You can see

it in the State government. Your Attorney-General is Mr. A, your Treasurer and Receiver-General is Mr. B, and then you have Mr. C in the Auditor's office. There is Mr. L, the Secretary of the Commonwealth, but he started running some years ago. Now, if those ballots were divided, so that if there are four candidates running in a given district a fourth of the number had Mr. A's name on the first line, and a fourth had Mr. B on the first line, and so on, I think you would accomplish something.

And there is one thing more. I believe from my experience in this Convention that the whole sum and substance of electing Representatives and Senators by National party designations is all buncombe. I do not believe that a Representative has anything to do with a National issue. If you introduce a measure into the House of Representatives affecting a National question your colleagues probably will tell you that you ought to mind your own business. If we were able out of this Convention to bring some proposition whereby the candidates for Representative and for Senator could be chosen in the same way that we in this Convention were chosen to do our task, I think you should find that the gerrymander would fast disappear, because the gerrymander is the attempt of the party machine to perpetuate its strength in a given territory; and it is my experience and belief that in those territories and those districts where there is pretty near an even balance or a division of sentiment, in the long run you are going to get better representation than in those districts that have a preponderating party number of one kind or the other. I believe that what this Convention has done is going to receive in a large measure the approval of the people, and I think in that we are going to fare better than did our predecessors. In all the roll-calls we have had here it is impossible, I think, for any man to say that the party line of cleavage has run through any roll-call on any important measure.

Mr. Bennett of Saugus: Will you kindly explain to the Convention the difference between what is proposed in this document and the present Constitution?

Mr. Leonard: As affecting the county of Suffolk?

Mr. Bennett: As affecting the State. What is the difference between the document proposed and the present Constitution?

Mr. Leonard: The document proposed bases our representation upon inhabitants. That is one difference. I do not say that I agree to that, and I do not say I believe in it, but I do wish to make a point that we ought to get this before us for consideration. There are also other provisions. I believe that one provision of the resolution is that the districts should be apportioned by the House of Representatives. Now, I have not agreed always with the gentleman who has introduced these resolutions, the gentleman from Boston (Mr. Mancovitz), — I believe they bear the name of Mr. Mancovitz, — but I say this: That what he has proposed is at least a constructive proposition, it represents serious work and serious thought. The 21st amendment of the existing Constitution, which was adopted in 1857, has nothing about it that is of a sacred nature. There is nothing that shows by the debate which occurred in the Convention of 1853 any reason why we should cling to the amendment of 1855. I regret that the committee on The General Court did not see the difficulty we have in Suffolk County, and I suppose there are grievances in other

counties, and I regret that they have not brought into the Convention a constructive measure. In order that we may fashion or frame one ourselves, in order that we may have the proposition before us for discussion, I ask the Convention at this time to substitute the resolution for the report of the committee.

Mr. William S. Kinney of Boston: The question raised by the resolution on the calendar and by the motion to substitute is a very simple question, and one which I believe this Convention can settle in a very few moments. The 21st and the 22d articles of the Constitution provide that the election of Representatives shall be apportioned on the basis of legal voters. The amendment moved by the gentleman from Boston in the third division (Mr. James H. Brennan) would change the basis of representation from legal voters to that of population. The difference between the two is this: Legal voters are citizens of the United States. The word "inhabitant" includes aliens. In other words, all that there is in this proposition is whether you shall take away from the citizens of the United States certain of their powers in regard to the apportionment of Representatives and give it to the alien population of Massachusetts.

Mr. Mancovitz of Boston: I should like to ask the gentleman whether there is any provision for permitting aliens to vote upon the question of election of Representatives.

Mr. Kinney: There is no question of permitting aliens to vote, but the proposition is to have them numerically counted in determining the number of Representatives the locality in which they reside shall have, thereby increasing the influence of those sections of the Commonwealth which have large alien populations. Now, that is all that is involved in this whole question here to-day. If ever there was an hour in the history of Massachusetts when an argument to take away from citizens of the United States and their sons subject to the draft law, millions of whom, — thousands from this State, — millions from all over the United States will be called into the service, to take away their influence and transfer it to an alien population not subject to such civic obligations, should not be entertained, I think it is this. I think that it needs no more than the simple statement of the case to defeat this proposal.

Mr. Lomasney of Boston: I hope that the gentleman does not mean what he says. Let us go back to the early days of this country, and consider who but aliens settled here and helped to make it. What were the Puritans, who, as the gentleman who represented the opposition to the initiative and referendum said, came here way back in the early days, but aliens? It is simply a question on what boat your father or my father came over on. All were aliens. They all came to this country in pursuit of liberty and happiness. Why make an argument at this time against the aliens! That was the kind of an argument that was made in the Know Nothing days when the Irish people were coming over here. There was not one of that race in the last Constitutional Convention, but their interests were pretty well protected. These men came here and they worked hard and raised large families, and you know they were abused in many cases; but when Fort Sumter was fired on where were they? Were they not ready to fight for the Union? Would you not wish to God now, although you have great generals, that you had a Sheridan and a Grant

and a Sherman leading our army over there? Would you not feel more secure and satisfied that our boys would be led to victory? Philip H. Sheridan was the son of an alien, who may have been held down by tyrannical laws so that he could only just manage to read and write the language of this country. Sheridan's father came here to stay. See what an acquisition he was to this country. And your present naturalization laws would stop a man like him from having a fair chance! Hence where logically does the gentleman's argument stand now? Nowhere.

Mr. KINNEY: I think the gentleman is going beside the question. Nobody attacked the aliens. Every one conversant with American history will be willing to pay the tribute that the alien is entitled to for services rendered in the building up of this country. All of us, as the gentleman has well said, are sons of alien parentage. That is not the question. No encomium of the alien is needed. The only question here is: Shall we at this hour in our history take away power from citizens of this country and transfer it, in the absence of thousands of citizens, to the alien population? That is the only question.

Mr. LOMASNEY: The alien population made this country, and you know it. There were men in 1853 opposed to certain aliens, and these restrictions probably were enacted because they did not understand the regard the alien had for this country. But does not the history of the country convince you that you can trust the alien? What brought these men here? Do you gentlemen realize the courage it takes for men of no education to leave their homes across the sea and come here, many of them with their wives and children, with not more than $25 or $50 in their pockets, and in many cases not a friend to meet them? That takes courage, and the aliens who came here had plenty of it.

Mr. BENNETT: I should like to ask if there is not another side to this question as affecting the question of race suicide. Now, suppose here are people who have large families, and you are going to include those inhabitants in the making of a representative district, then do you not discriminate against those who have small families? The answer to that is this: I voted to extend the time of the eloquent young senator from Charlestown (Mr. James H. Brennan) very much against my judgment [laughter], because I thought that he was preparing a campaign document for his congressional campaign in this State [laughter], and of course we all are friendly and cordial toward a matter of that kind. But is not this the fiercest attack that has been made upon the initiative and referendum, because if there is anything to which the initiative and referendum properly should be applied it is these fundamental questions of the frame of government. It does seem to me that this day has been valuable to us by merely showing to us what not to do hereafter. We spend all this time on these fundamental propositions of frame of government, to which the initiative and referendum should be applied. Now, here is my question. [Laughter.]

Mr. LOMASNEY: Will you please put the question in writing?

Mr. BENNETT: It is not necessary. Anybody can understand it. My question is this: Are you not casting contempt upon the initiative and referendum? I am moved to frame this question, not by the gentleman himself, but by the gentleman from Harvard in this division

(Mr. Hart), who has announced that when we come to the executive he is going to let himself loose. I say that the best thing is once for all to leave these fundamental questions to the initiative and referendum. That is what the initiative and referendum is for. Here is my question: Is not that so?

Mr. LOMASNEY: If ever a son of an alien in Massachusetts who attended our public schools, stood in this body as a representative of the people and made such an exhibition of himself as the last speaker, I would say he should be disfranchised. [Laughter and applause.]

Some men here little understand what those of us who are the sons of aliens learned at our fathers' knees about the benefits this country conferred upon the alien and his sons. He, and those who believe as he does, do not understand that we always were taught to support the flag and stand by the government because of the equal rights and equal opportunities it gave to us and to them.

Now, sir, I was talking on the fundamental part of the resolution, and I am sorry his intelligence does not allow him to see it, but I am not the keeper of his intelligence.

You all must admit that under the United States Constitution we elect our Congressmen by population. We recognize there the aliens all over the country; that is the basis of election to the Congress of the United States, but the Constitution of this State discriminates against them in the election of Senators and Representatives. Some men here act just like the slave owners of the South. When the colored man was denied his liberty, they sneered and boasted how well they controlled their "niggers." Some of you men no doubt believe that your unfair opposition to the aliens will be successful forever. Do not deceive yourselves. Massachusetts is only one State in the Union, and, summoned before the bar of any tribunal, no man can defend Massachusetts' action on this matter, although we have in Senator Lodge one of the ablest men in the United States Senate. He frequently has trouble to defend what the men of Massachusetts have done to the aliens in the past.

What is the history of the aliens of Massachusetts? They cannot become citizens unless they comply with your naturalization laws. No matter how honest an alien may be, no matter what his capacity may be, if he cannot read and write the English language he cannot become a qualified voter. Massachusetts passed that law. It takes time for a man to acquire that qualification. We have evening schools, the cities and the towns provide them, to assist these people and teach them how to read and write. But who stopped many of them from learning how to read and write their own language? The government under which they lived. Those who speak the English language can hold that government responsible; those who speak the other languages and cannot read and write must blame their own governments.

They come here with sound bodies, with good brains, to this great land of ours to better their condition, but they must have a chance, and they must comply with our laws. In the early days the lawmakers evidently became afraid of these people who lived and worked in the manufacturing centers, and they frankly said so. But I submit to this Convention sitting here, as intelligent men, fair-minded men: Do you not believe that the alien has passed the probationary period, if we may term it such? What has the alien been doing in

this country from the Convention of 1853 to this one? As I was saying when the gentleman interrupted me, let us take the civil war; they went into it and showed what they could do, forgetting all that the Know Nothings said and did to them. Then came our Spanish War, and again they were loyal and true. Then came this war. Take the sons of the aliens out of the present draft, and that is based upon population, and I think some of you men who came over in different boats, before my parents did, would see the difference. We have in this Convention a presiding officer, — his son is over there; we have the gentleman from Worcester, — his son is over there. But without the sons of the aliens over there where would your numbers be?

Mr. SULLIVAN of Salem: I should like to ask the gentleman if the sons of aliens who now are over there are not also legal voters?

Mr. LOMASNEY: I presume that a great many of the sons are, but many of their fathers could not comply with your present unfair naturalization laws. I hope to God they all can. But I am talking on the broad fundamental proposition. We are sending these young men, the cream of the country, the youth of the Nation, to fight for democracy for the world, and you are sitting here, in this Constitutional Convention, and you are denying to the same people here the right to be counted in the apportionment of Senators and Representatives. Where is the justice of your position?

Mr. BRYANT of Milton: I should like to ask the gentleman if he is willing to give these aliens representation and allow them to vote?

Mr. LOMASNEY: I know the gentleman understands that I do not believe in that proposition. I say this: When you make an exception it devolves on you to show your reasons for your exception. The United States law provides that the basis of representation to Congress shall be by population. Why? It is taken from the returns of the United States census enumerators appointed from Washington. Nothing can be done that could be fairer. It is on the basis of population. That is the basis for the election of Congressman in each district of the country. There is no good reason why the State should not adopt the policy of the United States government. Now you are exempting your Representatives and Senators from it. That may be all right for 1853, when narrow-minded men were fearful of the aliens' power. But I say, just as a judge of the Superior Court, when passing on the question of admitting a man to be reinstated at the bar a few years ago said: "Is there to be no forgiveness on this side of the grave?" When will you gentlemen admit that the alien is a true son of this country? In view of what he has done why do you continue to say we must keep the aliens down?

I have seen Bernard J. Rothwell, who came to this country an alien and who is a credit to the State, come before the committee on Ways and Means, representing the manufacturers of Massachusetts, and beg them to give them legislation to create a commission to assist the immigrant, to tell him about our laws, and to inform him of his opportunities. He frankly told the committee it was necessary for the interests of the State. Now, sir, what are you going to do, where are you going to be, unless you recognize and count them as a part of our government? The committee admitted that the alien has been discriminated against for years and you propose to continue that policy. I submit it is wrong; and you know it.

I want to give you honestly and seriously my idea, because I have arrived at an age when I feel that you gentlemen do not know conditions as they really are in these large centers of population. You do not know the struggles of the men and women, fathers and mothers, to bring their children up as God-fearing, law-abiding citizens. And why, when they are working hard to succeed, do you say: "We are afraid of them, we cannot trust them"? I make no reflection upon the men of the American race; we have all the best races in the world here. I stood on a ship going to Europe and talked for this country against our critics from abroad; and I know how much any of them really love us, when you come right down to each particular case. But I submit, sir, when they say this is not the time to do this thing, I say that this is the time to prove by your action that you do believe in the rule of democracy. I do not mean to let men have the right to vote or to be represented who cannot comply with our laws.

Mr. GEORGE of Haverhill: I understand that the tenor of the delegate's remarks is that if we should include the aliens in our population in apportioning our Representatives they would be a great deal better off. They cannot vote; they do not have any more rights; but the simple fact that Boston and some other cities can have from ten to twenty more Representatives in the General Court will increase the happiness of those aliens who cannot take part. Now, I want to ask my friend, if for seventy-two years the nine Southern States did not have a law by which three-fifths of the Negro population was entitled to representation, and never voted, — I want to ask him how much advantage the Negro got out of that law?

Mr. LOMASNEY: I have no sympathy with any movement to disfranchise the Negro or deny him his rights as a man. So far as Boston is concerned, Haverhill is in a worse condition than Boston, and always was in a worse condition than Boston. If anybody wants to make comparisons and talk of Boston and Haverhill to me, I am prepared to meet him, giving names and dates, if necessary. I submit, sir, that is why I took the floor, for I could not sit silent in this Convention and see men trying to laugh this matter out of court. It is too serious a matter. Why talk about equal rights and equal opportunities for all, and then deny a large portion of the population those rights? Now, you are doing that, and you may continue to do it, but I say to this Convention, and I say it to you in all seriousness, that if any man goes into a court of equity he must go in with clean hands. You gentlemen cannot face any body of intelligent men, even the professor from Cambridge (Mr. Hart) who spoke here cannot sit down around a table where there is a jury of twelve men and discuss this question, and then say to them: "We will continue to keep this law as it is and hold down the aliens," and say that you are doing justice, especially when you consider what the alien population has done for this State. Do you men here, representing the money interests of the State, realize what sturdy, honest, safe and sane men you had in the Irish immigrant? No demand from them for a lot of these fancy working hours. They stuck to their work, their home, their fireside and their family, and they tried to save from their earnings enough to secure a little home, and their stipend went into the savings bank, and you took the profits of it. They came and put their surplus wages in a savings bank for you to administer, showing their con-

fidence in you; and is this the way you would repay them? They went through the battle of life successfully. To-day we want workers outside the war lines just as much as we do soldiers within the war lines. How can you refuse justice to them now except you follow the old traditional reputation that the genuine Yankee had when he was swapping jack-knives and insisted on getting a little the best of the bargain? Upon no consideration of fair play and equity can you refuse to give this matter your support. I should be false to the education I received if I sat silent here and allowed this matter to be used as a football by the delegates of this Convention.

What does the apportionment amount to? It is the fundamental principle of representation. Why not comply with the United States law in this matter? What are you doing now? You tax aliens. You give them the benefit of the police and fire department, do you not? In my opinion it would affect only the cities that contain a large foreign population. But it would put Massachusetts in such a position that she could not be assailed. In fact, then it could be said that she does not lie when she speaks in her Bill of Rights of equal rights and equal opportunities for all. Submit this question to the people of Massachusetts and you need have no fear of the consequences, because I am one of those who believe in the people of Massachusetts and in their intelligence. It is for narrow partizan purposes that they are discriminated against, and you know it. These aliens do not belong in any one political party, so that party prejudices do not enter into the matter at all. It is a matter of principle that I am contending for. Why not be fair and give them justice, in view of the part they have had in the history of the country, and especially in view of the present war?

When we are discussing other matters it often is pointed out what other States have done. Can every other State be wrong on this question and we be right? Of course not. We are right when we recognize the man, the soul. It is the man and the soul that you will be recognizing in this matter. He cannot vote until he complies with your law, but it is the man with a soul whom you are recognizing; not a piece of paper, not an alien, but a free man ready and willing to fight for the country that he loves; and you know it.

While I have not read this measure very carefully, I could not let the remarks of the gentleman from Boston (Mr. William S. Kinney) pass without reminding you, sir, of the unfair discrimination that has prevailed in this State for years, and protesting against its continuance; because, sir, you will find that in the 1853 Convention, there were many fair men, who defended the aliens of that day and recognized and predicted the successful part they would take in the history of the State. Let me suggest, sir, that under the present conditions, when we are trying to have all elements united, it is no time for us to sneer and try to be smart and say we will defeat this proposition by such unfair arguments. An essential, fundamental principle is at stake, and I trust the report of the committee will be rejected.

Mr. UNDERHILL of Somerville: I move the previous question. I do so in order that I may not take too much time in calling to the attention of the Convention that the gentleman who has just taken his seat (Mr. Lomasney), in his most impassioned defence of the alien, and the statement that the alien has made this country, by his elo-

quence and arguments convinced me, at any rate, that the country has re-made the alien; and until the country has re-made the alien I think it is hardly time for us to invest him with all the rights and privileges of citizenship. We never discriminated against the alien and never will. There is no law that discriminates against him in any way, shape or manner. There is an advantage, however, which he has had during the draft, and has taken advantage of altogether too frequently, to my mind and according to the reports of the drafting boards.

The statement has been made by him and by others that this country is an asylum for the oppressed of all lands. It is the only asylum in the world that is governed or partially governed by its inmates. That is no reflection upon those who come to our shores. But, sir, until this asylum of ours works its cure upon those who arrive each year, until it works a complete change, so that they may accept our institutions and our manner of living, I think they should have no part in the government of the asylum.

We all realize that the trend of immigration has changed; that the alien of to-day is not the picture in our minds of the alien of yesterday, or the alien of the time of the forefathers, or the father of the gentleman in the third division (Mr. Lomasney). And, sir, if he could go before the draft or exemption boards, and could hear the excuses which are offered, if he could hear the boys standing on the streets making fun of the men in uniform because our boys *have* to go, and they do not, why, sir, he will agree that the time has come when, rather than make laws to fit these aliens, we had better make the aliens fit the law, and fit for the law.

Let us differentiate between aliens and aliens. Everybody knows the Irish race have made good citizens. Everybody knows that when they once come to our shores they stay here, they do not go back to Ireland, they make good citizens, and their young people make better citizens, because of the teachings and the opportunities given to them in this country. The stock is good, but it takes the opportunity to make it better.

Now, sir, as I started to say, with no reflection upon the men who have come here, who have taken advantage of the opportunities offered, who have become, as I said the other day, professional and business men of this Commonwealth and of this whole country, I think we want to go slow. There are thousands of men to-day in detention camps all over the country interned by our government. Why? Because they were aliens? No; because they were alien enemies, and dangerous men to be left at large in our communities. That is the alien I am talking about, and I assume the other gentlemen were talking about that kind of alien.

Mr. Sullivan of Lawrence: I have not taken the time of the Convention very much on any matter, but I represent a district where a large number of non-voting people live and I had intended to address the Convention on this subject, — not at very great length, however. I feel that I could not do justice to the subject in the time which would be allowed me if the previous question is put. I should not take more than about fifteen minutes at the most, and I am going to ask the gentleman if he will withdraw his motion for the purpose of

permitting me to speak at a little greater length than otherwise I would be allowed to.

Mr. UNDERHILL: I dislike to appear discourteous, but after the previous question is moved the gentleman will have five minutes, and I have no doubt the members of the Convention will extend it to ten if he so desires.

Mr. SULLIVAN: The substance of the amendment which the committee has recommended that we reject is that the basis of representation in the General Court shall be population instead of the number of registered voters, as at present. It seems to me, sir, that this subject has been discussed up to this time on a somewhat narrower range than it should have been. It could not be discussed any better from the point of view to which he addressed himself than it has been by the gentleman from Boston (Mr. Lomasney), but this is not merely a question of representation of aliens. It concerns the representation of other people who are not allowed to vote. As has been said in many discussions upon the question of woman suffrage, it is a difficult matter to determine who shall and who shall not vote. Obviously, all the people for whom the government is established cannot vote. Children cannot vote, and the age at which young men are admitted to the suffrage has been fixed, rather arbitrarily, at twenty-one. Women at the present time, in this Commonwealth at least, have not the right to vote.

Some say these are questions of expediency only. But if expediency only is considered, we may wake up some day to find our democracy gone and our liberty destroyed. They are above all questions of right and justice.

This government is established, not for the benefit of the voter, but for the benefit of all the people; and I am very much surprised that any man, at this stage in the history of this Commonwealth, should deny that representation should be based upon the whole population of the Commonwealth. The basis of representation ought to be the people for whose benefit the government is established, and that means the whole people. That means children, that means women, that means aliens.

I did not intend to add anything to what already has been said about aliens. But the gentleman from Somerville (Mr. Underhill) has stated that he has seen young men upon the streets laughing at those who have to go to the front while they themselves are secure from the draft because they are aliens. I believe that he has overdrawn the picture. Let me point out to him, on the other hand, that thousands of aliens, who do not have to go, have volunteered for service; so many, in fact, that the naturalization court of the United States for the first time in history adjourned from Boston to a military camp the other day so that the alien volunteers might receive the reward of citizenship for leaving their homes and families and friends to fight for the country of their adoption. [Applause.]

The gentleman from Boston (Mr. William S. Kinney) who represents the committee says it seems surprising that now, of all times, this measure should be urged. Now, of all times, when the whole world is joining in a fight for democracy, should we determine that there should be here in Massachusetts not one vestige of misrepresen-

tation, and that our Legislature should be selected as fairly as possible from the whole people.

It is claimed by the gentleman from Sharon (Mr. Quinn) that his town ought to have a larger representation in proportion to its population than Lawrence, for instance, because Lawrence has many immigrants and its population is shifting. Lawrence has many immigrants, but most of them have come to stay. Its population is not shifting, but it is growing rapidly. It is a city of large families. It is doing far more than its share of the work of the Commonwealth not only in industry but in education and in civic training. It would have a greater representation in the General Court if the resolution now before us were passed, and such additional representation would result in benefit to the whole Commonwealth. Let me say that when the call for troops to fight for our country is heard, we send our quota on the basis of population. If that is a good rule when sacrifices are to be made for the common cause, why should it not apply also to the apportionment of representatives? I hope that the Convention will settle this matter once and for all on a basis of justice by passing this resolution.

Mr. Washburn of Middleborough: The gentleman from Boston in this division (Mr. Lomasney) made the statement in his speech that Massachusetts, of all the States, alone had a system of apportionment which was not based upon population. I wondered at the time whether this State was quite as lonesome as his assertion implied. I knew that it could not be true altogether of New England. I have only to point out the fact to enable us to recall that in Rhode Island and Connecticut and Vermont and New Hampshire, each town, irrespective of its population, has one Representative. It is true that, broadly speaking, in Maine the apportionment is based upon population, but a population how determined? I will read from the Constitution: "exclusive of foreigners not naturalized and Indians not taxed."

Now, what is the situation outside of New England? The facts are that very many States apportion their Representatives by counties. That is true especially of the south. The State of Georgia, — I have not had time to go through all these States since the gentleman made his speech, — in the State of Georgia according to the organic law the six largest counties have three Representatives and the twenty-six other counties have two. In South Carolina they are apportioned by counties and each county has at least one Representative. In Louisiana each parish, without regard to its population, has at least one Representative, as has each ward in the city of New Orleans.

And finally in the State of New York, also, the organic law fixes the number of Senators and Representatives by counties, — so many for each county or group of counties. Every ten years the Legislature is required, under the new census, to reapportion the Senate and the Assembly; but there again, in counting the population aliens are excluded by the express provision of the Constitution.

So, after all, Massachusetts does not stand alone in this respect, and in the last analysis it is simply a question of policy which each State must decide for itself.

Mr. George of Haverhill: I have heard nobody here abuse the alien. There has been no attack made upon that class of people in

Massachusetts who have failed to become citizens. I am one of those who believe that Massachusetts has been extremely kind to its alien population. Any person coming from any country to Massachusetts has to stay here but five years and he can become a citizen, but an American boy has to stay here twenty-one years before he can become a voter and a citizen. I think if there is anybody slighted, and if there is anybody who is ill treated, it is the American boy, who was born and brought up here in America. I do not think this discussion should have taken quite such a wide range.

We all know what this argument means. There is only one object in view. It is the same object that the southern States had for seventy-two years when they wanted to control this country. They reckoned in the three-fifths representation of the colored race. I do not understand that anybody contended that the slave was any better off simply because he was reckoned into the apportionment and given a representative. I cannot think that any alien who is not a voter in Massachusetts is going to be any better off because he is reckoned as one of those who is part of the population. It seems to me, if the argument is true, as the delegate from Lawrence (Mr. Sullivan) has said, that the more delegates we have the more democratic we are, that we ought to have a Legislature composed of about three thousand members. If we did, why then of course the public would be greatly benefited.

I doubt very much the wisdom of such talk. We all know very well the various States have different ways of the apportionment of members of the General Court. The State of Maryland, one of the most democratic States in the Union, is divided up in such way that Baltimore never can have over one-third of the membership of the Legislature. Almost every State takes into consideration, as has been said by the gentleman from Middleborough (Mr. Washburn), that in order to give the widest possible representation it has been deemed wise, on the part of those States, not to have it based entirely upon population, and it seems to me that the Massachusetts idea of having it based upon legal voters is fair and just. We certainly do not want to indorse or adopt into the Constitution of Massachusetts some features that existed in the Federal Constitution for seventy-two years before the civil war. We had our experience then. Our experience will be like that now. It is simply a question of control. To-day we have a better representation in Massachusetts than we should if we had representation based upon population rather than legal voters.

Mr. Bennett of Saugus: The town which I represent has a population of 12,000 and has one Representative. The difficulty is that there are three Representatives to the Legislature from a single district, and the Republican majority, — the handsome Republican majority of Saugus, — as in many towns, is used in order to carry in other Republicans.

I fail to have heard anything said about that feature. I fail to see anything here about aliens. I should like to see this amendment to the Constitution go through, and I regret that my friend from Boston (Mr. Lomasney) has killed it by favoring it.

It is not a question of aliens; there is nothing about aliens here. I do not know why the man has dragged in aliens. There are some sinuous purposes burrowing down from old ward 8 and from the purlieus of Boston which do not appear in the debate here. There is

nothing in here about aliens. The debate very well might have avoided the question of aliens altogether and continued directly within the lines of the proposition. And why he has dragged aliens in here by the hair of the head, I do not know, except because he is in the habit of drawing them to the polls to vote the way he wants them to. [Laughter.] He has turned this Constitutional Convention into a ward 8 propaganda, — political propaganda. I protest against it, — protest against the whole thing. There is nothing in here about aliens. There is a proposition to change the method of districting, but it does not change it sufficiently, as I understand it. It goes a good way in the right direction. I shall vote for it, although I now consider it as good as dead [laughter], on account of the manner in which it has been used to promote the congressional campaign of one gentleman by a free document printed at the expense of the State.

The resolution was rejected, by a call of the yeas and nays, by a vote of 117 to 64.

On the following day, Thursday, July 11, Mr. Patrick S. Broderick of Waltham moved that the Convention reconsider its vote whereby the resolution had been rejected.

Mr. Broderick: In explaining the reason for making this motion, I wish to say to the members of this Convention that the gentleman from Newbury in the second division (Mr. Bailey), the author of this resolution, was absent unavoidably from the Convention when it was reached on the calendar yesterday, and on account of important public duties will be absent from the Convention for the remainder of the week. This resolution embodies suggestions of great merit, and it is his earnest desire to be heard in explaining its details.

I anticipate that objection will be interposed to the adoption of this motion because of what has been the rule and practice recently in this Convention in similar matters; but I wish to call the attention of the Convention to the fact that no rule or practice ever yet has been adopted which, if enforced indiscriminately, arbitrarily and without exception, did not work great hardship and great injustice. If the practice which we have been following recently is adhered to in this instance it will work great injustice. I hope that the motion for reconsideration will prevail, in order that the author of the resolution may have an opportunity to be heard.

Mr. Maguire of Boston: I hope the motion made by the gentleman from Waltham in this division (Mr. Broderick) will be adopted. I hope further that it will have the support of his colleague from Waltham in the first division (Mr. Luce). The gentleman from Waltham in this division (Mr. Broderick) has taken very little of the time of the Convention. He has been here every day, last year and this, and it seems to me his request that this matter be reconsidered should be adopted. I think the other day when this subject was under consideration certain phases of it were neglected. Those who opposed the apportionment of Representatives and Senators based on population intimated that the apportionment of Senators and Representatives on the basis of registered voters was done in a fair manner. The records show anything but that result.

I hold in my hand the annual report of the board of election commissioners of the city of Boston for the year 1917. The registered voters of ward 7, which used to be old ward 10, are 4,734 in number.

They have three Representatives. Wards 19 and 20 have three Representatives, but 9,400 registered voters. Ward 22 and ward 23 have 9,500 registered voters and three Representatives.

Now, ward 7, better known as old ward 10, was in a position to dictate, — through the fact that it happened to have the Speakership of the House of Representatives, — that it should have three Representatives on such an unfair basis.

What applies to the city of Boston undoubtedly applies to many cities and towns throughout the State. The evil with reference to the representative districts is just as strong in the matter of the senatorial districts. For instance, East Boston is composed of wards 1 and 2. In making up the senatorial district they took ward 1 and attached to it Winthrop, Chelsea and Revere; and they took ward 2 and tied it to ward 6 and ward 12. The only connection that ward 2 has with ward 6 and ward 12 is by water, and then only beyond the Dover Street bridge. I personally feel that the making of that senatorial district was in violation of the present Constitution. The present Constitution says that senatorial districts shall be contiguous. That means in actual contact, touching; also near, though not in contact; neighboring, adjoining. Ward 2 is just as much in touch with Nahant or Revere or Swampscott, or any of the towns along the North Shore; and, in the language of the gentleman from ward 5 in this division (Mr. Lomasney), perhaps if it were attached to some of those communities it might have what he calls "standing." Nevertheless the senatorial districts were made on an unfair basis. There is no reason why East Boston should not be together as a unit.

The reason that the gerrymander prevails with reference to the Senate is that the Senate is still the citadel of corporate influence and power. East Boston gave John L. Bates to the Commonwealth through the representative district. It was impossible for her to send him to the State Senate because the State Senate, or influences that control the State Senate, do not desire such an honest, straightforward type in that body.

I hope that the representative and senatorial districts will be considered, and that we may have an amendment to our present Constitution which will compel the Legislature to make a fair and equal apportionment on the basis of the registered voters. At the very least let there be fairness and equality. Because ward 7, that used to be old ward 10, happens to have temporary control of the Legislature, it is not right to the rest of the Commonwealth to permit it to so adjust senatorial and representative districts that it has abnormal power, which is just precisely what it did when the last apportionment was made. This sort of intolerable injustice should be prevented by a constitutional amendment.

East Boston has a right to demand fair play. She has given thousands of her sons to the army and navy to fight for world liberty; she has subscribed more than $1,000,000 to the Third Liberty Loan; she has given $40,000 to the last appeal of the Red Cross; she has bought $31,000 of War Savings Stamps in the month of June; and since the beginning of the war her women have been engaged in every kind of war activity. Surely in the light of all this she should be protected from being the victim of selfish and unscrupulous politicians who temporarily may control the General Court.

Mr. Sawyer of Ware: It is not necessary for this Convention to reconsider this matter in order to give a hearing to the author of the resolution, who is supposed to be absent. Now, this resolution is presented to this Convention by Mr. Bailey of Newbury, and he is unable to be here, and I think we ought to give him an opportunity to be heard, and he can be heard on the question of reconsideration. So I would move that we postpone further consideration of the question of reconsideration until Tuesday next, when Mr. Bailey of Newbury can speak for himself.

Mr. Luce of Waltham: The Convention will appreciate the embarrassment of a delegate who feels it incumbent upon him to object to a favor asked by his neighbor and townsman in behalf of another who is a personal friend. Yet, in order that we may decide at least understandingly whether we ought to deviate from the program that has so advanced the work of the Convention as to lead to the hope that we very speedily may complete our labors, it should be explained that to approve these requests will in all probability precipitate a discussion that will cover a day, and possibly two days. The gentlemen who have had occasion to peruse the dry and dreary reports of the proceedings of many other Conventions will have discovered that no topic has aroused so much debate as that of apportionment. Reams on reams of paper have been given to perpetuating the views of delegates, evidently interested in the subject, in large part, by reason of its relations to the personal fortunes of individuals. These apportionment debates, I think, never have contributed to the harmony of Conventions, and apparently have rarely led to any improvement in the situation.

I think we all will admit the evils connected with the present system of apportionment by county commissioners, or by their equivalent in Boston; but to accept a proposal of change might be but to jump out of the frying-pan into the fire. No satisfactory solution of the question has yet been found anywhere in the United States.

If the Convention thinks that the problem is so serious that we should give a day or two to its discussion, then the Convention might very well take up the matter anew. I will call your attention to the fact that fifteen of your members, constituting one of your committees, were unanimously of the belief that it was unwise to invite the Convention to approve the pending resolution. Under those circumstances, and with the greatest reluctance to take a position ungracious toward my friends, I feel it incumbent upon me to advise the Convention not to reopen the question.

The motion to postpone was negatived, by a vote of 38 to 80.

Mr. Broderick: No doubt every member of this Convention is well aware of the fact that the Constitutional Convention of 1853 was called, if not for the specific purpose, chiefly for the purpose of considering the reapportionment of the State. The debate in that Convention on this question occupied a greater length of time than the debate on any other question that engaged the attention of its members. The members of that Convention who participated in that debate were recognized then as among the greatest lawyers and statesmen of the Commonwealth.

The demand for a more just and equitable reapportionment of the representative districts of the State is no less important and urgent

now than it was then; and I am surprised, and others here are surprised, that members of this Convention should try to belittle this question, try to have it passed over before it had received the deliberation and the discussion which its importance demands.

One of the principal objections to our representative system as it existed prior to 1853 was the fact that it was based on the town plan of representation. Our present system, in a measure, is based on the town plan of representation, but in even a more objectionable form. Under this system certain cities are set off as single and separate districts and may elect three Representatives to the Legislature, and other cities are set off as single districts and may elect two Representatives, thereby reducing the voting power of the minority voter in such districts far below his voting power in a single representative district. There is no sound objection to an apportionment of the State into 240 single representative districts based on the registered voters of the State. Any other apportionment is so unjust and inequitable that it is indefensible. What is more important or fundamental than an equal and a fair representation of the voters of this Commonwealth in its law-making body?

As a Nation we are in this war, we are sending the best of the manhood of the Nation overseas, and for what purpose? In order that civil and military despotism the world over shall be annihilated, and in order that governments shall rise up on its ruins, founded upon the principle that all men are created free and equal, and that government derives its just power only from the consent of the governed.

Are we sincere in our professions that we are fighting the cause of democracy, going on public platforms night after night so proclaiming, and then coming here to this Massachusetts Constitutional Convention, and opposing an equal representation of our citizens, or are we only bluffing and camouflaging?

I believe that here in Massachusetts and as members of this Constitutional Convention, we should establish a system of representation founded, as our Constitution provides, on the principle of equality; found a government here on the principle that all men are created free and equal, and that all governments derive their just powers only from the consent of the governed.

The motion to reconsider was negatived, by a vote of 54 to 78.

XXIV.

DECENNIAL CENSUS.

Mr. Horace I. Bartlett of Newburyport presented the following resolution (No. 262):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the Secretary of the Commonwealth, on or before the last day of June, nineteen hundred and twenty-five, and of every tenth year thereafter, and no other census of the inhabitants shall be taken under the authority of the Commonwealth.

The Committee on State Administration reported that the resolution ought NOT to be adopted.

It was considered by the Convention Wednesday, July 24, 1918.

Mr. Nathan P. Avery of Holyoke moved that the resolution be amended by striking out, in lines 7 to 9, inclusive, the words "and no other census of the inhabitants shall be taken under the authority of the Commonwealth", and inserting in place thereof the words "which enumeration shall determine the apportionment of Representatives for the period between the taking of the census. The General Court shall have authority to take a census of the inhabitants of the Commonwealth".

This amendment was adopted, by a vote of 72 to 26.

The resolution, as amended, was rejected Wednesday, July 24, 1918.

On the following day a motion was made that the Convention reconsider the vote by which the resolution had been rejected; and the motion to reconsider was negatived.

THE DEBATE.

Mr. BARTLETT of Newburyport: This resolution was introduced by me. It is not the most important matter to come before this Convention, but it is worthy of consideration. It is a proposal to abolish the taking of the decennial census by the State. When I went before the committee of which the ex-Governor from Fitchburg (Mr. Walsh) was chairman, he immediately told me that I had done a public service by bringing in this resolution and that there was no occasion for me to advocate it before that committee, but that it was for those who were opposed to it to show cause. That committee had that matter all last session and a great part of this session, and with no one appearing against it and with a committee which then declared itself in favor of it now we have an adverse report. I think it is for the committee to show cause why that is. Certainly no one

appeared before that committee at the time of the hearing, and if any one appeared afterwards I had not the opportunity to meet "my accusers face to face," and I do not know what they said or what they did to influence the committee to make an unfavorable report.

I apprehend that it may be that the possible prospect of having representation based upon population, — which, by the way, has been effectually disposed of here, — had something to do with the wish to retain this, as I claim, useless decennial census. The United States takes the census of population and of industries, a most elaborate census, on every year ending in ten, and since 1865 the Commonwealth of Massachusetts, almost alone of the important States, has taken a census on the years ending in 5 between the United States censuses, — a census of the inhabitants. The census of 1905 was published finally in 1909 and we did not quit paying the expense of it till 1912. We spent on that census something like $500,000.

Mr. Lowell of Newton: I should like to ask the gentleman why it is necessary to put his resolution into the Constitution?

Mr. Bartlett: Because there is a requirement in the Constitution that the census shall be taken, and the Legislature has not the right to go against it. Perhaps, as they did in one of the western States, they can refuse to take a census. The courts say that they cannot compel a Legislature. But those who want the job, those who want to partake of the $600,000 that this census of 1915 is likely to cost, lie back upon the Constitutional provision. The special acts brought in in the Legislature previous to taking the census all begin "In accordance with the requirement of the Constitution." We can at least take that requirement out of the Constitution and save the State fifty to sixty thousand dollars a year and justify to that extent the existence of this Convention.

Now, as I was saying, the United States takes a census every ten years of everything imaginable. The volumes of the census of the United States are to be found in the library and if anybody can go in there and look over those volumes and find anything that the United States does not investigate or tabulate in every which way, I should like to know what it is. In addition to that they issue every two years large volumes of statistics of every industry. If one can go in there and see what the United States does the wonder is how anybody can find an excuse for the Commonwealth of Massachusetts to do it over again. There were ten years ago some dozen or fifteen States which had this constitutional requirement of a census taken by the State. There were fifteen of them. Eight of those fifteen were the States of North Dakota, Colorado, Washington, Utah, Nevada, South Dakota, Montana and Florida, and the majority of them, I think, base their representation upon population and change it every five years. Therefore they want a census between the United States censuses. The remaining seven are considerable States, — Iowa, Michigan, Wisconsin, Oregon, New York, Maine and Minnesota. But in those States, except the State of New York, the census is a trivial affair compared to what it is in this State. The cost of the census in Iowa, for instance, is $15,000. The cost of the census in South Dakota is $4,000. The cost of the census in Colorado is $25,000.

Mr. William S. Kinney of Boston: Has the gentleman taken into

consideration the other dependent features of the Constitution that would have to be changed if his resolution was adopted?

Mr. BARTLETT: I do not know of any that would have to be changed. This leaves the census of legal voters which can be taken by merely a return from the assessors of the cities and towns.

Mr. KINNEY: I call the attention of the gentleman to the fact that the twenty-second article of the amendments to the Constitution prescribes that the apportionment of Senators shall be based on the State census.

Mr. BARTLETT: All that information can be obtained from the census of the United States. The State of Michigan, the State of South Dakota, the State of Wisconsin and the State of Oregon have abolished the State census within the last ten years. In the State of Oregon it was abolished as an emergency measure "immediately necessary to the preservation of the public peace" under the initiative and referendum. In the State of New York they spent for the census of 1915 $465,000, and the late Constitutional Convention reported in favor of repealing the State census in the State of New York. The work of that Convention was submitted to the people as a whole and rejected as a whole, and that recommendation was not carried out. The Commonwealth of Massachusetts stands almost alone in doing this great and expensive work. I have here the figures of the censuses of 1915 and 1905. The census of 1905 was begun in that year. The last volume was published four years later. It was not until the 1st of January, 1912, that we got the final bill of expense and it cost about $490,000. For the census of 1915, according to the Auditor's report there had been expended up to the year 1916 $306,742, and if it goes upon the like ratio as it did in the previous census this census of 1915 is likely to cost the Commonwealth of Massachusetts $600,000.

Now this started in the Convention of 1853, where is was stated that a census of the people could be taken practically for nothing, that the work could be done by the assessors and that they would get no extra pay and they might as well do it. It was adopted in 1857 and we have taken a decennial census in 1865, 1875, and so on, beginning with $150,000 expense, and we are now up to four times that amount.

I presume that the ex-Governor, the chairman of the committee, who favored this matter, had wanted at some time in his career to do away with this matter and that the Constitutional provision stood in his way. It seems to me that it is practically a useless thing, particularly to carry a requirement in the Constitution that this census shall be taken, when we have at the very time a census of the United States taken five years before. My resolution provides that a census of the legal voters shall be taken and that a census of the inhabitants shall not be taken. A census of the legal voters is taken very easily. It need not cost anything hardly and it can be taken by returns from the assessors or the registrars of voters, as we base representation upon the legal voters. As to the figures of population being necessary, the figures of the census of the United States can be used. If it is necessary to amend the Constitution in any other particular in order to confirm this it can be done readily. But there is this much to be said in favor of this proposition and I have

not heard in the committee or anywhere else any argument against it except from those whose craft is in danger. I trust that the resolution may be substituted for the report of the committee.

Mr. MAHONEY of Boston: I am sorry that I have to disagree with my friend from Newburyport when he makes the statement here that the ex-Governor was in favor of this resolution. I want to say that the ex-Governor presided over this meeting and the committee were unanimous in reporting against this measure.

Mr. BARTLETT: Am I right in saying that the ex-Governor told me that I had done a public service in bringing in this resolution?

Mr. MAHONEY: I cannot say, because I did not hear the conversation. But the question of the legal features the gentleman wants to eliminate from the Constitution, — of course you must know that you have got to take the census of the State for the purpose of getting legal voters. Of course you know that in this State we have at the present time about 775,000 legal voters. Of that number we have about 675,000 who are registered voters and we have about 575,000 who vote. So you can see what it is to get the legal voters. And not only that, but this goes into the matter a good deal deeper than that, because it gives the number of the native and foreign born, male and female, in this Commonwealth, also race and color, and classifies the population as male and female, married and single, and also the illiterate, natives and foreign born, and the different occupations of the State. Also it must determine by the census of legal voters the apportionment of the Representatives in the General Court and Senators.

Debate was continued after the recess.

Mr. Avery of Holyoke moved that the resolution be amended by substituting for the article of amendment the following:

A census of the legal voters of each city and town on the first day of May shall be returned to the office of the Secretary of the Commonwealth on or before the first day of June, 1925, and of every tenth year thereafter, which enumeration shall determine the apportionment of Representatives for the period between the taking of the census. The General Court shall have authority to take a census of the inhabitants of the Commonwealth.

Mr. MAHONEY of Boston: The gentleman from Newburyport (Mr. Bartlett) would like to do away with the census and have it merely of the legal voters. Now this question of a legal voter is a great question in this Commonwealth which many people do not understand. A legal voter is a man who is qualified to vote, whether he does or not. We have in this State 775,000 legal voters. We have also about 657,000 registered voters and we have about 557,000 who vote. You can see by that that there are about 218,000 legal voters who do not vote and about 100,000 registered voters who do not vote. If you want to get the legal voters the census must be taken by the population, and by the population we get the legal voters, and then we have got to find out whether they are native born or foreign born and also whether male or female and the race and color, and then also classify them in male and female and married and single. Now this is the work that is done by the Bureau of Statistics, and they have to find out also in this State how many illiterates there are and native born and foreign born, and then the different occupations.

Now that is a great question that people are all the time going to the Bureau of Statistics for, to ascertain the number of persons in various occupations. And then, as you know, the ascertaining of the number of legal voters, as I said before recess, is merely for the purpose of determining the apportionment of the 240 members of the House of Representatives and the 40 Senators, who are apportioned according to the number of legal voters. As you know, in this State we have assessed polls to the number of about 1,067,000, or almost 292,000 more than the number of legal voters. The gentleman from Newburyport spoke of the amount of money that the taking of the census cost. Well, when the census was taken in 1905 the population was 3,003,680. The population by the census of 1915 was 3,693,310, a gain of 689,630. Now in 1905 it cost a little over $500,000, and as you notice, the Legislature of 1914, which passed the act providing for the census of 1915, appropriated $400,000, and the chief of the Bureau of Statistics has told me that they lived within the $400,000, a saving of almost $200,000, and still the population has gained about 20 per cent.

As you all know, the taking of the State census was provided for in the amendment of the Constitution adopted in 1857 and the first census was taken in that year and the next in 1865, and after that it was every ten years. Now it has been the opinion of the chief of the Bureau of Statistics that it would be too long to wait for the United States to give the census returns, so they alternate in this way: In 1915, as you know, the State took this census; in 1920 the United States takes it and in 1925 it comes back to the State again. This whole matter of appropriation is left to the Legislature and I cannot see any reason why we should abolish this great work, — because it is a great work, it is a great source of information to the people of this Commonwealth, and I hope and trust that the report of the committee will be accepted.

I want to say for the gentleman from Newburyport that he was the only person who appeared in favor of abolishing the State census, and I hope and trust that this important matter will be left as it came from the committee. I want to say also that the census has given great assistance to the committees in charge of the Liberty Bond sales and the Red Cross funds. They have come up to get information as to the foreign born and the gentleman in charge of the Bureau said it was a source of great information for them. And I hope at this time during the war troubles that we will not in any way disturb this matter.

Mr. Avery of Holyoke: I can agree to a great extent with the member who has just spoken, also with the member from Newburyport. You have your United States census, at every period it is taken, becoming more scientific and more exact. Our present State Constitution makes it obligatory that we take a census not only of our legal voters but also of our inhabitants. The amendment which I propose says that we shall take a census of the legal voters and that the Legislature shall have authority to take a census of the inhabitants. If the Legislature has authority can we not trust the good sense of the Legislature in this matter? If there comes a time when it seems a needless waste of money the Legislature can stop taking a census of the inhabitants of this Commonwealth. Now

we are going to spend anywhere in the neighborhood of half a million dollars when we take this census. The time may come when that will be absolutely unnecessary. The present Constitution makes it obligatory. The amendment which I propose leaves it to the good sense and the good judgment of the Legislature.

Mr. Curtiss of Hingham: When this matter came before our committee the members of the committee made careful inquiry as to authority and as to results, and after that inquiry the committee was unanimously convinced that there were times when it was necessary to have a special census of one or more of the industries of Massachusetts from a Massachusetts standpoint; that it was unwise for us to limit any census to the inhabitants and the inhabitants only; that the matter stood well where it was. The control of the matter, so far as the expense is concerned, is now in the hands of the Legislature, and it depends largely upon the appropriation and direction of the Legislature as to what the census shall be and the scope of that census. It is true that the United States government does take every ten years an elaborate census, but it is true also that it is from the standpoint of the United States. No matter how complete it may be, that census does not throw upon the returns of the particular point under investigation the light from the angle that we especially want. Massachusetts wishes to know about the manufacturers, the accidents or the various forms of activity from a Massachusetts standpoint, and for that reason the committee reports as it does that it is unnecessary to make any change in the present situation.

Mr. Lowell of Newton: It seems to me that if we adopt the amendment of the gentleman from Holyoke we shall put this matter in the place where it ought to be. It seems to me entirely unnecessary and improper to have a requirement in the Constitution that a census shall or shall not be taken. If we adopt the amendment of the gentleman from Holyoke it leaves it that a census need not necessarily be taken but that it may be taken. As it stands now, one must be taken each half-way period between the United States censuses which are taken. I personally do not believe that the State is getting the value of the money which is being spent for this census. There is no question that it gets some value out of it and the suggestion made by the gentleman from Hingham that certain lines of inquiry as to the industries, we will say paper making or boot and shoe making or cotton weaving or anything of that kind, — such things as that are very valuable, but the amendment will leave it entirely within the control of the Legislature without requiring a census to be taken at a stated period whether at that period it is necessary to know the facts and statistics of certain branches of labor or not. As I understand it, the principal value of the Bureau of Statistics is not in the taking of this Massachusetts census, but it is in the statistics which have been compiled. Now it seems to me that the value of those statistics — and they are valuable, as all of us know by personal experience — will be kept up just as much if we do away with the absolute requirement that at each stated period the census must be taken, and leave it merely that the Legislature may determine at what time and of what scope the census should be. So that it seems to me that we have here a very good chance of saving a very large sum of money and I cannot see what harm would

be done by taking out of our Constitution the absolute requirement that on certain fixed occasions a census should be taken.

Mr. Bartlett: I want to say that all I have undertaken to do is to take out the absolute requirement.

The census is taken in New Jersey and in Rhode Island under statutory authority and I do not think there is any objection to that, although the censuses in those States are nothing like the elaborate things we have in this State. This resolution which I introduced was drawn up in the office of the commissioners on information. It is possible that what they put in there (I did not see it until after it was in; I had it sent in here), — "that no other census of the inhabitants shall be taken", — that that reflected the sense of their office. But if the provision is taken out of the Constitution that a census is required I am content and therefore shall be pleased to accept the amendment as offered by the gentleman from Holyoke.

The amendment moved by Mr. Avery of Holyoke was adopted.

Mr. Luce of Waltham: If I understood correctly the gentleman from Hingham in the rear of the second division (Mr. Curtiss) he gave the Convention to understand that what the friends of this resolution desire is now practicable under the Constitution, and that this amendment will accomplish nothing. If that be the case, may I ask the gentlemen of the Convention to reflect as to the desirability of adding to the long list of proposals we are likely to put before the people next November, an immaterial and inconsequential proposition? There may be slight argument for or against this change, but may I call your attention to the fact that every proposal added to this list endangers all the others? The more you perplex the people, the more issues you inject into the discussion, the less likelihood that any of our work will be accepted. Therefore, sir, unless there is some tangible, definite, positive, specific, considerable reason for changing the Constitution, is it desirable to proceed in this manner? Here a committee has reported unanimously that this change is not needed. One of its members gives us to understand that it will accomplish nothing. Why should we further disturb the electorate in the fall by putting this upon the ballot?

Mr. Dean of Fall River: I rise for information. As I understand the law now, we are leaving the General Court to decide when and if it is advisable to take this census, and by doing that, and not making an arbitrary provision for the taking of a census at certain stated times, a work which already is done by the National government, we are saving money for the Commonwealth in a very considerable amount, — it was stated, I believe, half a millon dollars.

Mr. Luce: Simply that the question may bring out the facts in the case, may I ask the gentleman in the fourth division (Mr. Dean) if he understands that a census of legal voters can be taken without material expense. In other words, why would that amount be gained? Suppose the census man goes round to inquire if Jones is a legal voter and is delivered from asking him if he is also an inhabitant; or inquiring if he is an inhabitant, from asking him if he is also a legal voter? In other words, how would there be any material saving in expense if the thing obtain as he suggested?

Mr. Dean: I will agree that there is very little saving in taking a

census of legal voters. I am not in favor of taking a census of legal voters, that is, I mean that alone, and narrowing it to that. What I believe is that the whole matter ought to be left in the hands of the General Court, and when through the adoption of a new method of apportioning your vote, or something of that kind, that situation arises, then the General Court will order that a census be taken, and you will find out what the status of the inhabitants of the Commonwealth is for the purpose of determining how you shall apportion your vote. But it seems to me that to arbitrarily fix in your Constitution that a census shall be taken every ten years or any other stated time is wrong. The whole matter ought to be left in the hands of the General Court.

Mr. AVERY of Holyoke: I do not believe that my good friend from Waltham (Mr. Luce) has quite grasped the question. The census of legal voters can be taken by the assessors of each city or town at no expense to the Commonwealth. The census of the inhabitants would cost half a million dollars every ten years.

Mr. LUCE: Does the gentleman from Holyoke contemplate that in such a serious matter as the apportionment of Representatives the State would submit to allow the city or town to report, without checking or investigation, as to the number of legal voters it contained? Does he think that in census taking throughout the Commonwealth, with the quarrels, the disputes, the accusations, the charges made by different people seeking to obtain representation, however much we might admire and trust the good people of Holyoke, Waltham, Chicopee, or any other place, does he think that the people would accept the census reported by the assessors of Holyoke, for instance, without any State inquiry?

Mr. AVERY: The State already entrusts local authorities with the registration of voters, and any census would but canvass the registered lists, and they are under the control of the local authorities. When you investigate those lists you investigate the authority and the integrity of every board of registrars in the Commonwealth of Massachusetts. I still repeat that the Commonwealth can take a census of the legal voters at a minimum expense, and that a census of the inhabitants is an entirely different thing. This is not an inconsequential matter. I am glad that the gentleman from Waltham (Mr. Luce) has at last awakened to the fact that there should not be too many matters put upon the ballot next fall. He has introduced just a few himself. Now, here is something where you save the State half a million dollars in the next ten years, and it can hardly and justly be called an inconsequential matter.

Mr. BOSWORTH of Springfield: The entire matter relating to the census of the Commonwealth is in the 21st and 22nd amendments, and they now read:

> "A census of the legal voters of each city and town, on the first day of May, shall be taken", etc., "and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter."

Now, that is substantially the first part of the amendment that is suggested here. The resolution as it came before our committee provided that no other census of the inhabitants should be taken under the authority of the Commonwealth. That prohibition is not proposed now, as I understand the amendment.

Mr. Avery: The General Court has authority to take any kind of a census.

Mr. Bosworth: In the amendment of the gentleman from Holyoke (Mr. Avery) that part of the original proposition is stricken out. At the present time the matter rests practically entirely in the hands of the Legislature. A census of the inhabitants of this State or of the legal voters could be taken, as has been suggested by the gentleman from Holyoke (Mr. Avery) by simply certified copies, probably, of the reports of the local authorities if they contain the information necessary. Half a million dollars is not spent at a dollar apiece in counting 500,000 legal voters, or at fifty cents apiece for twice that number. It is spent in obtaining a lot of other information about which the Constitution says nothing. For that reason, the committee, not believing that any action of this kind was necessary, recommended that this suggestion should not be adopted by the Convention. The matter at the present time rests entirely in the hands of the Legislature, except for one thing. The Representatives and Senators must be apportioned according to a census taken every fifth year of the decade. That is all that the Constitution requires. It is something that must be there in some form, because you have got to have a basis of legal voters from which to start everything else. The $500,000 that is spoken of is purely extraneous. So far as the Constitution is concerned it might be entirely possible, if the Legislature wished it, to save much of this money and get a lawful census by simply taking certified copies of what might appear in the records of the cities and towns, or, if not, the Legislature merely would have to appropriate the money that would be necessary to do that particular counting, and nothing else. That is the reason that your committee reported against this matter, and it does not seem to us that the suggestion made here either adds anything to the Constitution or subtracts anything of particular value from it.

Mr. Curtiss of Hingham: As has just been stated by the last speaker, the entire matter of the census to-day is covered in amendments 21 and 22 of the present Constitution. The amendment suggested by the gentleman in this division sitting in front of me (Mr. Avery) strengthens the position for the taking of the census as it has been done in the past. I understand that he and others wish that there should be less of that work done. To-day the amendments state that there shall be a census of the voters, and also under some certain conditions a census of the inhabitants. There is nothing more in the Constitution. There is nothing in the Constitution to-day which makes it obligatory to take a census of the number of accidents, the condition as to married life, divorce, color, race, place of birth, matters of that kind. All this has grown out of acts of the Legislature. The Legislature has it absolutely in its control to-day as to how far the census shall go, and it has grown year by year under demands of one organization or body of people interested in certain phases of social life. If we put into the Constitution that the Legislature in addition may take certain censuses it will feel that it is obligatory to do so. It is not as obligatory to-day, as it would be with the amendment that has been suggested by the gentleman from Holyoke (Mr. Avery).

Mr. Bartlett of Newburyport: In taking a census of legal voters

I do not know how they arrive at that enumeration, but no act of the Legislature clothes the Bureau of Statistics with the judicial power of determining whether a man is a legal voter or not. That *is* determined now by the local authorities. The assessors are officers of the Commonwealth, according to the Supreme Judicial Court. That enumeration can be secured through the assessors.

The gentleman who spoke previously said that according to his understanding the Legislature is not obliged to take the census of the inhabitants. It is. These amendments, — the 21st and 22nd amendments, — begin like this: "A census of the legal voters of each city and town on the first day of May shall be taken and returned into the office of the Secretary of the Commonwealth, in the year 1865 and every tenth year thereafter." Then they go on to say that the representation of the House and of the Senate shall be based upon the legal voters. There is no use at all in requiring in the Constitution that there shall be any census of the *inhabitants*.

Mr. Mahoney of Boston: I should like to know from some member of this Convention how you are going to determine the legal voters of your cities and towns. When you have your assessors go around they take merely the names; they do not ask the question whether that man is qualified to be a legal voter or not, and the only way that we can get this information is through the census. There is the question that has to be determined. You gentlemen no doubt have had connections in cities and towns, and you know how the assessors do their work. Now, this is a matter purely for the population, to determine the legal voters. As Mr. — (I do not care about mentioning the gentleman's name, but of the Bureau of Statistics) has said, it would be a great mistake to defeat this measure. That is Mr. Gettemy. If any gentlemen of this Convention want to find out about this matter, why I should like to have you see him. I think myself it is a question that we should not trouble with. How are you going to proportion your Senators and Representatives if not by legal voters? If you are going to take them from the figures of the cities and towns how long would you have to wait for the returns if you did not have some mandatory law to make them do it? That is a question that you want to look into, and I hope and trust that you will, because here is a committee comprised of men who have had life service in regard to assessing and one thing and another and they would like to see this report accepted.

The resolution, as amended, was rejected Wednesday, July 24, 1918.

On the following day Mr. Bartlett of Newburyport moved that the Convention reconsider the vote by which it had rejected the resolution.

Mr. Bartlett of Newburyport: With all deference to the desire for the accelerating of business, I move to reconsider the vote of yesterday whereby the Convention voted to reject the proposal as to the Decennial Census as amended by the amendment proposed by the gentleman from Holyoke (Mr. Avery).

I cannot be accused of taking unnecessary time in this Convention. What I have had to say has been altogether too briefly expressed. I make this motion to reconsider because the vote yesterday was such that I am told all around that if a count had been had the result might have been different; also because I believe the delegates voted

under a misapprehension of what they were voting upon. I read in a leading paper:

> After voting to leave the State census in the Legislature's hands the delegates completed their trip through the calendar.

That is just what the Convention did not vote to do, to leave it in the Legislature's hands. The exact proposition that was before this Convention after the amendment of the gentleman from Holyoke had been adopted was whether or not we should continue in the Constitution the mandatory requirement that a census of the inhabitants should be taken every ten years whether that is wise or otherwise. The question was: Shall we continue in the Constitution to compel a census of the inhabitants with the accompanying expense to be taken every ten years, or shall we leave it to the Legislature? That was the proposition before us. It was not in respect to that proposition that the director of the census said it was a mistake, for he could not know that that proposition was up until it was made. This requirement as to the taking of a census never ought to have been in the Constitution, in the first place. No other State in the Union does anything like what we do in this respect. To leave it to the Legislature to say whether a census of the inhabitants shall be taken or not, I submit, is the proper thing to do. The issue is squarely up to this Convention. Is it going to say to the people: "We have ordered a census to be taken every ten years regardless of the expense, whether the Legislature think it right or not, whether it is wise or otherwise", — and that for a generation, perhaps till 2016? I submit that here is the only opportunity on the vote upon this matter, to place the thing right and to put it where it ought to be, in the control of the Legislature to say when and where the census shall be taken.

Mr. JONES of Melrose: I confess to having a great deal of sympathy with the position of the member from Newburyport, and I have yet to hear any reason why this matter of taking the census should be a constitutional provision. It seems to me that no illumination was given the Convention when this matter was under debate yesterday on that point. Why should not the matter be left in the hands of the Legislature? Why is it necessary that there should be a provision in our Constitution that regardless of the expense and regardless of the necessity, there should be a census taken every ten years? Why is it not all right to leave it in the hands of the Legislature? Why should this be a constitutional provision? Why is not the position taken by the gentleman from Newburyport sound and worthy of attention?

Mr. LOMASNEY of Boston: I do not want to interfere in this matter. But if the gentleman will read the Manual, page 80, he will find there that the last words of the paragraph are:

> The enumeration aforesaid shall determine the apportionment of Representatives for the periods between the taking of the census.

There is one reason clearly stated in the Constitution.

Mr. BARTLETT: If the gentleman will read that he will see that "the enumeration aforesaid" is not the enumeration we are referring to. "The enumeration aforesaid" is the enumeration of legal voters.

Mr. LOMASNEY: I do not care about this question. But it seems to me that you have to use machinery to do work. I know that

the taking of the polls on the first day of April is an entirely different matter than determining who the legal voters are. All you demand then is: "Give me the names of all persons who resided here on the first day of April, together with their age and residence a year ago." Under this amendment different questions are asked, so as to determine the qualifications of the resident. In substance there is asked: "Has the party who lives here the legal qualifications of a voter?" I submit, sir, that there is a great deal of difference between a man's possessing the legal qualifications of a voter and a man who is a registered voter, because many men have the legal qualifications of a voter who do not register, and those are the ones who are counted in making up your representative districts. Such a man possesses the legal qualifications whether he registers or not. That is the distinction that I make. And you have to inquire also into other matters. I hope this resolution will not be reconsidered.

Mr. BARTLETT: I do not want to take up time. The gentleman is way off the issue. We are providing in this amendment that a census of the legal voters shall be taken. We are providing that a census of the inhabitants need not be taken unless the Legislature says so.

Mr. MAHONEY of Boston: I should like to ask the gentleman how he could get the legal voters in the way he said.

Mr. BARTLETT: I would get the legal voters through the local authorities. As it is done now it is done in a way which the people do not know and in a way which I do not believe any Legislature ever intended should be done. The Bureau of Statistics send their men and they take down the questions and the clerks in the office determine who are voters. The census required by the Constitution to be taken can be taken by the election authorities and taken as it should be by sworn officers of the State as the assessors are, and taken as it should be by a board having judicial powers at very little cost. This amendment provides that a census of the legal voters shall be taken. The machinery of it is left to the Legislature and that can be changed, but it prevents a census of the inhabitants unless the Legislature sees fit to authorize it. There is where the great expense comes, right in there, your $50,000 a year. It was that that the Governor wanted to do away with; it was that which the Census Bureau stood up and begged might be taken, saying that they would keep themselves down to $400,000, and they are trying to do it. And it is that which we do not want taken unless the Legislature says it shall be. The Legislature has no control over it while it is provided in the Constitution that it *shall* be taken.

Mr. LOMASNEY: I hold no brief for Mr. Gettemy, yet it must be admitted that he gathers the State's statistics well and further he is an honest man. He gave a lot of time to the work of the office; he has increased the importance of it; he went beyond any other man in that office in trying to bring it up to the highest standard of efficiency and, what is more, he can be trusted. I hold no brief for the gentleman, but I am surprised that some of the members here who know him better than I should have allowed this debate to go on thus far without saying something in his favor.

The motion to reconsider was negatived.

XXV.

PROPORTIONAL REPRESENTATION.

Mr. Charles H. Morrill of Haverhill presented the following resolution (No. 180):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The House of Representatives shall provide that any or all of its members shall be nominated, or elected, either by districts or from the Commonwealth at large, or in some other manner, so that the members thereof shall reflect as fully as possible the political, governmental and industrial opinions of all electors or voters, and except as hereinafter provided, the membership shall consist of two hundred and forty. Each political party, or other organization within the body politic or a requisite number of independent voters or a candidate or candidates whose name or names are not contained in a group, as herein specified, shall at each session of the House of Representatives be represented therein, as equally as may be, in the exact proportion that the combined number of votes cast for Governor, Lieutenant-Governor, Secretary of the Commonwealth, Treasurer and Receiver-General, Auditor and Attorney-General, bearing his, their or its designation at the last general State election next preceding the assembling of any session of the House, bears to the combined total number of votes cast for all the candidates for the said offices at the aforesaid election.

For the purpose of securing equitable and proportional representation as herein provided, the Commonwealth may be redistricted, in whole or in part, or the basis of representation for nomination or election may be established, changed or cancelled at any time; but when so established, changed or cancelled at any period, other than that specified in article twenty-one of the articles of amendment to the Constitution of the Commonwealth, the number of legal voters in the Commonwealth, or in any subdivision thereof, shall be considered to be that shown at the last preceding decennial census taken as provided for in said article twenty-one, together with a per centum added thereto for each year or major fraction of a year which may have elapsed since the said enumeration, which annual per centum shall be one-tenth of the decennial increase shown by such enumeration, and a like tenth additional shall be added thereto in lieu of the real growth of the remaining portion of the calendar year then current. And in allotting the representation, — where election is determined otherwise than by districts, — a residue of a major fraction of the basis of representation, cast for each party, or group, or candidate whose name is not contained in a group, shall be given representation; after which the minor fractions cast for each party, group or candidate whose name is not contained in a group shall be combined into one total for the whole Commonwealth, and if such total equals or exceeds fifty per centum of the basis of representation an additional member shall be given to the party or group or candidate whose name is not contained in a group receiving the larger of the said minor fractions; and the House membership may, if necessary, be increased in number for such purposes to the end that, as nearly as may be, each and every qualified elector or voter shall be equally represented.

The name of any qualified elector or voter shall be placed upon the ballot by the Secretary of the Commonwealth as a candidate in whose behalf a primary or caucus certificate of nomination or a nomination paper containing such number of certified signatures of qualified voters, not less than fifty or more than one hundred as the General Court may by law prescribe, shall have been duly filed with the Secretary of the Commonwealth. In case the General Court shall fail to prescribe any number for said purpose fifty such signatures shall suffice.

All the provisions of the existing Constitution inconsistent with the provisions herein contained are hereby annulled.

The committee on The General Court reported that the resolution ought NOT to be adopted.

It was rejected without debate Wednesday, July 10, 1918, and on the following day Mr. Morrill of Haverhill moved that this vote be reconsidered.

The motion to reconsider was negatived Thursday, July 11.

THE DEBATE.

Mr. MORRILL of Haverhill: I move that the Convention reconsider the vote whereby on yesterday it accepted the adverse report on No. 208 on the calendar. Although the adverse reports on two or three of the five resolutions which I introduced were accepted, owing to delay in train service and so on, I did not make any attempt at reconsideration. I regard this matter as the most important one dealing with our political system that is before the Convention, but yesterday I was detained through a mishap on the railroad and was therefore five or ten minutes late in arriving. I appreciate that the Convention in these closing days is moving fast, and, in any event, the resolution was disposed of when I reached the Convention chamber. It is only because my tardiness was in no way due to remissness on my part that I ask for reconsideration.

Former Governor David I. Walsh, who is a delegate to this Convention, recommended to the Legislature, with all the authority that comes to a man from the office of the State's chief executive, that unanimous constituency representation, — known also as proportional or true representation, — be adopted. He is now, unfortunately, under the care of his physician and has been compelled, because of ill health, to go away for a time. He, in consequence, was unable to take the floor for the resolution yesterday, a fact which, quite aside from my deep regard for him as a man and a leader, I deplore, since it removed from the list of this resolution's advocates a most worthy champion. George W. Coleman, another delegate in this Convention, who also strongly favors this resolution, is away upon leave of absence to engage in war work for the government in Washington. Several others interested in it were absent for various reasons. So I make no apology for asking the Convention to reconsider its vote of yesterday.

This morning in my remarks relative to "Compulsory Voting," — and I consider this to be the logical alternative to complusory voting, — I quoted the vote cast in Massachusetts for President in 1912. Some may explain the result shown by these figures by saying that the Progressive party in that year split the Republicans and sapped that party's strength. The outstanding fact is, however, that the Republicans, although the third party in voting strength, elected 38 more members to the Legislature than all other parties combined. It was not an accident applicable to that one year alone either; so, to disabuse the minds of those who hold to any such belief, I will quote the returns for 1915 for the State ticket. Conditions by that time had slipped back again to their previous status and the reactionary trend was expressed then in slogans like "Never mind the people," an attitude more aptly even if less cautiously phrased when Vanderbilt said: "The people be damned." Taking the vote in 1915, not for Governor alone, but the average vote for the State ticket, six officers, Governor to Attorney-General, inclusive, — because I do not think the vote for Governor is a fair criterion of party strength;

there is too much of a personal element involved, — the vote was as follows: Republican 254,220, entitling them, on a basis of equality, to 126 Representatives in the House. They obtained, however, 168. Democrats 197,309, entitling that party to 98; whereas they obtained only 71. Prohibitionists, 13,546, entitling them to 7 Representatives, but they obtained none. Socialists, 10,689, entitling them to 5, and they by accident elected one, — myself. Progressives, 5,937, entitling them to 3, and they obtained none. Socialist Labor Party, 3,449, entitling them to 1, and they, too, were left without representation or voice in the Legislature.

All voters in Massachusetts not Democrats or Republicans thus were deprived of representation, with the single exception I have noted, whereas each and every party should have had from one man upward. Disfranchisement in the representative assembly of 33,626 citizens, — it was nothing else! And if we add thereto the 54,000 odd Democrats insufficiently represented (71 instead of 98 members), the total disfranchised was approximately 88,000. This was brought about primarily through the practice of taking "legal voters" as a basis of representation rather than the party voters; in other words, theoretically basing representation, — providing the inevitable evil of gerrymandering does not enter in, — on the geography rather than on the principles of government held by those who are to be represented. Those who believe in proportional representation, in contrast, advocate that it is principles of government, it is people of a like mind joining together in a common cause for its expression, which should determine the extent of representation. If, as that year, there were 485,150 votes cast with 240 Representatives to be elected, those 485,000-odd votes cast should be divided by number of members to be chosen with one added to care for fractions, and a just system of representation will result. The basis in that case would be 2,000 votes, and any party casting that number in the State that year would secure one Representative and one more for each 2,000 after the first. A party casting 100,000 votes would by this system have 50 Representatives in the Legislature. Ashtabula, Ohio, and Kalamazoo, Michigan, now determine representation in their city councils by this method. Bowlder, Colorado, has adopted a method differing in some respects, but for purposes of discussion so nearly like it as to be identical.

Mr. Tatman of Worcester: The gentleman has stated properly that the real issue involved here is the question of the representation in the Legislature of political parties, or the representation of small political subdivisions; that is to say, territorial representation, representation of cities and towns. The scheme of proportional representation relies upon direct representation of political parties; and if the members of the Convention have reached that state of mind where they wish political parties to be represented in the Legislature, and not cities and towns, then they should vote for a similar resolution to that proposed by the gentleman from Haverhill (Mr. Morrill). The doctrine of the so-called proportional representation to my mind would mean disproportional representation or perhaps proportional misrepresentation, because it would not provide for the representation of cities or the wards of cities or of towns. As I understand it, as elaborated in another resolution, slightly different but on the same principle as that introduced by the member from Haverhill (Mr. Morrill), it would

provide for the division of the State into a small number of districts, such as, for example, the congressional districts, which I think are mentioned specifically in one of those resolutions, and the candidates voted for by the citizens of a particular congressional district would come from anywhere in that congressional district. All the voters in the congressional district would vote for a certain number; for example, if there were fifteen to be elected they might be allowed to vote for three, and then those voting for the candidates of certain political parties would have their votes counted as voting for those parties. The consequence of that would be that the great centers of population naturally would elect the candidates who came from those centers. A very good example of that perhaps would be in the fourth congressional district, which I represent in part, where the city of Worcester has more than twice the number of voters that the fifteen or sixteen towns which also lie in that district have. It would be the most natural thing in the world for the citizens of Worcester to appropriate all the Representatives for that congressional district. And so it would work throughout the State. The great centers of population would elect the candidates to the Legislature to the exclusion of all the small towns. The theory of our government as it always has existed has been representation of the small as well as the large places, not only that they may be represented, but that the Commonwealth may have the advantage of the point of view of those who come from the small as well as from the large communities. This measure would result in the disintegration of the present political parties and in the springing up of perhaps ten or a dozen or fifteen or twenty parties, each with its own little, narrow platform, each a party with a specific hobby, and would tend to log-rolling in the Legislature, without any kind of responsibility such as now exists. As it is now, we have grown to be a country and a Commonwealth governed by parties, parties having responsibility; and if a party has failed to meet the responsibilities which have been put upon it, the people have the right to put that party out of power, which they do. The adoption of this measure would result in a division of responsibility, where you could not put your finger upon any one who was responsible for any measure which had been arranged by the log-rolling and wire-pulling in the Legislature among the various little parties.

Mr. Morrill: The possible evils the gentleman in the third division (Mr. Tatman) cites as attendant upon proportional representation are those of the present system, and, in part at least, furnish the demand that a better one be substituted for it.

Take, for instance, the Senator from the Fourth Essex district. Haverhill, having slightly more than half the number of legal voters in the district, for more than a dozen years has elected the Senator, — and it bids fair to elect him in 1918 if the press reports from Haverhill be true. The surrounding towns, every one of them, have been shut out from representation in the Senate, — a matter of 15 years, if I am not mistaken. Amesbury, on the last occasion a Senator not a resident of Haverhill represented the district, was given the office only because a combination of circumstances rendered possible a coalition with the Haverhill machine. I use the verb "was given" advisedly, gentlemen, for that exactly describes the situation; only by gift can a resident of any town in the district secure the Senatorship.

Other instances of the same kind might be cited from various sections of the State to illustrate the point. But that is only a minor evil. This shutting out of small communities from representation in one branch or another of the Legislature is important only because it is so unjust.

Among the men who favor proportional representation may be instanced Charles Sumner Bird, late candidate for Governor as a Progressive; Moorfield Storey, a former president of the American Bar Association; Charles W. Eliot, president emeritus of Harvard College and a publicist of world-wide fame. Others of equal or greater note might be named and the list would include Earl Grey, late Governor-General of Canada, who had a very large part in inducing both Canada and England to adopt proportional representation.

Two city charters petitioned for in the Massachusetts Legislature in 1915, both of them from Springfield, contained provisions for proportional representation in the city council when introduced. The Legislature, however, struck from each that section, whereupon the Springfield voters rejected both, — whether or not because of the omission, I am unable to say, but certain it is that neither was so popular with its projectors after that had been done as it was before.

I already have quoted the vote for President in 1912. You may be interested to know how proportional representation would have affected the Legislature that year if the average vote for the State ticket had determined the relative strength of the political parties. The Democrats, for instance, would have had 92 Representatives in the House; they had 94. The Republicans would have had 86 Representatives; they had 139. The Progressives would have had 52 Representatives; they had 5. One man, one vote, — or, in other words, if each man who *voted* had been really, or equally represented, — would have given 52 Representatives to the Progressives in 1913. The Socialists, who had only one, would have had seven. The Prohibitionists, who had none, would have had two. The Socialist Labor, which had none, would have had one. Cannot you see that when the government is the people in a condensed form, as it would be under proportional representation, all parties, — competing against each other, — would be forced to do their best, and progressive legislation and good legislation would be the natural consequence? I think I am justified in saying that this is the most important proposition before the Convention. It seeks to place the government in the hands of the whole electorate. With the initiative and referendum and recall, and a single chamber body, with the resultant fixed responsibility, we should have a real republic.

Proportional representation is in successful operation in Belgium, or was before the Germans overran that unhappy land. In Finland it was a fact before the Prussian Kaiser destroyed all government there. In Sweden, Switzerland, Denmark, the Union of South Africa, Tasmania, parts of imperialistic Germany, and elsewhere about the world the system prevails. The home rule bill for Ireland, which now is suspended by the British Parliament until after the war, contains a provision that the Senate and the House shall be elected on a basis of proportional representation, and the provision relative to the Irish Senate was approved unanimously by the English House of Commons; that relative to the Irish House was approved by a vote of 311 to 81

in the same body. The Speaker's Conference on Electoral Reform, so called, although composed of influential men of all parties, unanimously recommended proportional representation for the English House of Commons in districts electing more than three members. The Vice-President of the Belgian Senate testifies: "In Belgium there is now no political group of any importance which would dream of proposing to suppress or even to curtail the application of the proportional system." Sir John McCall, Agent General for Tasmania, thus testifies: "We have demonstrated the ease with which the system can be worked. It has come to stay." And all along the line from every country where it is in vogue similar testimony could be offered. It has rendered legislation more stable and has softened racial, religious, and sectional differences everywhere it has been adopted.

The Convention refused to reconsider the rejection of the resolution.

XXVI.

NEGATIVE OF SENATE ON HOUSE.

The first paragraph of Article I, Section I, Chapter I of Part the Second of the Constitution is as follows:

ARTICLE I. The department of legislation shall be formed by two branches, a Senate and House of Representatives; each of which shall have a negative on the other.

Mr. John A. Donoghue of Boston presented the following resolution (No. 173):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Article I of Section I of Chapter I of Part the Second of the Constitution is hereby amended by adding at the end thereof the following words: — *Provided, however*, that if any bill or resolve of the House of Representatives shall be rejected by the Senate, the Senate shall return the same to the House of Representatives, who shall proceed to reconsider the said bill or resolve; and if after such reconsideration, two-thirds of the House of Representatives present and voting thereon shall, notwithstanding the rejection by the Senate, agree to pass the same, it shall be laid before the Governor, and shall have the same force and effect as if it had been enacted by both branches. All bills introduced in the House of Representatives and referred to committees shall be reported back to the House of Representatives and not to the Senate.

The committee on The General Court reported that the resolution ought NOT to be adopted. It was considered by the Convention Friday, June 28, 1918, and was rejected the same day.

THE DEBATE.

Mr. MORRILL of Haverhill: I hope this will not be rejected. The Senate, under our system, acts as a House of Lords, as it was intended that it should by the reactionaries who framed the sections of the Constitution establishing the Senate. Organized labor every year experiences difficulty in getting labor laws through the House, only to see them, — together with every measure known generally as progressive, — defeated in what is known as the graveyard of popular legislation, — the Senate. This year, for instance, the bill to establish the three-tour system of eight hours for tour workers in paper mills, in place of the present two tours of eleven and thirteen hours, went through the House of Representatives by an overwhelming vote, only to be rejected in the Senate. A long list of bills equally meritorious could be cited were it necessary. The amendment to the Constitution now under consideration provides that a bill passed by the House and defeated in the Senate shall be returned to the House, and if two-thirds of the lower branch again pass it that act shall go to the Governor and have the same standing as if it had passed both branches. That is similar to the provision the labor party of England and those who are fighting with that faction for popular rights in England

secured in regard to the House of Lords. I see nothing unreasonable in asking that in a republic we also shall establish it. This is an extension of the rule of the people, and if any one who is not an upholder of the rule of the political machine and the corporations, — in other words, any one who is not an upholder of the divine right of kings and corporation magnates to rule regardless of popular will, — does not support me in this, I believe he is inconsistent.

I believe that we should establish this as one of the immediate steps necessary to curtail the control of State government by selfish or questionable interests. Owing to the fact that the Senate is composed of a very small number of men elected from very large districts, it is impossible for the majority of their constituents, — of the people, — to keep close oversight of their activities; but in the popular branch, elected from smaller districts, where the members are better known and are more intimately acquainted with their constituents, it is possible for the public to have more control. In contrast lies the danger of a small body coming from large districts. We are told frequently in the corridors of the State House that certain interests do not care so much what the House does on progressive bills and labor bills, because the Senate already is "fixed" on the matter. Repeatedly we have been twitted to that effect by the corporation lobbyists who haunt the corridors of this building. Now, why not seek to purify legislative procedure by establishing this in the Constitution, not that it is a far-reaching measure, but simply because it is a primary step along the line of extending the power of the people.

I hope the adverse report will be rejected and the amendment take a reading at this time.

Mr. Luce of Waltham: The tragedy that deprived the Convention of the advice of former Attorney-General Malone also deprived the committee on The General Court of its chairman. As the ranking member of that committee it devolves upon me, therefore, to assume the burden of these matters when the gentleman in charge is not here. The gentleman in charge of this measure is engaged in the work of the food conservation service for the government, and his absence I think will be excused by every delegate. Under these circumstances I may take a very brief time in order to do the gentleman from Haverhill (Mr. Morrill) the courtesy of explaining the reason for the committee's report, and I assure the Convention it shall be done in a very few words.

He has broached a subject that is of great interest to students of political science, and indeed has had a much more practical bearing by reason of the reforms of the British House of Lords and the proposal to institute similar reforms in nearly all countries where the upper branch is based upon a different system of choice from that of the lower branch. The arguments and considerations, however, produced by that state of affairs, do not apply under a Constitution like that of Massachusetts, where the members of the two branches are chosen by the same electorate. For this reason much of the argument of the gentleman from Haverhill (Mr. Morrill) would fall to the ground. As to the rest of the argument, it may be submitted that while it is true that in many parts of the world there is grave criticism of the bicameral system, and it may be the case that the tendency is

away from the bicameral system and toward the unicameral system, there has not developed in this Commonwealth any condition leading to any considerable degree of public sentiment in favor of abandoning this feature of the legislative process handed down to us by the fathers. Therefore I am confident the Convention will not desire a long discussion of the question, but being ready to vote will sustain the report of the committee.

XXVII.

ABOLITION OF THE SENATE.

Mr. Charles H. Morrill of Haverhill presented the following resolution (No. 176):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The Senate is hereby abolished. The department of legislation shall consist of one branch, a House of Representatives, and shall be styled The General Court of Massachusetts. All impeachments shall be tried by the Governor and Council. All other duties and powers of the Senate or of both branches under the existing Constitution shall devolve upon the House of Representatives. All duties of the President of the Senate under the existing Constitution shall devolve upon the Speaker of the House of Representatives. In case the existing Constitution provides a different number of votes for the passage of an act or resolve through the two branches, the provision with respect to the House of Representatives shall govern.

This amendment shall take effect upon its approval by the voters; but those persons chosen as Senators at the election at which this amendment is adopted shall be deemed to have been elected members of the House of Representatives, and shall be entitled to serve as such for the period of time for which they were elected, and no longer, and shall have the same powers and duties as other members thereof. The number of members of the House of Representatives shall be temporarily increased for this purpose.

The committee on The General Court reported that the resolution ought NOT to be adopted.

Debate was begun Friday, June 28, 1918.

The resolution was rejected Tuesday, July 9.

THE DEBATE.

Mr. MORRILL: The tendency throughout the world is to do away with the bicameral system of government. What I said this morning relative to the Senate will apply perhaps equally as well to the resolution now before the Convention for debate. In addition to that I wish to say that in our sister Commonwealth, the Dominion of Canada, the bicameral system of government has been almost wholly done away with. But two provinces retain it.

The Province of Quebec retains the two-branch system of government and so does Nova Scotia. On the other hand the Province of Ontario, the largest Province in both wealth and population in the Dominion, has but a single chamber Legislature.

Our country is about the only country, so far as I have been able to ascertain, wherein the upper branch, so called, is allowed to be even equal in power to the so-called lower branch. In France and other countries of Europe, with the exception perhaps of Germany, — which we do not regard with very much favor to-day, — in the other countries or the most of them the lower branch is the superior branch. Being the branch representing popular sentiment it has greater power than the Senate or whatever name the upper branch goes by in the respective countries. But in this country, while we have been behind

the times and lagging behind the progressive nations of the world, we now are beginning to catch up, especially as relates to municipalities. The almost universal tendency of the times is now for city charters to provide for but a single branch.

Debate was continued Tuesday, July 9.

Mr. MORRILL: When this Convention last adjourned I was explaining what is in vogue in various parts of the world in this respect. Since then, by consulting the Statesman's Year Book and other authorities, I have obtained more specific information than I then presented. For the benefit of those who were not present last Friday and perhaps may be present to-day, I shall repeat to a certain extent what I said at that time.

The tendency in all countries having popular government is toward the abolition of the upper House. Where two Houses remain the tendency is to give the more popular branch greater powers. In England the House of Lords has been made subordinate to the House of Commons. In France the Senate has become more and more subordinate to the Chamber of Deputies. This is true also of Swiss governments, both National and cantonal. In Norway there is practically a one-House system. Members of the Legislature are elected as one body and divide themselves into two Houses. If the two Houses thus formed disagree they meet as one House, where a two-thirds vote is decisive.

All the provinces of the Dominion of Canada except Quebec and Nova Scotia have one-House Legislatures. That is, seven have Legislatures of one House, while only two retain the old system. Ontario is the largest Canadian province. The one-House system has worked well there and the people are in no way inclined, either in Ontario or any other of the Canadian provinces, to return to the bicameral system.

The bicameral form of government once was prevalent in nearly all American cities. It now has been abolished almost everywhere and it is regarded as a municipal and political monstrosity wherever it is still in existence. All the larger cities except Philadelphia, Baltimore and Kansas City have one-House councils. In each of those cities the two-House system has proved to be an incumbrance to the orderly conduct of business and in some of them it has been a source of corruption. It is unnecessary to take time to recite the repeated corruption exposures which have appeared in the press. Merely calling the attention of the members to that subject should suffice.

The financial problems of such cities as New York, Chicago, Boston and Cleveland, all having one-House councils, are greater than those of most American States, if measured by appropriations. There is no better reason for a two-House Legislature in a State than in a city. A two-branch form of government makes it difficult to place the responsibility for legislative action. In Massachusetts as well as in other States we repeatedly see popular legislation, — what might be termed progressive legislation and labor legislation, — defeated by what is known as "falling between the two branches;" that is, one branch will pass favorably upon a popular measure, often knowing that the other branch is "fixed" in advance by the political machine of invisible government. The other branch will vote in opposition and a deadlock is created. A small body like the Senate affords

greater opportunity for those who corrupt legislative bodies to work their purpose. As I stated during a previous session, we, representing organized labor in the Legislature, have been told repeatedly by the lobbyists who haunt the corridors of this State House that they feared they were to lose upon a certain measure in the House but that they felt sure of the Senate. They told us that frankly.

Now if you had had nine years' experience in the Legislature, as a few of us have had, it seems to me if you were in favor of real popular government it would be unnecessary to take any more time in going into detail. But for those who have been unfortunate enough, — or fortunate enough, perhaps, — not to have served in the Legislature but who have followed what the press has said from time to time relative to the upper branch of the Legislature in this State, you must know that its reputation is questionable. And, furthermore, you must remember that but very little of what is derogatory to the Senate is allowed to appear in the press. The men who write the reports for the press up here are willing to inform the public fully as to conditions, but they know that in every editorial office there is a large blue pencil, well sharpened, with which to *delete*, — I believe that is the word nowadays, — their stories. This is true especially if those stories shed any light on the legislative activities of the vested interests, which control the newspapers as well as the larger corporations and which attempt to control the Senate and sometimes succeed more than is well. I hope that this committee report will be negatived and that the Convention will give the resolution calling for the abolition of the Senate a reading. I think it is unnecessary to consume any more of the time of this Convention.

Mr. Anderson of Newton: I take this opportunity of expressing the hope that this Convention will do something toward strengthening the Legislature. Naturally we should have looked to the committee on The General Court to take the initiative in this matter, but, for some reason, it has almost entirely failed us, reporting favorably only a trivial amendment with reference to adjournments. And it looks as though, with many separate propositions, all doomed to defeat, we were to do practically nothing. What is the matter? Are we afraid to deal with the Legislature or do we deem it above reproach or beyond salvation?

I have spent a part of my week's vacation reading what I unexpectedly found to be a most interesting volume, the debates on the initiative and referendum. Those debates show that, last year at least, the majority of the Convention did not think very highly of the Legislature. The gentleman from Fall River, the chairman of the committee on the Initiative and Referendum (Mr. Cummings), who always measures his words, called it "a weakening, waning, failing Legislature," which "has been sick a long time and needs correction." The distinguished ex-Governor who hails from Fitchburg (Mr. Walsh) said in his eloquent speech in the same debate:

> The people have lost confidence in their system of representative government, due to the influence 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 despicable partisanship.

Even the gentleman from Amherst (Mr. Churchill) seemed only to ask that we be patient with the Legislature a little longer. The

gentleman from Waltham (Mr. Luce), in one of his lofty flights of complacent glorification, declared that Massachusetts had the best of all American Legislatures. We might dispute the statement on the grounds of truth, but content ourselves with simply pointing out that his words are very faint praise. The only out and out defender of the Legislature is that prince of our stern and unbending Tories, the gentleman from Wellesley (Mr. Pillsbury), and our points of view are so opposite that when something exactly pleases him, I begin to grow suspicious of it [laughter], and I suppose that he gladly would return the compliment. Yet we should notice as an eddy in the steady current of his life and thought, that at the last session of the Convention, even he charged the Legislature with a "grave scandal."

The gentleman from Brookline (Mr. George W. Anderson) who bears the same name with me, and whose large experience, fearless and yet temperate statement, and trenchant analysis we so sorely miss this year, gave his final mature judgment in this sentence, whose apparent moderation contains the sharpest criticism:

> After a considerable acquaintance with the Legislature for a period of twenty-five years, in my opinion there was a very small percentage of the members who were bad men, there were half of them who were good men, and probably three-fourths of them who were fair average men.

Would you like to know what the average citizen who is not in politics thinks, the man who watches the game from the side-lines and who has not thought of taking any part in it? He is proud of the judiciary of Massachusetts, he is only a little less proud of her Governors, making a few judicious exceptions, but he is just a little ashamed of the Legislature. He thinks that there is little direct bribery, a great deal of illegitimate influence, a great deal of self-seeking, a great deal of log-rolling and not very much real ability. He recognizes that there are some able leaders, a considerable number of good men, and that the large majority are well-intentioned, but weak when their political future is at stake. Possibly he has too low an opinion of his representatives, but that is what he thinks.

Now, it strikes me that the most important thing we can do in this Convention is to strengthen the Legislature, and the way to do it is to give it power, responsibility and dignity, with the purpose of attracting to it more men of large caliber, unselfish purpose, and independent character. To this end I have voted for nearly every proposition to give the legislators more power, to untie their hands and to grant them wide freedom of decision.

Besides this, we should give them a longer term. Perhaps they should have a larger salary. They should be freed from the duty of dealing with private bills and from the corrupting influence of the gerrymandered districts. The system of proportional voting should be adopted. The opportunities of the invisible government to control them should be curtailed and cut off in every possible manner. The State should see that a proper publicity through the newspapers is given to their proceedings. Real debate and roll-calls should be encouraged.

I am quite sure our weak Legislature will not be cured by such small measures as abolishing recess committees. We need to take hold of the subject with a firm hand. Possibly only radical measures will avail. It might be that the abolition of the Senate, though the very

thought sends a shiver down our conservative spines, might dignify the House and put responsibility upon it, might gain it the power and prestige needed to redeem the whole situation. Of course, it would remove a check on the rash popular will, but we have that in the new compulsory referendum. Possibly we do not need two such checks. And then there is the Governor with his veto. I do not say I favor the abolition of the Senate, but I should like to hear it really debated, and consequently I shall vote for it on this stage. Something must be done to bring the whole subject of the strengthening of the Legislature before the Convention. Now that the committee on The General Court has failed us in any general constructive remedy, have we the ability, the initiative and the courage to do a plain duty? [Applause.]

Mr. Luce of Waltham: The timely and in many respects admirable statement of the gentleman from Newton brings before the Convention this very important subject in a manner that calls for somewhat broader treatment than naturally would be given to the concrete proposition now before us. So before reaching that proposition, as a member of the committee that has been so cleverly characterized, I would say that the gentleman from Newton is not alone in thinking the conditions of the General Court need our attention. And if the committee on that subject has not laid before the Convention any specific program of importance I may assure him that one remedy which some of us hope will prove of value is now in the hands of two other committees of the Convention, which, it is hoped, will report in a few days upon a plan for relieving the General Court, — not for punishing it, but relieving it, — that perhaps will meet the approval of the Convention.

Such strictures as his upon the General Court have received earnest study, — at least from myself, — and I think I may explain to him the reason for what he thinks is a widespread feeling that the General Court is not equal to its tasks. That feeling in very large measure is due to the fact that ten or fifteen years ago certain publishers in this country discovered that they could capitalize muck, that they could make large personal fortunes out of slander, and that by appealing to the baser emotions of the American people they could make themselves powers in the community. And so during a period that always will be characterized in history as the muck-raking period of American life, they found nothing too foul to say of the men who were trying to serve their fellows in public office. No man escaped their slander, no institutions were spared their abuse. Unfortunately, there was altogether too much ground for this in the case of some of our legislative bodies. In certain States of the west, besides those not far from the Hudson River, there was reason for the castigation of legislators which the gentleman from Newton has echoed.

When I said that this Legislature of ours was the best in this country and perhaps in the world, I invited him or any other man here to name a single legislative body in any corner of the globe that for efficiency, uprightness and freedom from criticism by those acquainted with its work equals that of Massachusetts. It is not a perfect body. It has the failings common to humanity. It has the weaknesses to which all of us are subject. It has

> Men who are good and men who are bad,
> As good and as bad as I.

Mr. Creamer of Lynn: I should like to ask the delegate from Waltham if it is not easier for people, even the best of people, to work better with good tools than with bad tools. What some of us want to do with the Legislature is to make a better tool of it.

Mr. Luce: It is true as the gentleman says, and I am in heartiest sympathy with him and hope that I may contribute personally, from my own experience, something to make this Legislature a better tool. That has been my chief interest in this Convention. It is the thing which I have urged with the most earnestness and to which I propose to devote myself with, I hope, the coöperation of every other member of the Convention, until we adjourn. But in order to do that it is not necessary for us to add to the suspicion of our Legislature which already is too widespread among our people.

Mr. Morrill: On the day on which we last met a matter preceding this one on the calendar was the measure offered by the gentleman who has the floor, relative to the scheme which he has just outlined. He held up the committee on The General Court for the greater part of a day explaining the minute details of that plan, and then when it was reached upon the calendar failed to try to resurrect the proposition from an adverse committee report, with but himself and one other committee man recorded as dissenters. Now I should like to know why he has so much to say upon the plan after he deserted his own child when he had the opportunity to proclaim its paternity. [Laughter.]

Mr. Luce: I might reply to the gentleman in the fourth division (Mr. Morrill), with perhaps more asperity than wisdom, that there are those with legislative experience who have learned the uselessness of debating propositions that can arouse no support. [Laughter.]

Mr. Morrill: I would ask the member in the first division (Mr. Luce) if he knows of any great proposition, no matter how meritorious, that ever won out without several years of repeated agitation and efforts toward educating the majority by those who had the courage of their convictions and would rather be defeated fighting for what they believed to be right than to be victorious with the crowd or to be with any otherwise unanimous group of members of any body.

In other words, is it not true that weeds grow rapidly but good fruit and vegetables come slowly?

Mr. Luce: The truth of the gentleman's remarks is so obvious, and they so appeal to any one who appreciates, as I do, his own sincerity, that I have no word of criticism to make thereof. The State is indeed fortunate when it has gentlemen like the member in the fourth division, who, in spite of the evident disapprobation of his proposals by his fellows, nevertheless keeps on fighting, conscious that he is but doing his duty. [Applause.]

The proposal that I urged upon the committee on The General Court will reappear in a changed form, I may assure him. Of the suggestions by the gentleman from Newton (Mr. Anderson), some may be debated in the course of the day. Others, experience has not elsewhere shown to be desirable for imitation. As to the particular matter now before us, even though probably a majority of this House will not approve the resolution, it would be unfortunate if this Convention allowed so sincere an argument as that of the gentleman from Haver-

hill (Mr. Morrill) upon a proposal that perhaps has been discussed more than any other of the proposals of political science in the last century, to pass without at least a few words which may reflect the views of the majority, and at any rate tell another generation why Massachusetts at this moment did not engage upon a serious consideration of the subject.

It may be the case, as the gentleman said, that the world is tending toward the unicameral Legislature. Although that might be contested, yet in frankness it ought to be admitted that the Governors of several of our western States, and as serious an organization as the Tennessee Bar Association, within a brief period have urged the one-chamber Legislature; and it is true also that only two of the provincial assemblies of Canada have two chambers, and in some other places the one-chamber idea has made progress. But on the other hand it may be pointed out that when Australia recently gave the most earnest consideration to its new Constitution there was no serious argument in favor of abandoning the two-chamber system, and the decision of Japan might be cited also.

Experience is against the change proposed. Let me take just a minute or two of the time of the Convention to remind it of what that experience has been.

When our fathers wrote this Constitution they recalled the fact that the Italian Republics of the Middle Ages had come to disaster under the one-chamber plan. Turmoil, strife, murder, all the worst vices of government, had there been developed. In the year 1649, when the Puritans of England believed that they could reform the world, they established a one-chamber Parliament, and four years later Cromwell himself drove them out; said he would have no more of their prating.

Our fathers for the most part were accustomed to two chambers, not a slavish imitation of Parliament, but a natural development, with some most curious episodes, such as the famous sow episode, which led to the separation of the two bodies in Massachusetts, narrated at great length in John Winthrop's Journal, and I would commend it to you if you would know how Massachusetts happened to have a Senate. In other colonies the movement was equally natural. In only one of them, Pennsylvania, was the movement in the other direction; for three-quarters of a century prior to the Revolution, that Colony had used but one chamber. Benjamin Franklin, the only great American statesman who ever committed himself to this proposition, it is believed was the man who secured its adoption for Pennsylvania as a State, but the plan was abandoned in 1790. Vermont, which imitated Pennsylvania in many ways, likewise was a one-chamber State, remaining such until 1836. Georgia is supposed to have been for a time a one-chamber State, although really the upper branch, the Council, had in effect much power over legislation. Observe that all three of those States, having tried the one-chamber idea, threw it aside and replaced it with the two-chamber plan.

The great example of the one-chamber system has been the National Assembly of France, which in 1791 put into effect the plan that my friend from Haverhill (Mr. Morrill) desires us to imitate; and no man who has read the story of the French Revolution can fail

to recall the terrible results that came from the absence of any check on the law-making body.

Human nature is the same to-day that it was in the National Assembly. There are still the same reasons why one legislative body should be checked by another, and the reasons are familiar. You, sir, in the years of your presidency over this House saw times when gusts of passion swept through its ranks. You saw men carried away by the mob spirit; you knew occasions when, if one House could have acted without check, it would have perpetrated injustice; you and I, going home to the solitude of our chambers, have wondered that we could have been swept off our feet by some stirring speech or by some wave of sympathy. So it is we have found that it is not prudent on these great questions that may affect the destinies of millions, that may spread unhappiness through every corner of the State, — we have found that it is not wise to allow one body, without the mature second consideration of another body, to decide our fate.

Confident that this lesson of experience will result in the rejection of this proposal, perhaps if I add a reference to the remedy that has seemed to me the wisest, I shall be the more readily pardoned because it is in part based upon considerations involved in this very proposal. The gentleman from Haverhill was accurate in pointing out that the two-chamber system has been discarded by practically all American cities. I remember when as a young man I first had anything to do with public life, there was in my own city a board of aldermen and a common council, and I remember how some of the gentlemen who think, to use Wendell Phillips' phrase, that the "roof will fall if you sweep off the cobwebs," — I remember how some of them prophesied disaster to our city if we abolished one of those bodies. Very reluctantly did we come to the one-chamber idea in city government. Now there is not a man of us who does not know that it was a wise step, and I doubt if there is a person within the sound of my voice who would urge us to revive the two-chamber idea in the conduct of cities.

It may be very pertinently asked: If that is true of cities why may it not be true of States? The reason is simple. A city government is not a Legislature, it does not legislate, — so our courts have held, and so our observation shows. It passes, to be sure, rules and regulations, it handles administrative affairs, it handles business. Now, because the business of the State has grown so enormously in the last generation, many of our western friends have forgotten that there are other things than business in legislation, and, finding that it overshadows everything else, have urged that, just as municipal business is better handled by the single body, like a board of directors, the State business should be handled by a board of directors, a single administrative body.

But the State still remains the great law-making agency of the people. The scope of its endeavor is vastly wider than that of Congress. The problems coming before the National House do not begin to compare in importance with the things of the daily life of mankind, with those that come before every Legislature. There are the laws as to the descent of property, the domestic relations, sales, contracts, negotiable instruments, morals, crimes, — nearly all the laws

that govern us in our daily conduct, laws enacted by the State, and neither by Congress nor by city councils. The consequence is that the most important of all genuine legislation is still in the hands of the General Court. It combines these two functions, — one of passing laws, and the other of administering business, — the spending each year of between $25,000,000 and $35,000,000 of the people's money. And, sir, if I could persuade those who are listening to me of the extreme importance of drawing a clear-cut, sharp line between those two things, I could feel that I had made some headway in suggesting the right solution. It is true that in matters of business we ought to rearrange our system so that they shall not be subject to the delays and to the insufferable expenditure of time and money now imposed by the bicameral system. It is equally true, in my judgment, that we ought not to expose those laws that so intimately and closely determine and affect our daily lives, to the hasty, impetuous, passionate action of a single body.

Now, if this be correct, then our line of remedy is palpable. We should relieve the two Houses from considering that great bulk of the work which was unknown to our fathers. They did not have from $25,000,000 to $35,000,000 a year to spend. Taxes were insignificant, the business of the State was unimportant. Until within a generation this Legislature, like all other Legislatures, concerned itself almost exclusively, or at least preponderatingly, with questions of law. But now we find added to that this enormous mass of administrative detail, which chokes the channels of legislation, which invites the log-rolling that my Newton friend suggested, which encourages all the evils conspicuous in Legislatures, and which ought to be handled in some other way.

For these reasons I submit that my friend from Newton (Mr. Anderson) is in error in assuming that the members of the committee on The General Court had not given these things study and reflection and were not prepared to discuss a remedy.

Mr. Anderson of Newton: May I ask the gentleman just what the remedy is that he proposes?

Mr. Luce: Although I perhaps more usefully might have delayed the statement, yet the question deserves a fair answer. I came to this Convention with the conviction that the administrative detail of government ought to be taken away from the Legislature, as a matter of relief for the Legislature and a betterment to general legislation. My first idea was that this detail, the rules and regulations, the minutiæ of government, might be wisely entrusted to the Senate, which should sit continuously throughout the year, like a board of directors of any of our great corporations. But after discussing the matter with other gentlemen it seemed that the proposal was so novel, it seemed so doubtful if a patient hearing for it could be secured, it seemed such a departure from all governmental tradition, that my own conclusion was, — and it was the conclusion of other gentlemen, too, — that we would better attempt to accomplish the same thing in another way. We began looking around to find out what agency of government was available to handle the minutiæ, to handle the special legislation, the private legislation, and particularly that which concerns our cities and towns, now imposing upon our city and town

officials so much onerous labor because they must resort to so awkward and difficult a means of relief, and we discovered such an agency in the Governor's Council.

I realize that the moment I make the suggestion I am met by the expectation on the part of many of the Convention that the Governor's Council, which has been so much abused and criticized, may be abolished. But from what I have learned in discussion it is to my mind extremely doubtful if, in case this Convention recommends the abolition of the Governor's Council, it would meet the approval of the people so long as we have a judiciary appointed during good behavior; for it is extremely doubtful if the people ever will be willing to entrust to one man, unadvised and unrestricted by others, the naming of the Justices of the Supreme Judicial Court of this Commonwealth. It has been suggested, to be sure, that confirmation might be turned over to the Senate, but that would be jumping out of the frying-pan into the fire. And so, in the belief that the Governor's Council will be retained, it occurred to some of us that it would be possible by its use to adapt to American conditions the remedy that has been found so efficacious in the best administered country in the world, — Great Britain.

I am not sure that the committees now considering the matter will give this proposal their approval. I very much hope that they will, or, if not, that they will suggest some other remedy. But it is likely that there will be urged upon the Convention in some form or another this proposition: That some small body of men, either the Governor's Council, or a continuous Senate, or a body created for the purpose, shall be allowed to take away from the Legislature the minutiæ of its work, the part relating to the administrative details of government, which does not involve any question of principle, always reserving to the Legislature the power to annul if it sees fit.

Mr. Anderson of Newton: I should like to ask the gentleman from Waltham whether that is the only remedy that is to be proposed; whether he thinks that that remedy is sufficient to strengthen the Legislature in such a way as the people of the State desire.

Mr. Luce: Nothing but experience can tell. I may say to him, sir, that in expressing the belief that it may prove the effective remedy I am but following the same line that has been followed in many another Constitutional Convention in this country; for through a period of about 75 years, the wisest men of all our States, in their Constitutional Conventions, appear to have agreed that the root of the evil is special legislation, local legislation, private legislation; and so, in one form or another, nearly all the States have sought a remedy in the way of somehow handling this most difficult problem. Most of the States have seen fit to try to meet the situation by prohibiting special legislation, and you may find the Constitutions full of restrictions to that end.

Specific prohibitions have failed everywhere to cure the evil, and they have failed chiefly because they have ignored what was a fundamental purpose of our General Court and of every other Legislature. It was not alone to pass laws but also it was to redress grievances. General laws work gross injustice. There must be exceptions to all general laws, and men always have recognized the propriety of making exceptions. So we allow our citizens to come here with their griev-

ances, and sad will be the day when the doors of the General Court of Massachusetts are closed to men who have ground for complaint, who beg for relief, who ask not alone the justice of the Commonwealth, but also its clemency and its mercy.

For other reasons, too, the specific prohibition of special legislation has not brought the cure desired. Your city or my city may be wholly justified when it comes up here and asks that, by reason of purely local conditions, it may be exempt from the operation of general laws; when it asks to go beyond the debt limit, when it wants to modify its charter in some respect. So we have recognized that our comfort, our happiness and our prosperity are involved in the power of the general government to make exceptions. Because of this no man here has urged seriously that we attempt by specific prohibition of ten, fifteen or twenty classes of legislation to meet the evil.

Let some gentleman suggest to me, if he can, any better way of solving the problem than by relieving the Legislature. I would again emphasize, — not by punishment, but by relief. There is no occasion for punishment. You and I, sir, and many of the members of this Convention, have shared in the responsibility for the work of the Legislature, for its reputation, for its character. And shall we admit that we deserve the epithets so rashly applied to us? No; and yet in candor we must admit that we did not accomplish all that we wanted to accomplish. Why did we fall short of our aims? Why was there ground for the Progressive movement of 1912?

We have been told, sir, by many a critic that in this State there is too much legislation. I would tell you that the people of this country said in 1912 there is too little legislation. They pointed out in a program that received the approval of millions of our fellow-citizens, more than fifty specific lines of action where they wanted advance. When you study the history of our own Legislature you will find that again and again and again it has been dilatory. In the end it has done the right thing. Go read what Francis C. Lowell wrote after he had served in this chamber and how it was that the Torrens system was so long in being accepted in this State, — a reform that we all now recognize was most eminently desirable. It was not because the Legislature of his day objected to that reform; it was because the committee on the Judiciary never could find the time to attend to it.

So, during my own years in the Legislature, I watched the Workmen's Compensation Act in its slow and tedious course. I remember, sir, one day meeting after the session the gentleman from Northampton who is now about to receive nomination to the highest office in the Commonwealth. He was downcast, his face was long, and I said to him: "Calvin, what are you so sober about?" And he told me it was because, once again, the Workmen's Compensation Act, in spite of his advice, had been defeated. Six times, year after year, I myself stood on this floor and urged the House to pass the direct inheritance tax, and six times I was knocked down; in the seventh year that measure became law without a vote against it, and there is not a man here now who is not glad it is law.

It is the story of Massachusetts legislation. Things recognized by the Legislature as eminently desirable, or even of extreme importance, are postponed year after year because there is not time to handle

them; and that is why for fifteen or twenty years after the world had learned that the cost of the disasters of industry ought to be borne by the consumer and not by the miserable victim of accident, we delayed giving that problem its solution, simply because we did not have time to handle the big questions. We used up the precious minutes in handling little things; in deciding that the assistant driver of the patrol wagon in Worcester should be reinstated in his position, in deciding that the city solicitor of Northampton or Newburyport should be elected by the city council or should be appointed by the mayor, instead of being chosen by the people. We frittered away hours over things that were unimportant, that could have been decided as well by ten men or one man. Why, sir, almost every month in my life, in my own business, I decide questions that would take the time of our Legislature one, two, three hours, or a whole day, — for a legislative body likes nothing more than to amuse itself with a problem that every man of business would answer off-hand.

That is the reason why the Legislature does not respond to the desires of the people. It is because it lacks the sense of proportion. It is because it emphasizes the little things and does not find any time left for the big things.

So, if you would have your remedy, simply face the fact that these public interests of ours, once confined to matters of law, have come to include manifold affairs of business; that we now conduct great enterprises, and that they ought to be conducted by precisely the methods which all private enterprises have found salutary and beneficent. That is the direction to which the Convention may turn for relief, and not to devices that have been tried through centuries of the experience of mankind and in many instances have brought calamity and disaster.

Mr. Morrill of Haverhill: I will accept the challenge with which the member (Mr. Luce) closed his remarks. He quoted the experience of the Florentine republics with the one-chamber system of government, and cited that as a reason for their decline. I do not agree that that was the reason for their decline. A study of history discloses that empires have come and gone and governments of various kinds have come and gone. The concentration of wealth in the hands of the very few in Babylon and other empires of the past, Greece and Rome included, is said to have put them on the toboggan-slide toward oblivion, and finally there came a renaissance.

But what about the Roman Senate? That was part of a bicameral system of government, in the days of the Roman Empire, preceding the Florentine republics to which he referred. Did that bicameral system save Rome from ruin? Did not the Roman Senate become so notorious that it is referred to even to-day as one of the worst examples in history of a branch of government becoming corrupt and unsavory in every way? In the days of the decline of the Empire were not Roman senatorships bought and sold as we of to-day buy junk or baubles, — or perhaps so-called honors, like membership in the Massachusetts Senate? Does it not look as if the tendency is somewhat along that line in regard to our own United States Senate? Is it not true that we hear of "sugar Senators," also "railroad Senators," "mining Senators," and the other Senators, and their possession of their seats through the ability to spend large sums of money

for campaign and other purposes? Why do we not take warning from the lessons of history?

I admit that after listening to the presentation of the one-chamber system and the two-chamber system by my opponent and myself you cannot off-hand decide as to which was responsible either for the prosperity or decline of government in the past, but what I want you to concentrate your attention upon is that we are in America and that we are dealing with our own Senate problem, and that is something with which you are more familiar. He says that some American States have tried the one-branch system and then returned to the two-branch system of government, and he claims that therefore we should not adopt the one-branch system in this State.

I have not examined into the reasons why the one-branch system was eliminated in those States which have eliminated it; but I would call your attention to the fact that in these days of great wealth, of great public expenditures for various enterprises, in these days of enterprises being carried on upon a large scale, the American cities are rushing pell-mell into the one-branch system. Must there not be a reason for it? Must it not be working well? If not, why do cities adopt the one-branch system after they have seen it work in cities near by, cities that are rivals, socially and industrially, in which the defects of the system would be magnified if possible and the virtues minimized?

He refers to the great increase in appropriations which the Legislature now acts upon. Has not that been true of all American cities? Are we not a rapidly growing Nation? Yet cities of greater population and wealth than some of our States are adopting the one-branch system; either that or they already have adopted it.

The Massachusetts Senate is what we are dealing with specifically and we know what the experience has been here, and we know the problem that is facing us. I believe we should abolish the Massachusetts Senate. Why was the Senate, as a theory of government, first instituted in this country? Alexander Hamilton led the forces which advocated an upper legislative branch, and Hamilton's plan was that Senators should be chosen by a select few to hold office for the remainder of their lives. A great many other things which Alexander Hamilton advocated in direct opposition to democracy, — which we now are fighting to extend and preserve, — might be cited. I take it for granted, however, that the majority of the members of this Convention graduated from college, and, having had experience in the professions and the greater activities of life, are familiar with the Hamiltonian idea as opposed to the Jeffersonian, and that therefore it would be a waste of time to go into details, — even if it were not presumptuous on my part. I am trying not to consume time, but to make my remarks as pointed and as specific as I can.

As I said before, it is the Massachusetts Senate with which we are dealing now; and while there have been a few instances in which that branch has done something good after the House has refused to do it, the evidence all tends toward showing that public sentiment would have been able to force those acts from a Legislature of a single branch, with a fixed responsibility.

Mr. Washburn of Middleborough: I should like to ask the gentleman from Haverhill if it is not true that the upper chambers which have

been abolished have been for the most part either hereditary or appointive and not elective.

Mr. Morrill: In some instances they were hereditary or appointive, but the Roman Senate was neither, and a great many other cases might be cited.

Mr. Washburn: Can the gentleman cite any modern State, having an elective upper branch, which has abolished that branch?

Mr. Morrill: While I was born in Haverhill, I regard the Canadian provinces as up-to-date States or provinces. They have done away with the bicameral system of government, — all except two of them.

Mr. Washburn: Is it not true that the Dominion upper branch is appointive?

Mr. Morrill: Yes, the upper branch of the Dominion Parliament. The same was true in the early history of many of the British provinces in various countries. The Governor of Massachusetts at one time was appointed by the King. But we gradually have been getting away from these appointed and these exclusive bodies and individuals, and extending the power of the people constantly; so why should we stop now, in these days when we are drafting the flower of American manhood to go across the seas with the battle-cry of democracy? Why should we not live up to what is being professed? Why not make a reality out of what we utter by word of mouth?

A great many labor bills which failed to become law because they were defeated in the Massachusetts Senate could be cited, — the eight-hour, three-shift system for tour workers in paper mills, in place of the present eleven-hour and thirteen-hour system. Just think of it! Is not that slavery? Eleven and thirteen hours per day and night, alternating each week, with the individual employed. That is in existence to-day in Massachusetts. And the bill to establish that three-shift eight-hour system, — on which I have had the honor among other bills to overturn the committee's adverse reports, and, with the aid of others, succeeded in putting through the House, — has been defeated year after year in the Massachusetts Senate. I should like to have the delegates to this Convention take that into consideration, because the man who works for a living is numbered among the majority of the population of this country, and you are saying constantly that the majority should rule. Then why keep these impediments to majority rule and permit the majority to secure the enactment of measures from time to time as those who compose it desire, especially when a referendum, as has been proved in the past, shows that the public does demand such legislation? I will not take time, however, to enumerate a long list of such measures, because I believe an assertion of the fact carries with it conviction to those who have kept abreast of the times.

Mr. Hart of Cambridge: The gentleman from Haverhill (Mr. Morrill) well may live to see the day when the Legislature of Massachusetts will consist of one House. It is not likely, however, to be within a day measured by the discussions of this Convention. Upon the face of it a single body always is better than two bodies. The proposition needs only to be stated to be accepted. Is there any member of this Convention present who is connected with or does business with any corporation, bank, steamship company, mine, industrial corporation,

commercial corporation, in which decisions are made finally by two different bodies, discussing bodies, each of which has a veto upon the other? We all know that you get efficiency in commercial life through concentration of authority in few hands, who can be held responsible. That is an axiom of business; it also is an axiom of politics.

Nevertheless, in our discussions here we must measure every proposition that comes before us by three calipers. The first question is: Is a proposition upon its face likely to be serviceable? Second, will it work, will it adjust itself to other parts of the system? Third, — and in many ways the vital question, — will it be accepted by the voters of the Commonwealth if submitted to them?

I presume in this Convention the question already is concluded through the fact that a large majority of the members of this Convention are not in favor at this time, nor so far as they see at any time, of concentrating the Legislature of the Commonwealth into one House. Therefore I shall not argue that question. What I have to say is suggested rather by the remarks of the gentleman from Waltham (Mr. Luce), who surely never has appeared to better advantage in this Convention than in the remarks to which we have just listened, — so lucid, so profound, and so inspired by a genuine feeling that something different ought to be done to make the Commonwealth of Massachusetts efficient. I go side by side, I go elbow to elbow, with any member of this Convention, and any citizen of Massachusetts, whose aim is to make the government of our beloved State more efficient, to secure more attention to it, to secure a better type of official throughout the Commonwealth, to secure better legislation and better administration. What the gentleman from Waltham has suggested is in line, is intended, is likely, and is calculated, to improve the government of Massachusetts. We shall bring up this whole question again when we come to the organization of the executive.

The Convention has made up its mind speedily that, for whatever reason, it is not worth while to try experiments with the Legislature. It is not precisely borne in upon the members of this Convention, as has been suggested recently on this floor, that the only objection to Legislatures, including the Legislature of Massachusetts, is that of muck-rakers. I find all the authorities are satisfied that in general the Legislatures, not simply government as a whole, but the Legislatures of the States of the Union, are defective. I hold in my hand the volume of my colleague, Professor Arthur N. Holcombe, upon "State Government." It is evident that the gentleman from Waltham (Mr. Luce) is familiar with it, because he has quoted it several times with approval, and I am sure he will agree fully with this passage, in which is summarized an opinion as to what ought to be the aim of State legislation:

> No scheme for the restoration of legislative prestige is worth much which does not recognize that the greatest accomplice of legislative corruption is legislative inefficiency. Much of the work now attempted by the State Legislatures is work for which large representative bodies are not fitted. No inconsiderable portion of the output of legislation, so called, consists of measures of an administrative or quasi-judicial character. Practically all private and local legislation is of this character.

We all know the gentleman from Waltham (Mr. Luce) is specially interested in that question of private and local legislation, and that he has brought before the Convention a well-thought project by which that difficulty may be somewhat palliated, at least.

The one thing that I desire to say is that we need efficiency throughout government, and that the time to face it is now. This debate has turned from the mere question of the form of the Legislature into the issue of the form of State government. We are approaching now the great question of the reform of the executive, upon which I hope to deliver myself more at length when the proper time shall come. What I want to say here is simply that the question of a two-House legislature is not a foregone conclusion. It is a great mistake to suppose that in the history of the world or of this country Legislatures of our present type have been habitual. In the Colonies there was a two-House Legislature, the upper House, however, being also the Governor's Council. If we go back to the records of the Revolution we shall find that in the establishment of a two-House Legislature in the States the main reason undoubtedly was that the upper House should be provided in order to represent property and the men of property, and to this day there are some curious adhesions of practices growing out of the attempt to apply that principle.

Here in Massachusetts, as you all are aware, the districts were so arranged as to give greater weight in the Senate to the richer districts of the State. In the course of time that distinction has passed away, except that in some States of the Union counties have representation in the Senate. For instance, in New York matters are so arranged that the city of New York never shall have more Senators than all the rest of the State outside the city of New York, no matter what its population. In general, however, the State Senate is arranged on exactly the same proportional basis as the membership of the lower House. Practically, in most States, we have supposedly equal senatorial districts, each choosing one Senator, or possibly two. We have also what is practically a subdivision of that division into legislative districts. The members of the two Houses are very much of the same kind, the Senators themselves being graduates of the lower House. The two groups do not represent different constituencies, though the original reason, viz., that one House ought to represent population and the other property, long since has disappeared.

The second reason why we have proceeded so long under a double chamber system is the example of the United States of America. But, as everybody knows, the two-House arrangement apparently was not designed when the Convention came together in 1787. It was forced upon that Convention in order to provide a proper representation for the States, and without that representation the small States never would have come into the Union. Throughout the Union the States have imitated this two-House Legislature exactly as they have imitated the Capitol of the United States by making the numerous domed capitols in nearly all the States.

Another reason which undoubtedly has large effect upon the minds of most people is the idea that the two Houses will give more attention to a measure than one House. But, as Professor Holcombe points out in his book, two incomplete decisions may be very much worse than one decision where more time and attention have been given to it. It is a very curious thing that our great institutions of learning are governed in general, like our business corporations, by a single body. A remarkable exception is the government of Harvard University. I think the gentleman who occupies the chair (Mr. Adams

of Concord) would not disagree with me as to which of the two Houses, the Corporation and the Overseers, is the real going concern, the real guide, the real power behind the government or in the government of the University of Harvard.

Let me come back, then, to this one point: Historically we are not in the least precluded from having a single House. There is no more reason *per se* for having two Houses in the State Legislature than having two Houses in the city legislature. When Boston was created a city, the first in Massachusetts, it had two Houses, — the lower representing the old town-meeting, the upper representing the selectmen, who had been representatives of the town government from time immemorial. It was continued for no better reason. If our cities are more effective because they are concentrating their power in one body, there is no reason in the nature of things why our Legislature might not be more effective.

I hope, in the days to come, twenty, forty or fifty years hence, when another Convention takes up that question, when another Legislature submits an amendment which is adopted for a single House, that it may be imputed to me for righteousness that in 1918 I was one of the few who thought it possible.

Mr. Brown of Brockton: As to which side of this question I am on you may decide when I have finished, but there is a note that has not been struck yet by any of the speakers. Who can study the government of Massachusetts and the government of the United States and not admire the symmetry? Who can study them without first looking at the common foundation and seeing what were the thoughts that animated the fathers? It was Anaxagoras who made the observation that love always makes us better, religion sometimes, and power never. Power was the great giant which our forefathers were dealing with, and they undertook to fetter it by declaring how the power of the people should be delegated and used. Fearful were they even to the limit that they might bestow some power where it ought not to be placed.

The Florentine Republic? Well, what was it except an imitation of what happens when Government is in irresponsible hands? There was a rivalry between two powerful Houses; to-day there is often a rivalry between two powerful money barrels. They harangued on either side in the Florentine Republic and out of their harangues they got what they called government. But the power that sustained either was corrupting and corruptible.

The gentleman from Waltham (Mr. Luce) speaks of Cromwell. Again we come to a man who usurps or seizes the reins of government for the good of the whole, as he says, and he throws the old government out; then he has responsibility for something better upon his shoulders. He had on his head exactly what the men had in Russia when they threw out the government, — the duty of substituting a better government. And you know what Cromwell said after he had a very long thought upon the subject. He said he guessed about the only way to have a good government was to establish a government composed wholly of saints. Well, say now, that is just about the situation. It is only in eternal government, whose wisdom is unquestioned, that there are no mistakes. In justice and mercy ever the right will come uppermost. Forever wrong will be expiated by who-

ever perpetrates it. Cromwell did not get his government of saints. Failing in that he tried to give some better government. With many failures in government before them our forefathers were fearful of bestowing the power of government. We have with us, — I see him before me, — one who once was the gallant leader of the Ancient and Honorable Artillery Company (Mr. Benton of Belmont). Do you recall the fact that when the Ancient and Honorable Artillery Company in this Colony came up and wanted a charter they were turned down precipitately even though they were the very best of men? Do you remember the reason that was given? The fathers said that they could not in any way establish a Prætorian Guard. Now just think of it one moment. They thought if they set up the Ancient and Honorable Artillery Company they were going to have a Prætorian Guard that would stand on the walls and cry: "How much for the office?" But do we need now to think of the possibility of a Prætorian Guard? Why, it has been here; it is here. In Massachusetts you have seen it and I have seen it, — the governorship of Massachusetts auctioned off, if you please, although there were no other bidders, so far as I know. I speak not to cast any reflection, — for I speak of a friend! I speak to ask who makes your Governor sometimes. What wonder, I say, when you establish a system whereby men go up and down in some of these congressional districts and sometimes in this Commonwealth to hire anybody they can hire to work for them! What are you going to get out of a system of that kind? Is it possible to have a Constitutional Convention that can establish some frame of government that will change that? How and why are such developments possible? The people have degenerated politically, as the forefathers feared. Read all of the fourth of March addresses by all of the men of that time on the Boston Massacre. Hear them contemplating the coming of Independence; hear them after the government was established, and one keynote runs through the whole: "Banish luxury, banish corruption; by that sin has fallen the best of governments." And that is true.

Now if you can discover where you can place power so that it will not be abused, you have solved the problem. The gentleman from Waltham says that human nature has not changed. That is true. Note this fact, — and I am speaking from an observation that comes from being a newspaper man since I was nineteen, at which time I was reporting here in the Senate and House of Representatives. I have known the generations that were passing then, the one that has come and that is passing, and the one that is coming. And I have found out this: That the best way to develop a low streak in a man is to give him a little bit of power, and then you have got that low streak in all its intensity. Quite often you think a fellow is a pretty good sort of fellow, and he is on the outside, much as was said of certain people in the Scriptures, — "Whited sepulchres, fair without but within full of dead men's bones" With that kind of man all you need to do is to give him any office, legislative, judicial or executive, and you will have stories such as have been given out here. Give such a man even the honorable office of Governor, there will come times when he will not know whether he is Philip drunk or Philip sober. You are not going to correct that by delegating more or less power. You are going to correct these conditions only by educating

people to pay more attention to the men whom they select for officials. It was Solon who, when he gave out his wise laws and somebody asked: "Are those the best laws you are capable of giving out?" replied: "No, but they are the best that the people are capable of receiving." And so therefore why do you mourn as you sit here that sometimes you have in your legislative or executive chambers men for whom you blush and thank God that everybody does not know as much about them as you know? Why, do I say, do you mourn? Because the source of the whole of it is in private virtue. Your public virtue forever and forever will keep step with private virtue and your private virtue with your public virtue. What is the common opinion of the people to-day of men who hold office? First, that if they get there they have a chance for graft, to rake off something. That they feel sure of, one thing beyond a doubt, and perhaps they were educated to it, as the gentleman from Waltham says, by the exposures and by seeing men who entered office with nothing coming out with something. So therefore they feel that men can have the opportunity. What, then, is finally their conclusion? That if the man takes it he is a knave; if he does not take it he is a fool; that he is either one or the other; therefore they get down to the idea that about everybody who is in politics is either a fool or a knave! Remember, some members have not put them on a much higher pedestal in addresses to this Convention.

The foundation of all good government, to my mind, is right in the people. So long as you have them practice as they are practicing, practicing through their self-constituted political machines, we shall have just what we have got. What is the first question the machine will ask about a candidate for high office? "Has he got any money?" And if he has not, he goes into the discard; they go hunting for somebody who has got money. It is not for men who are educated, for men who understand the science of government, who are worthy; as a rule, men who are the most worthy are not themselves seeking office. It is men who have accumulated wealth; they want to purchase the office; to wear it much as you wear a watch charm on your watch chain, something to hand down to their grandchildren, — for instance, that their grandfather had been Governor of the Commonwealth of Massachusetts. Your government and your men who are elected are an expression of the condition of the people. So long as the people are content to allow wealth to be distributed in such a way that it accumulates in the hands of the few, just so long those few who have not anything to do except to run for office will pay the bills and, having paid the bills, they will think they have bought the office and that they own it.

On the question of one or two chambers, I think the gentleman from Cambridge (Mr. Hart) has misunderstood my position. I have been pointing out all along that the danger in any government is that the power that is delegated by the people shall be used against the people rather than for them. Often the Senate is linked up with the Governor. Senators are told that the Governor wants a bill killed; he does not want it to come up to him because it will embarrass him; and the Senators do not dare to say anything except to do what the Governor says, for fear when they go down to their district they will "get the hook." The gentleman from Waltham (Mr. Luce) has a

remedy. I am not without one. I believe that this whole State should be divided into electoral districts small enough to have democratic principles and intimate knowledge of officials flow from the center to the outside. The electoral districts should not be much larger than our precincts. In those districts should be places such as school-houses where the people could be educated on government. In those districts nominate electors; make the electors the most worthy men in the Commonwealth; give to them the duty of nominating all officers. It would be their duty to look up the qualifications, even down to the school records of the men who were willing to serve as officials. The electors would examine all who desired. Then the electors would recommend all of the best. Their reputation as electors should depend on their ability to find the best men or the best man. That is the principle of the National Electoral College. It never was understood that the President and Vice-President should be nominated and elected by political machines as they are. A beautiful thing, the Electoral College, — the thought that representatives of the people, with no private interest, should gather in a college and consider all the men who were proper for President, and then after they had got through voting, out of the three highest, if they could not agree, the Senate and the House should choose our President and Vice-President. Some such system, coupled with a system of educating and assimilating the people who are coming into this country, might be applied in selecting State officers. I want to speak plainly: I believe the time has come when even the church should awaken more interest in the broad principles of civic virtue, — in other words, good religious education applied to government.

Mr. Hart: I should like to ask the gentleman whether he stands prepared to submit an amendment for the consideration of this Convention to make all voters of Massachusetts virtuous and intelligent.

Mr. Brown: Unless you have a system of government that does make your voters virtuous and intelligent, you have failed utterly in that which the forefathers thought that they had accomplished. When they gave out the great corner-stone that all men are created free and equal, that they are given different talents, that each in his place is entitled to all the proceeds of his toil and no one should take anything from him without giving him an adequate equivalent, that was a system that would have produced virtuous and intelligent people. It was Jefferson who said that in a well-ordered Republic no man should be unduly rich and no man should be unduly poor, and that is true. No man is unduly rich in this Republic or in this State unless he or his ancestors held a privilege. He is rich more often by privilege than he is by virtue. I am living under this government and I shall support it, State or National, but I will be willing to pray all the time for something better and I am not assuming any virtue, — I have worked for years with the idea that government could be restored to the ideals of the forefathers.

The best effort I have known in that direction was the ideal in the old People's Party, — the Populist Party. How one could love that party! No city ever gave them any large stipend for gathering their Convention in their midst, because when they gathered the bar-rooms were empty. If the delegates had any spare time they prayed, and they prayed honestly and earnestly that God would guide them,

that they might save the Republic from the dangers they prophesied, the dangers that are now upon it and which they clearly could foresee. So I have answered the gentleman's question, I think, that we ought to be able to take some steps toward making the people more virtuous, and we would take those steps if we could prevent in some way wealth being distributed so that those who do not earn it take from labor the bread which labor has earned.

It is a great problem, but the answer is coming. It is coming out of this great upheaval across the water. We are drawn into it because we have got to do part of the uplifting. Out of that there are coming conditions that will create what the gentleman from Cambridge speaks about, — a virtuous, self-respecting, God-fearing, man-loving people.

I think I have finished, and whether or not I have determined which side I am on I do not know. But I will tell you this, that before I tear down a superstructure so well built as the one we now have, I shall hesitate. Remember how many years it took Montesquieu, — how many years he studied governments that had come and gone before he evolved the idea of checks and balances. Our forefathers built this truly representative government as the result of a study of the history of all governments. Come, look at it just for a moment. They recognized every man as free, entitled to all civil and religious liberty that did not infringe upon the liberty of others. To the end that he may not be the sole judge as to whether or not his liberty infringed upon others, it is left to disinterested judges to decide differences. Their little towns incarnated true democracy. The town, the city, the State and the Nation. These are the courses of the building. The strict constructionists who wanted to live right up to the letter of the Constitution were in the minority and those who found incidental power traveled away with the government. A system of towns, cities and State government, the one balancing the other, is drifting into a strong centralized government. It was not what was contemplated by the fathers. It is a sweeping away of the anchors that they had thrown to windward to perpetuate an American Republic. But I believe the Republic is under the guidance of the One that was invoked when it was founded, and that in some way the Ship of State will sail through. Until you clear the source it is no use for you to expect anything better than the source to come out of the fountain. The stream is muddy. It is muddy because of years of easy-getting wealth, the evils of wealth corruption, the distaste of men for work, the absence of frugality, the disappearance of our farms and our farmers and the kind of men who were born upon them. But we have done something, Mr. Delegate from Cambridge, this Convention has done something, you have done much yourself, in providing for an appeal to the one original source of power, — the people. We have given the people a chance to take a hand at the job.

Mr. CHANDLER of Somerville: I have listened with a great deal of interest this morning to these silvery-tongued orators, but we are here for some other purpose. I therefore move the previous question.

Mr. SAWYER of Ware: I want to offer very briefly two or three reasons why I support this proposition. I believe the gentleman from Cambridge (Mr. Hart) was right when he said that some time we

shall abolish the Senate in the Commonwealth of Massachusetts, and then it will be imputed for righteousness to those in this Convention who believed in the abolition at this time. Inasmuch as this thing has been championed by a Socialist and a Progressive, I desired that a member of my own party also should here champion the abolition of the Senate, and I do this particularly because the party to which I belong suffers from the existence of the Senate.

The first reason why the Senate ought to be abolished is that it is not representative. We (the Democratic Party) some years elect a Governor; many years we cast a majority of the votes of the State, but never do we get more than six or seven Senators. According to the rules of the Senate, seldom does a minority party have Senators enough to secure a roll-call. We may go before the people with things in our platform, fundamental things of government to which our party adhered and for which a majority of the House of Representatives vote, and yet we do not have enough representation in the upper branch to have a roll-call. Therefore because the Senate is not representative I believe it should be abolished.

Secondly, the Senate by its authority also divides responsibility. By jockeying matters between the two branches it is possible for Representatives and Senators equally to escape responsibility for the enactment of legislation or the killing of legislation in a way detrimental to the people's interests.

Thirdly, we are seeing that the bicameral system does not work in cities. The old boards of aldermen and common councils are being abolished. If it does not work in the cities, — and we are finding it does not, — why then should we believe that there is anything sacred in maintaining the same system in the State Legislature?

Fourthly, the General Court is an organization, in many ways a great corporation, dealing, and more each year, with economic matters, and hence more and more a corporation. We cannot believe that the efficient management of a great railroad or other corporation could be carried on with a bicameral board of directors, if it were conducted in the same way that the General Court is organized; and the analogy is sufficiently strong that we ought to abolish the upper branch.

It has been said here that we have the bicameral system upon us because of the conclusions of great students of systems of legislation; that having looked over the various possible legislative systems it was felt by those competent to judge that the bicameral system was the best at that period. This, I believe, is not true. It is simply a heritage of the past, and in taking it we have followed the line of least resistance. The barons, the great property owners in the past, were men who first got power to force from the Crown certain rights for themselves; and the granting of the lower body, the House of the people, came only later, and that first body always has been jealous of its power of veto on what the House of the people could do. This whole question was threshed out in the French Revolution and following it. The radicals of that time wanted a single chamber and the conservatives a bicameral system. We are continuing a great historical fight, and while we have not the votes to carry it in this Convention, let us stand up and be counted.

Mr. PILLSBURY of Wellesley: Except for a single reason I should

not feel justified in prolonging this debate for one minute. If posterity ever looks into the history or the debates of this Convention it may appear singular that out of the large number of members here who have served in the Senate, including two or three unfortunate men upon whom is the ineffaceable stigma of having presided over that body, not a word has proceeded in its defence. I presume the others have remained silent, as I might well have done, for the reason that there is no sufficient occasion to say anything. But I must say, Mr. President, as a general proposition, that I think it contributes somewhat to the value of a debate to have it participated in, at least, by those whose knowledge of the subject is not somewhat less than nothing. For example, I should regard it as in the highest degree foolish and unjustifiable for me to discuss before this Convention, or anywhere else, the question why our friends of the Baptist denomination consider total immersion as essential to a proper scheme of salvation [laughter], as that is a question about which I have no special or peculiar knowledge and therefore could not contribute anything worth saying or hearing. [Laughter.]

My friend from Haverhill proposes to abolish the Senate. He has served in the House, he says, nine years, and, entertaining the opinion which he has expressed of the Senate, I may fairly presume that he would scornfully refuse an election to that body. [Laughter.] But if he had served there nine terms as he has in the House, or even one, probably he would not have proposed this resolution, for then he would have seen the other side of the shield and would be in a position to appreciate to some extent the reason why it ought to be rejected.

The general reasons which put the Senate into our Constitution are so well understood that I will not say a word about them except that they exist to-day in the same force, indeed in greater force, than they had when the Constitution was made. And let me call the attention of the Convention to one single fact. If you question the personnel of the Senate, or the character of that body, every well-informed man in Massachusetts knows that the Senate is constituted, from year to year, and always has been since my time, of the ablest and safest men who have appeared in the House in the few preceding years. In other words, the Senate, as a whole, is the picked flower of the House, the most experienced men and, as a rule, the best.

Mr. Anderson of Newton: I hope that my knowledge of the subject under debate is not so absolutely less than nothing as the gentleman from Wellesley's knowledge of the Baptist denomination. The Baptist denomination does not believe that immersion is necessary to salvation. The Baptist denomination believes that no rite or ceremony but only the correct attitude of the heart is necessary to salvation. In reference to my right to speak here with reference to the Constitution and matters of Government, I will say that I used to teach constitutional law in the University of Chicago. [Laughter.]

The resolution was rejected.

XXVIII.

ADJOURNMENTS OF THE GENERAL COURT.

Mr. Robert Luce of Waltham presented the following resolution (No. 83):

Resolved, That it is expedient to amend the Constitution of the Commonwealth by the adoption of the following

ARTICLE OF AMENDMENT.

The General Court, with the concurrence of both branches, may within thirty days of their assembling, adjourn themselves for not more than thirty days.

The committee on The General Court reported the following new draft July 16, 1917 (No. 312):

Resolved, That it is expedient to amend the Constitution of the Commonwealth by the adoption of the following

ARTICLE OF AMENDMENT.

The General Court, with the concurrence of both branches, may, in the course of and wholly within the sixty days after their first assembling, take a recess or recesses amounting to not more than thirty days.

The new draft was considered by the Convention Friday, June 28, 1918, and was ordered to a third reading the same day.

The resolution was read a third time Thursday, August 1, and was passed to be engrossed in the following form (No. 394):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court, by concurrent vote of the two Houses, may take a recess or recesses amounting to not more than thirty days; but no such recess shall extend beyond the sixtieth day from the date of their first assembling.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 147,104 to 100,552.

THE DEBATE.

Mr. WILLIAMS of Brookline: I have not read this resolution. Will some of the gentlemen on the committee state what it contemplates?

Mr. SAWYER of Ware: This is a very simple but a very useful resolution. It would enable the General Court to do just what this Convention did, — meet for a short session, then take a recess while its committees were working and come together again, and save time. Those who have stood by that action of the Convention certainly can have no objection to the General Court having the same privilege.

Mr. LUCE of Waltham: The restriction upon the power of the General Court to adjourn is an inheritance from Colonial days, when the Governors were able to prorogue the Court and thus to cause the colonists great inconvenience and often damage. In the Declaration of Independence one of the grievances set forth by the colonists was the

power of the Crown thus to interfere with the orderly conduct of business. So when our Constitutions were framed our forefathers, with this grievance fresh in mind, put in provisions meant to prevent the executive from getting rid of a hostile Legislature, or to prevent the Legislature itself, quarreling with the executive, from using adjournments as a device to worry him. The reason for these clauses long since has passed away. Not in our generation has there been any occasion for the use of this provision which prevents the General Court from adapting its sessions to the needs of the time. It occurred to somebody in California a few years ago that it might be a convenience and facilitate the work of the Legislature if, after coming together for organization, it could take an adjournment, during which time the matters that had been laid before the Legislature could be studied either by committees or by individuals; and so California put into its Constitution this, which is known as the split-session idea. Commending itself to us when our Convention opened we decided to experiment with the same thing; and you will recall that last summer three weeks, if I recollect right, were given to the committees to perform their work, that they might do it without the interference of the sessions of the Convention itself. I have heard no word of criticism of our experiment, but, on the contrary, it seems to have given general satisfaction. Having tried it, as the gentleman from Ware (Mr. Sawyer) has said, with success, it would seem not unreasonable to give the Legislature the same opportunity, which it may use if it sees fit. It is but a permissive amendment, empowering the Legislature to do just what we did, if it desires.

XXIX.

APPOINTMENT WHILE IN OFFICE.

Mr. Samuel W. George of Haverhill presented the following resolution (No. 55):

Resolved, That no State official holding an elective office, counsellor, or member of the General Court, after qualifying as such shall be eligible for appointment to any other office the salary of which is paid from the treasury of the Commonwealth, during the term for which he was elected.

The committee on State Administration reported that the resolution ought NOT to be adopted.

The resolution was considered by the Convention, Friday, July 12, 1918.

Mr. George moved that the resolution be amended by striking out lines 1 to 5, inclusive, and inserting in place thereof the following:

Resolved, That it is expedient to amend the Constitution by the adoption of the following article of amendment:

No member of the General Court shall, during the term for which he is elected, be eligible to any office under the authority of the Commonwealth, except an office to be filled by vote of the people.

This amendment was rejected, by a vote of 51 to 68.

The resolution (No. 55) also was rejected the same day.

THE DEBATE.

Mr. GEORGE of Haverhill: I move the amendment printed in the calendar.

For the last fifty years we have had a statute in this Commonwealth that provided that no member of the General Court should be eligible for appointment to any position that was created by the General Court of which he was a member, — that is, for the term for which he was elected. I think that law was inviolate for a great many years, but within the last eight or nine years there has been a disposition on the part of the Legislature, whenever they saw an opportunity, to repeal that act. For instance, they would pass a law creating a certain commission, and then they would repeal this statute, so that they could have an understanding with the Governor and the Governor would appoint them to certain places on commissions. In fact in one year there were commissions handed out to three individuals amounting in salary to $12,000, to men who had been useful in getting certain schemes through the Legislature which proved to be very acceptable to the Governor. I know this is a very trivial matter, — probably anything that interferes with the desires of the members of the General Court is very trivial, — but I am one of those who believe that this is a Constitutional Convention and when it finds any particular part of the Constitution ineffective I think that it ought to apply a remedy. This year in the Legislature there was common report that there were a hundred members who shaped their course of action in

the Legislature by reason of the fact that they were candidates for appointment on certain recess committees and certain commissions, and there was an attempt in three instances to repeal this statute, which is a constitutional provision of the United States and of many other States, in order to let a large proportion or a large number of the General Court have an opportunity to get positions worth anywhere from $4,000 to $8,000 a year created by themselves with the approval of the Governor. Now, I want to read how the Constitution of the United States deals with this proposition (Article 1, section 6):

> No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Now our statute to which I referred, which was adopted in the 50's, reads as follows (Rev. Laws, chap. 3, sec. 21):

> No member of the General Court shall, during the term for which he is elected, be eligible to any office under the authority of the Commonwealth created during such term, except an office to be filled by vote of the people.

I think it generally has been considered if a man wants to be a candidate for the General Court or any elective office and the people want to elect him, they ought to have the right to elect him. But if a man goes out and secures an election to the General Court and he uses that position in order to bargain away some action of his or some influence that he may have gained by such election to secure an appointive position, I think it ought to be stopped in the same way that the Constitution of the United States stops it.

I did not intend to discuss this until we reached the other matter dealing with the recess committees, but I think the question ought to be divided, and that the Convention should discuss it at this time, and possibly give it a standing, so that at some other time it may receive intelligent consideration. I believe that we should remove all opportunity of bargaining between the Governor and the Legislature. It was intended that the Legislature should be independent of the Governor; it was intended that the executive should be independent of the Legislature; and for a great many years, up to within the past ten years, it was a rare instance that the Governor ever invaded the Legislature to make an appointment. I know some years ago when one of our most worthy members of the Superior Court was appointed, — now dead, — that while the Governor wanted to appoint him he refused to appoint him as long as he was a member of the General Court; and I know that Governor after Governor has refused to do so. But within a few years there seems to be a breaking down of the rule. I remember one time back in 1894 when it was proposed to put through a bill in the Legislature to permit the Governor to appoint one of his most intimate friends in the Legislature, and he said if that bill came to him he should veto it, — that is, with this repeal of the law in it that I have referred to. As I say, it has not been repealed in many instances until within the last three or four years, and as I said a few moments ago, — and I understand since then that I did not set the estimate high enough, — there were a hundred members of the present General Court whose conduct was so shaped because

they expected that they were going to get a position of some kind as a result of legislation that was pending then in the General Court.

Mr. MAHONEY of Boston: I do not see any necessity for this resolution. Your committee gave a hearing on this matter and the only person who appeared before the committee was the gentleman from Haverhill (Mr. George). This matter is taken care of by chapter 3, section 21, of the Revised Laws, which reads:

> No member of the General Court shall, during the term for which he is elected, be eligible to any office under the authority of the Commonwealth created during such term, except an office to be filled by vote of the people.

In 1894 I was a member of the Legislature with the gentleman from Haverhill and there were two cases of this nature which came up before the House. One was that of a gentleman from Cambridge who was secretary of the Board of Prison Commissioners. He was a member of the House in 1893 and 1894 and each year he resigned for the purpose of taking up his position as secretary of the Prison Commission, and the House accepted his resignation. Another case came up in 1894 in Fall River. A bill came before the Legislature to create a police board or a licensing board there. It caused a great deal of opposition because it was interfering with local self-government, but after a bitter contest the bill passed the House and Senate and became a law. The mayor of Fall River wanted to show his appreciation, no doubt, for some member from Fall River who had done good work on the bill, and he mentioned it to this gentleman, and that same member from Fall River tried to resign for the purpose of taking an appointment on that commission, and the House at that time refused to accept his resignation. I merely cite those two cases to show that this matter is wholly in the hands of the Legislature to govern their members.

There is an opinion given by the late Attorney-General, Mr. Knowlton, on this matter, and I will read it to you, and I think after that there will be no necessity of going further on this measure:

> Pub. Sts., c. 2, § 33, provides: "No member of the Senate or House shall, during the term for which he is elected, be eligible to any office under the authority of the Commonwealth created during such term, except an office to be filled by vote of the people." The obvious purpose of this statute is to remove from a member of the Legislature any temptation to be influenced in his vote by reason of the possibility that he may be a candidate for the place created by the Legislature of which he is a member.
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> As to your further inquiry, whether a Representative can resign his office after the prorogation of the Legislature, so as to become eligible to such an office, the statute provides that he shall be ineligible "during the term for which he is elected." A Representative is elected for the political year beginning the first Monday in January; he is therefore ineligible during the entire year. It is unnecessary to consider whether he can resign without the consent of the body of which he is a member, although the authorities are against such a proposition. (Opinions of the Attorneys-General, Vol. 1, 347.)

And I leave the rest to the Convention.

Mr. GEORGE of Haverhill: I see that the gentleman who has charge of this report (Mr. Mahoney) agrees with me as to the real virtue in this proposition. The only difference is, he believes it should be left to the Legislature whether they shall act at what they consider a convenient time, while I believe that we should do the same as they have

done in Maryland and other States, put it into the Constitution and take it away from the Legislature. If the object was good in 1857 when they passed the law, — and the former Attorney-General says it was perfectly right and the gentleman in charge says it was perfectly right, — let us embalm it by putting it into the Constitution of Massachusetts, and then it will be perfectly secure.

Mr. Clark of Brockton: I am not quite certain whether the majority of the members of this Convention fully comprehend the importance of this matter or not. It has been shown by one of the gentlemen in the fourth division (Mr. Mahoney) that we have a legislative enactment that provides against the appointment of a member of the Legislature to any position which that Legislature creates. But the fact remains that in numerous instances, — and I think those instances have been increasing in frequency in recent years, — if there is some good fellow in the Legislature who is popular and who would like the position, as I myself have seen on several occasions, his friends gather around him, they help to put that measure through, create that position, that commission or that office, whatever it may be, to give that good fellow an office. And then they got around the provision of the law of the legislative enactment by providing in the act creating that office and creating this salary of $5,000 or $6,000 that the provision of this general law shall not apply to this particular act; hence they nullify the law. It has been done repeatedly and it is an evil. It is a corrupting and demoralizing evil, not quite on a par with the recess committees, but along the same line. And I hope that the amendment proposed by the honorable gentleman, the delegate from Haverhill, with whom I am in absolute accord at this time but with whom I do not always agree, will prevail.

Mr. Curtiss of Hingham: This matter came before the committee on State Administration, and the chairman of that committee is absent. The reason the committee made the report that it has made is simply this: We felt that the proposed amendment was not necessary. If any Governor of this Commonwealth wished to make an appointment of a member of the Legislature then sitting, even if this were in the Constitution or there were a law upon the statute-books, it would be a very simple matter for him to accomplish his purpose by merely waiting until the end of the year and then making the appointment. The report for rejection was based simply upon the one fact that no real good could be accomplished by anything of the kind being added to the Constitution.

Mr. George: In view of the action of the committee, based on the fact that this would be of no importance because the Governor might wait until the gentleman's term expired, I want to remind him and the committee of the fact that the terms of the Governor and members of the Legislature expire the same day and he could not make the appointment.

Mr. Curtiss: That is true. In many cases where the Governor goes out of office it would have that effect. But in a great many cases, two out of three usually, the Governor comes back. More than that, there is another reason that influenced some members of the committee, and that was this: That sometimes the very best man to receive appointment for a particular position which has been established is a member of the Legislature who has been in close touch with and con-

sidering the very topic to which the appointment may relate, and by any such action as this we might cut off the appointment of the very best man for the position.

Mr. AYLWARD of Cambridge: I do not often agree with the gentleman from Haverhill (Mr. George), but I think this is one of the fairest propositions that has been put before this Convention. It is so fair that there is a statute now which if properly enforced and never abrogated would do exactly all the time what this amendment proposes to do.

Mr. LUCE of Waltham: May I ask the gentleman from Cambridge if there is not a sharp distinction between the appointment to an office created by the Legislature of which the person appointed was a member, and to one already existing? Does he not realize that this amendment goes very far beyond the present law on the subject?

Mr. AYLWARD: I am aware that it does, and I am willing to have it go that far. I have paid very little heed to the arguments by the gentleman in the second division (Mr. Curtiss of Hingham) that sometimes some expert is in the Legislature who for some reason is eminently desirable to fill a position on one of these commissions. It is much more desirable that the legislators always should have in mind that no act of theirs in any event shall promote them to a commission, and that we will have a situation which will be such that their actions will not be controlled by the inducement that probably in the future they may be able to benefit themselves. I can see no reason why this may not be incorporated into the Constitution and I believe if this Convention votes to submit it to the people it will be carried by a very large majority.

Mr. DELANEY of Holyoke: I should like to ask the gentleman from Haverhill if this amendment would prevent a member of the Legislature from being appointed justice of the peace.

Mr. GEORGE: I think it would, and there would be no objection to his being appointed to such a position as that which has no salary attached to it, and if the gentleman thinks it would make it clearer he can move on the next reading to insert "the salary of which is paid from the treasury of the Commonwealth." But my purpose was to submit practically the same constitutional provision which prevails in the government of the United States, to submit that to the people, and allow the people to vote on that proposition, to remove every possible opportunity of trading and bargaining between the legislative and executive departments of the State.

Mr. BENTON of Belmont: I should like to ask the distinguished member from Haverhill if that would not prevent the Attorney-General from appointing a member of the Legislature as an assistant in his office.

Mr. GEORGE: Of course I understand the situation in the mind of the gentleman from Belmont. If it was my case I would not hesitate to vote for a good principle and a wise provision even though it hit temporarily some member of my family. [Laughter.] Now I am not here to vote for anything to affect my interests or anybody who is akin to me. I am mighty glad that the Attorney-General has appointed the gentleman in mind, because I know him and I know he is a worthy man and an able man. But I do not think I would permit an opportunity for grave wrongs to be indulged in in the future

simply because it might affect some member of the Legislature who wanted a position as assistant to the Attorney-General's office or any other office of the Commonwealth.

Mr. Benton: The reason I asked the member from Haverhill the question was so that there be absolutely no misunderstanding as far as I may be concerned. I am going to vote against this amendment. I wanted it to be perfectly apparent why I did. I do not believe in constantly smearing and slurring the members of the Legislature. I do know that there are some honest men in the present Legislature of this State and there have been a great many in years gone by. The present law is sufficient to cover all cases at the present time. I do not think the amendment is necessary and I think that constant reflection, — and I agree with the distinguished gentleman from Waltham, — the continual slurring of our General Court is something that I do not agree with at all.

Mr. Langelier of Quincy: As a member of the committee on State Administration which reported this resolution, I desire to call the attention of the members of the Convention to one clause in the amendment: [He] shall not "be eligible to *any office* under the authority of the Commonwealth", — any office under the authority of the Commonwealth. That is a very broad provision.

The remarks that have been made regarding the necessity for this measure, the amendment put in by the gentleman from Haverhill, are really an attack upon the sincerity of the members and the honesty of purpose of the members of the Legislature in both branches. As a matter of fact, it is also a slur on the Governors of this State, upon the last seven or eight Governors of this State, because I think in each and every case some of our Governors, — in fact I am quite sure that each one of our Governors within the last seven or eight years, — have seen fit to find it advisable to make appointments to some offices from members of the Legislature because of their especial fitness and because of the fact that those Governors knew those men because of their personal contact with them during their service. Now there is a statute, as I pointed out the other day, which prevents a member of the Legislature being appointed to a commission or any body which he helps to create. With that I am in hearty accord. I also stated the other day that when bills were brought into the Legislature during the period which I served, creating or reorganizing certain commissions, there sometimes would be a clause inserted in such a bill which would eliminate this provision so as to allow a member to be appointed, but in every case that clause was ruled out, the Legislature as a whole not standing for it. So that I believe with the gentleman from my committee who has charge of this matter (Mr. Mahoney) that for the present at least there is law enough, and my main argument is against that one line "to *any* office under the authority of the Commonwealth." Just consider how broad that one clause is.

XXX.

RECESS COMMITTEES.

Mr. Joseph J. Leonard of Boston presented the following resolution (No. 5):

Resolved, That it is expedient to amend the Constitution so as to provide that no person hereafter elected to a legislative department of the government shall receive salary or compensation for service on any recess or *ad interim* committee, commission or other office created in whole or in part by action of the body of which he was chosen a member.

The committee on The General Court reported that the resolution ought NOT to be adopted. It was considered by the Convention Friday, June 28, 1918.

Mr. Leonard of Boston moved that the resolution be amended by substituting the following new draft (No. 389):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

No person hereafter elected to the legislative department of the government shall receive salary or compensation for service on any recess or *ad interim* committee, commission or other office created in whole or in part by action of either branch of such department.

This amendment was adopted, by a call of the yeas and nays, by a vote of 141 to 68, and, accordingly, the new draft was substituted; and it was ordered to a second reading, rejection, as recommended by the committee on The General Court, having been negatived.

The resolution (No. 389) was read a second time Thursday, August 1.

Mr. Joseph J. Leonard of Boston moved that the resolution be amended by striking out lines 3 to 7, inclusive, and inserting in place thereof the following:

No member of the Legislature shall, during the term for which he is elected, receive salary or compensation for service on any recess committee, commission or other office which shall have been created in whole or in part by action of either branch of the department of legislation of which he is a member, except such committee as may be necessary from time to time to consider a general revision of the statutes of the Commonwealth.

This amendment was adopted and the resolution, as amended, was ordered to a third reading Thursday, August 1.

It was read a third time Tuesday, August 13, in the following form (No. 418), as changed by the committee on Form and Phraseology:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

No member of the General Court shall receive any salary or compensation for service in any office or on any commission or recess committee which shall have been created or the emoluments whereof shall have been increased during the term for which he was elected, except such committee as may be necessary from time to time to consider a general revision of the statutes of the Commonwealth.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution (No. 418) be amended by striking out lines 3 to 10, inclusive, and inserting in place thereof the following:

No person elected to the General Court shall, during the term for which he was elected, be appointed to any office created or the emoluments whereof are increased during such term, nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption.

This amendment was adopted, by a vote of 97 to 50.

Mr. Arthur N. Harriman of New Bedford moved that the resolution be amended by striking out lines 3 to 10, inclusive, and inserting in place thereof the following:

No person elected to either branch of the Legislature shall be appointed to any office created during the term for which he is elected. No recess or *ad interim* committee shall be authorized by the General Court or by either branch thereof, except by a two-thirds vote taken by the call of the yeas and nays.

Mr. Clarence W. Hobbs, Jr., of Worcester moved that the amendment moved by Mr. Harriman be amended by inserting before the words "be appointed to any office", the words ", during the term for which he is elected,"; and by striking out the words "the term for which he is elected", and inserting in place thereof the words "such term".

Mr. Ezra W. Clark of Brockton moved that the amendment moved by Mr. Harriman be amended by adding at the end thereof the words ", and in no one year shall a sum exceeding twenty thousand dollars be paid as salaries and expenses of recess committees".

The adoption of the amendment moved by Mr. Pillsbury precluded the putting of the question on these amendments.

The resolution, as amended, was placed in the Orders of the Day, the question being on passing it to be engrossed, in the following form (No. 422):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

No person elected to the General Court shall during the term for which he was elected be appointed to any office created or the emoluments whereof are increased during such term, nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption.

It was considered again Wednesday, August 14.

Mr. Arthur N. Harriman of New Bedford moved that the resolution (No. 422) be amended by striking out lines 3 to 10, inclusive, and inserting in place thereof the following:

No person elected to either branch of the Legislature shall, during the term for which he is elected, be appointed to any office created during such term. No recess or *ad interim* committee shall be authorized by the General Court or by either branch thereof, except by a two-thirds vote taken by the call of the yeas and nays.

This amendment was withdrawn.

Mr. Ezra W. Clark of Brockton moved that the amendment moved by Mr. Harriman be amended by adding at the end thereof the words ", and in no one year shall a sum exceeding twenty thousand dollars be paid as salaries and expenses of recess committees".

The withdrawal of the amendment moved by Mr. Harriman precluded the putting of the question on this amendment.

Mr. Robert P. Clapp of Lexington moved that the resolution (No. 422) be amended by striking out, in lines 6 to 10, inclusive, the words ", nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption", and inserting in place thereof the words: ". No recess or *ad interim* committee shall be authorized by the General Court or by either branch thereof, except by a two-thirds vote taken by call of the yeas and nays".

This amendment was rejected, by a call of the yeas and nays, by a vote of 90 to 101.

Mr. George H. Foss of Springfield moved that the resolution be amended by adding at the end thereof the words ", except that, if His Excellency the Governor, the President of the Senate and the Speaker of the House of Representatives shall deem a proposition to be one of public necessity, there may be appointed one recess committee the members of which shall not be subject to the foregoing restrictions".

This amendment was rejected.

The resolution (No. 422) was passed to be engrossed Thursday, August 15 by a vote of 77 to 57.

The Convention voted, Wednesday, August 21, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 152,800 to 87,009.

THE DEBATE.

Mr. LEONARD of Boston: I desire to move a substitute, which I have offered to the Clerk and which I believe is not objected to.

The substitute resolution makes only a few very slight verbal changes from the resolution which I introduced at the commencement of our deliberations last year, and which the members will find is Convention document No. 5. I call particular attention to the fact that this Convention document No. 5 was introduced very early in the history of the Convention. We have before us as a Convention certain matters to consider concerning the General Court or the legislative department of the State's government. There are two chapters in the Constitution that have to do with the legislative department of the government, and on our docket we have found from time to time very many matters that have to do with the Great and General Court. I make what may seem a very elementary statement to make, because it has seemed to me, and I think possibly to some others of the Convention, that in the last session of the General Court there seemed to be a feeling upon the part of a considerable portion of its membership that any consideration of the functions of that body was something that was not germane to our deliberations. I have no desire at this time or in the consideration of this question to engage in any controversy with the allegations that were made in the last legislative session, with the exhibitions of sarcasm, of disparagement and of alleged humor that at times were shown regarding this Convention.

Those statements in the Legislature have received all the importance that they merited; in other words, they have not received any atten-

tion whatsoever in this body. I refer to the subject at this time in order to demonstrate only that the introduction of this resolution one year ago was for the purpose of applying a remedy to what I believe has been a gross and abusive practice in our legislative department. I have not given credence at any time to some of the more radical things that have been said regarding the legislative body. I myself have been a member of that body, and this resolution was not introduced excepting in a way of meeting what I believe is an abuse that has grown up through a number of years, particularly in the last decade, and in the discussion of this matter I trust I may be entirely impersonal.

Now, gentlemen, what is the recess committee? The recess committee is a committee that is appointed by the order of either branch of the General Court or it is a committee that is appointed by a joint order of both branches. The recess committee investigates upon some well-known subject of discussion, which subject serves as a pretext, — I say pretext in the great majority of cases, — for the appointment of a committee. This committee, by the way, is not subject in any way to the executive approval or executive sanction for its creation. It is appointed by vote of either branch or of both branches.

Mr. Sawyer of Ware: I should like to ask the gentleman if it is not true that the members of these recess committees always get their pay through the approval and sanction of the executive department, — the Governor and Council.

Mr. Leonard: My remarks have to do with the orders appointing the committees. I believe the matter of compensation receives the approval of the Governor and Council. In fact there has been somewhat of discussion even in the press of to-day regarding a controversy before the Governor's Council on that very point. The order creating the recess committee is an order that emanates either from the House or Senate, is passed by either the House or Senate or by both branches and does not go to the executive for approval. I think I have made myself clear on that point.

Mr. Sawyer: I understood the gentleman's resolution and his remarks were directed against compensation of members of recess committees, not the appointment of committees, and it seems to me his argument breaks down. The compensation is in the hands of the executive department. The Legislature can appoint the committees in spite of his resolution, but the compensation is in the hands of the executive department.

Mr. Leonard: I am very glad that the gentleman has asked that question. I am not attacking the recess committee; I am attacking the paid recess committee and I am attacking the compensation of recess committees. I am attacking the principle whereby a man who is elected to the General Court receives double the salary of the office to which his constituents returned him, and I am attacking the principle of compensation wherever and from whomsoever it comes and whether it is with executive approval or not. I wish to write into our fundamental law that there shall be no compensation paid for recess committee work. That will not in any way deprive the General Court of the power of appointing recess committees from time to time as they see fit, provided those recess committeemen serve on that committee work and give the same time and volunteer service to the Com-

monwealth that I think most of us are giving from time to time on various committees in our various and several communities.

Let me say that the principle of payment, in this State at least, is something of very recent origin. In the '80s and '90s the recess committees received no compensation, but were reimbursed for the expenses which were incurred in the study and investigation of their particular subjects. When I went to the committee on The General Court of this body last year I did not go there with any great array of evidence or of witnesses, and as a matter of fact I do not think that has been the practice in the hearings before the committees of this Convention. I went there and very meekly presented my case, and I supposed that those gentlemen of the committee on The General Court, — I presume they all have had service in the Legislature, — had in their possession knowledge regarding its practice, far better, perhaps, than anything I was able to give them. And yet I wonder to-day, after the committee on The General Court has voted unanimously that this resolution ought not to pass, — I wonder to-day whether in the light of the history of the General Court which recently deceased, they now would give the same report on this resolution of mine. I rather think that if the committee on The General Court had had the foresight to withhold this resolution until this year before they reported to the Convention, there might have been somewhat of hesitancy on the part of the Legislature when they appointed six committees and when the presiding officer of the House was obliged to jump into the forensic arena to protect the public against the appointment of a seventh committee. I wonder if those committees would have been appointed if there had not been upon our docket a unanimous report rejecting this proposition to abolish this principle of the paid recess committee.

I understand, of course, in these days that matters of financial consideration are not perhaps of very grave importance. I served on the Ways and Means Committee in 1905, and I recall at that time that there was a State tax of some four millions of dollars and we were very much disturbed about it and we hoped that the tax would be reduced speedily. Well, I have forgotten what the tax was the present year; I think it was somewhere near eleven or twelve millions, and the Legislature congratulated itself that it was not a million or two million dollars more.

Now during the past years for which I have the figures in which recess committees have been appointed, there has been expended by the Commonwealth something over $700,000 for recess committee work. Again, gentlemen, I am not urging the financial consideration as the chief and important matter in the discussion of this resolution.

There is another phase to this question, and a more important phase, and I think that is a fact to which most members who have served in the Legislature can testify, — that when at the end of the session there are forty or fifty men of that body appointed to recess committees, the very fact of these appointments has a very distinct influence upon legislation and upon the shaping of legislation. I wish to read to the Convention very briefly a few extracts that I have gathered from time to time from some of the Boston papers. Now, gentlemen, I am not going to read these in their entirety. If I was to do so I think I might throw a very picturesque feature into the dis-

cussion of this question, but I wish to be impersonal and I do not wish to quote the reasons why certain men were appointed to committees and other men were not; but I will quote from a few of the papers so as to show what the public sentiment is at the present time regarding recess committees. This is from the Boston Traveler. (After a pause.) I will not quote that, because I find it contains a personal reference, but I will first quote an item from one of the Sunday papers. This was before the Legislature adjourned. [Reading.]

RECESS PLUMS RIPENING.

This attachment of your representatives to the political cause of their Speaker is a natural thing, when the Speaker has been a decent sort of presiding officer. If a member is given good committee assignments, he is likely to return the favor when he has a chance to do so. If he is given a place on a recess committee, with its extra compensation and mileage and its pleasant and not often too arduous duties, he is almost sure to return the favor if opportunity is offered him.

There are four or five such recess committees in sight for this year, and the expenditure for them in the aggregate will be large. Appointments to these committees are the best plums to be given out by the President of the Senate and the Speaker of the House.

Here is a quotation from the Traveler:

Speaking of economy, it may not have escaped the attention of our readers that the members of six recess committees have been appointed to draw salaries from the people of the Commonwealth during the summer and fall seasons. The reporters, utterly lacking in reverence for the majesty of Beacon Hill, refer to the appointments as "plums"; for every one of the fifty-six members appointed to recess committees will receive $1,000 in addition to his salary as a legislator.

Each committee will have a clerk, and the clerk is usually a newspaper man of ability, who is expected to convince the public by means of his official report that the committee which he serves has actually wrestled with grave problems.

This year's recess committees are to consider these topics, some of which are familiar and of permanent value as pretexts for the appointment of recess committees: The fish industry, water resources, working-men's compensation, educational system, sheep and agriculture, taxation problems.

One of the greatest of our taxation problems would be solved if those who control the General Court could be made to comprehend the exact meaning of the word economy, aside from its utility in platitudinous buncombe at the beginning of and during a legislative year.

Mr. Merrill, writing in the Globe early in the session, — and this is the ordinary political article in the press, — says:

Apparently the usual number of recess committees will be appointed unless public sentiment can be roused in opposition. These committees, as a rule, accomplish nothing except to spend the State's money. The custom is to pay each member $1,000 for his services during the summer months, and such appointments are eagerly sought by Senators and Representatives. In these days, when economy is preached on every occasion, the Legislature should set a good example. A study of the Auditor's report for the past few years will show that many thousands of dollars of the State's income have been spent by these recess committees without adequate return to the public.

And I could quote further. The opinion of the press is that this Constitutional Convention will not have accomplished its full duty unless it takes action to do away with this flagrant abuse and graft of the paid recess committee.

I wish to state this: That these recess committees frequently from time to time make a report; that report is made to the Legislature and the matter discussed, and it frequently leads to the appointment of another recess committee. There are cases in the Auditor's reports which show that that has happened from time to time. I submit to

the Convention these considerations regarding this abuse, not merely from the standpoint of economy or from the standpoint of any financial saving to the Commonwealth, but I wish the members to consider the practice whereby the presiding officer can select forty or fifty members of the body and give these recess appointments from year to year, and then ask yourselves whether or not that has a beneficial effect in the direction of our legislation.

It has been argued at times that this was hardly a matter that should be written into our fundamental law. I regret that it is necessary to write it into our Constitution. I regret that the action of the Massachusetts General Court during the past ten or fifteen years has been such that it is necessary for a man to get up on the floor of this body and advocate this action. I would much prefer that the history of the Legislature had been such that if I or any other man had raised a voice in favor of this proposition we would have been met with the answer: "No, the General Court can be trusted; they will not do any such thing as that." But I submit to you gentlemen, in the light of the history of recent years, successive years, one after another, and this year, with this matter still pending in this Convention, when the country is engaged in war, with the spectacle of these recess committees being appointed, whether you can trust the Legislature on this subject. I believe the question whether this proposed amendment should be written into the Constitution should be referred to the people.

There is one other matter I should like to call to your attention. We already, on the docket to-day, have passed favorably upon item No. 184, which relates to adjournments of the General Court and allows the General Court to take a recess of thirty days. I submit there again that within that period of time there will be plenty of time for recess work. I submit further that those recess committees that may be needed to be appointed will get better service from their members, be they rich or be they poor, if they receive their appointment thereon without solicitation or because of the financial remuneration for the service. And I believe that as we, all of us, in our various communities are serving on all kinds of committees, giving work and time for the public welfare, we at least can call upon the General Court in those times when recess committees are needed to give free and volunteer service on those matters that are put before them. I submit this for the consideration of the Convention, for despite the report of the committee I feel that you will give it careful consideration. I do not regard a committee's report in this Convention as a matter of conclusive proof upon a given question. It is hardly a matter of *prima facie* proof, because the members here are men of such experience that we have not been influenced by the show or demonstration made in the committee-room, and the knowledge or the information brought to bear upon a subject like that is equally within the possession of all of us; and I have assumed, irrespective of the report of the committee, to move to substitute the resolution as offered on this matter.

I thank you very much for the attention you have given. [Applause.]

Mr. WILLIAM S. KINNEY of Boston: Undoubtedly there is a feeling in the community that the privilege of appointing members of the General Court to recess committees has been abused at times and that a larger number of recess committees have been created than the neces-

sities of public business demanded. But the proposition before us to-day is a very narrow proposition. The gentleman does not ask that the practice of appointing recess committees be abolished; he asks us to write into the Constitution of Massachusetts the statement that members of recess committees so appointed shall not receive compensation. That would be a very novel thing to write into a Constitution. The Constitution does not attempt to prescribe the salary of any one in the employ of the Commonwealth. It is not the business of the Constitution of Massachusetts. It is supposed, in the ideal of those who created it and who have perpetuated it, to contain merely a statement of fundamental principles, the great underlying principles upon which a great Commonwealth should be conducted. For that reason alone if for no other I do not think that the members of this body want to propose such a trivial amendment to the Constitution to the people of Massachusetts.

But that is not the only thing that rests in my mind. The spirit which prompted the editorials or the clippings by some of the political writers which have been read by the gentleman (Mr. Leonard) bring to my mind a sentiment which might as well be faced now as at any other time; that is, the attack by certain people upon those who are elected to public office and who come here annually trying to do their duty. If a proposition comes into a public body to increase the salary of a janitor, of an elevator man, of a clerk of a court, you can get any amount of support, — to increase the salary from three thousand to five, from five to seven, from seven to eight, and all the way up the line; and they will rise and point out that the difference in the cost of living has made it necessary for the public agency, be it the Commonwealth or the city or town, to increase the compensation of this worthy individual who has served with such distinction in this job, no matter how menial or how exalted it may be. But when they come to consider the men who have the legislative duties to perform, there seems to be a feeling that they should be overcome with patriotism to the extent that they should sacrifice their personal business, their means of livelihood, and devote their services year after year to the Commonwealth absolutely gratis. The compensation of the members of the legislative department of the government is so ridiculously low that it is within the knowledge of every one that the Legislature to-day is made up practically of two classes of men: One, a class so endowed outside of their personal business that they do not need the salary, and the other class so poor that they can live on a thousand dollars a year. And it prevents men coming here who should come here, and we find in rare cases men able to come here year after year and accustom themselves to legislative duties and to give the Commonwealth the character of service that the Commonwealth's business demands. I think it is time that the people understood this and that men in legislative capacity should let the people understand the real value of the service which members of the legislative bodies render to the community. I think it would be very unbecoming to write into the Constitution a prohibition of such a trivial character as this, and I do not believe that the members of this Convention in seriousness, while some of them may believe there is some slight abuse of the privilege, will want to write into the Constitution of Massachusetts such a trivial question as this.

Mr. Carr of Hopkinton: I want to give you a little inside information on the subject which I gained by a couple of years' experience and observation in the Legislature of the effect of this pernicious practice on the members. If you have watched, as I have, in the House of Representatives the actions of the so-called party whips and the promises that they hold out to legislators, of recess committee appointments, — I have known probably as many as seventy-five promises made of positions on recess committees when there might be not more than thirty of such possible appointments, — you will have seen the evil where representatives are approached by some whip of their side and told: "Now, look here, you are slated for a recess committee. You do this, or do not do that." And when these appointments are promised to any large group of men in the House, what effect it must have upon pending legislation! I have seen, in the last day of the session, men who have been promised by some important personage in the House that they were going to get a recess committee, when the names of committee appointments are read out and those poor fellows who had performed their part found their names were not among the favored few, — I have seen those members go out through those doors as though they had been beaten. If you had seen the effect of this practice upon the members as well as on the legislation, you would say that this pernicious practice ought to be stopped.

I have seen young members whose voices during the first year they were here were heard in advocating progressive legislation, and in their second year their voices were still, due to the promise of places on recess committees.

Mr. Kinney: I should like to ask the gentleman whether the effect on legislation which he has mentioned was caused by the efforts of those disappointed in securing recess committees or by the efforts of those gratified by such an appointment.

Mr. Carr: The difficulty is that not until the closing hour of the Legislature does anybody know who are to be the recipients of the recess committee appointments. It is by the mere promise that they are going to get an appointment, — the same promise to this man and to the other man that they are slated for a recess committee, — by that alone is the evil done. It is not the fact that they are going to get it, but the hope founded on promises to all those men, whoever they be, that affects legislation.

I have seen young men who the first year, when they were not candidates for recess committees, have stood on the floor of this House and advocated legislation that was beneficial for the people. I have seen those men the following session remain absolutely as though they were dumb. They had not a word to say and sat in their seats at times when you would have expected them to be heard in advocacy of certain legislation. When you inquired what was the reason for the silence you would be informed that they were slated for a recess committee appointment. You probably would feel sorry for them that they were tempted by that bait. And then at the end of the session, as I say, when those young men found themselves betrayed, I have seen them go out of this chamber crestfallen with the broken promise that had been given but had not been lived up to. They had given their year of silence without the reward.

Now that is one point of view. But my friend in the second division

here (Mr. William S. Kinney) says that this principle is not fundamental. Could any principle be more fundamental than that no man shall be paid twice for the performance of duty that he has been elected to do? That is the principle that we are trying to engraft into this Constitution. A man who is a candidate for the House of Representatives knows that his salary is to be $1,000. He does not know or expect to receive any additional $1,000 for service on a recess committee. He takes his oath of office that he is going to do all the duties incumbent upon him as a representative for that $1,000. Is there any reason why there should not be such a limitation in our Constitution that should say that he is to receive no more than the salary that is awarded to him? If you are going to say that the salary is small, that the $1,000 does not pay the members, why should any group of forty out of 240 be the favored class to receive an increase? If it is not enough, why should not they increase the salaries so that every man will get the increase and not give it to this man who bartered his honor, and bartered his constituents for that matter, for the reward of a recess committee? It is an evil; it is an evil which has grown until now even the press cannot remain silent. There have been read by the gentleman in the fourth division (Mr. Leonard) quotations that say there is an evil, and the duty is on this Constitutional Convention to do its part to cure it. There will be no great evil done by adopting this resolution. No man who gets elected to the Legislature seeks election with the idea of getting a recess committee. It is when he arrives here and he sees those temptations held out to him that he falls. I have known of cases where men have refused to vote for quorums or stand up for roll-calls or failed to give correct account of the vote in their division and many other ways of earning this so-called reward. Toward the end of the session those very men who sold themselves so cheap find in a great many instances that they had not received the reward that they had been promised.

Now on the practical side of recess committees. Take any one of the six recess committees that have been appointed by the last Legislature. As practical legislators you know that there are avenues of information by which the incoming House can get any information without the aid of a recess committee. Every subject that is before these present recess committees is a matter on which a commission of some sort could furnish all the information. We can instruct the commissions to hold hearings and advise the Legislature on any subjects upon which any legislation is needed. Committees of the Legislature send for those commissions and get the information. Will there be any great harm done if we stop the recess committees entirely? If you do not want to pay recess committees and if you still feel that they are necessary, with the provision that we already have passed (allowing a recess for one month during the session), the Legislature can take this recess. Let the men go into committee and do the work that they have agreed to do for $1,000 and report back to the resumed session, and thus do away with this evil of recess committees. I hope that the substitute amendment of the gentleman from Boston will be adopted.

Mr. UNDERHILL of Somerville: It is a peculiar situation that I find myself in accord with the gentleman in the second division (Mr. William S. Kinney) in words spoken in defence of his attitude on the

question, and find myself absolutely unsympathetic with the gentleman in the third division (Mr. Carr) who has taken this opportunity to attack the Legislature, but propose to vote against the gentleman in the second division and with the gentleman in the third division. There is one excuse, possibly, for the appointment of recess committees, and that is to inflict punishment upon a nuisance who happens to be elected by a constituency to that body. That is one good excuse for the maintenance of recess committees. For the Speaker, responsible for the conduct of that body and largely held responsible for the legislation, frequently can control to a certain extent those men who are not controlled by decency or by their oath of office. But the evil has grown from year to year and it should be stopped, and to my mind it can be stopped only by a Constitutional provision. Why, the gentleman in the third division (Mr. Carr) when he says that the men took a contract in the Legislature to serve for a year's term for $1,000 and that they should not be paid twice, forgets that he himself took a contract last year for $750, and then went to the Legislature to get that pay increased, and the Legislature gave him $500 to serve on a recess committee, or what might be compared to a recess committee.

Mr. Carr: I should like to ask the gentleman if he says that I appeared before any committee and asked for $500. If he does he is very, very much mistaken. I did not appear before any recess committee and I asked no money for any attendance at this Convention.

Mr. Underhill: I did not say the gentleman appeared before a recess committee, but when the gentleman refuses to accept his salary of $500 granted by the Legislature to the members of this Convention, then I will absolve him from all blame connected with taking a double salary. Until then I think my statement holds good.

Now, sir, one of the greatest evils of a recess committee is this, that it does create a feeling of jealousy and it also creates in the House unrest on the part of some of the members who know that they cannot be appointed to a recess committee, and who for revenge and in a mean spirit work their very hardest to discredit that body.

Now that is a bad feature and offsets the good excuse previously referred to. Another bad feature is that when one recess committee is really necessary, possibly, to bring out all the information needful for the new or incoming Legislature to act intelligently upon a matter, then immediately some other members of the House try to find some excuse for the appointment of more recess committees in order that they too may serve. Why, at the last session, even after the Legislature had provided six recess committees, His Excellency the Governor kept us for two or three extra days, and the only solution he could find for the problem on which he disagreed with the Legislature was the suggestion to the House that they appoint another recess committee.

Now it is not altogether the fault of the members of the Legislature. As the gentleman in the second division (Mr. William S. Kinney) well said, men come here for pensions, for increases in salary, for the improvement, if you please, of the Merrimack valley, or for the purpose of making Boston pay fifty-five per cent of the cost of a roadway down to Lynn, and they are commended for their efforts in those directions.

Mr. Bauer of Lynn: I should like to ask the delegate from Somer-

ville, in the third division, if he ever was commended by the citizens of Somerville for any public act that he did, — ever?

The Presiding Officer: The Chair hopes the gentlemen will not indulge in personalities.

Mr. Underhill: I trust the Chair will allow me to reply that the gentleman's question, like practically all of his questions —

The Presiding Officer: It will be very much better if the gentleman will confine himself to the question under discussion.

Mr. Underhill: For three years I served as ranking member on the committee on Rules in the Legislature during the service of one of our members as the Speaker of that body. During those three years not a recess committee was appointed, and the Speaker of the House at that time is deserving of great credit, for considerable pressure was brought to bear upon him. And, sir, a great deal of the unpopularity which I enjoy throughout the Commonwealth of Massachusetts is due to the fact that as ranking member on the committee on Rules I had to fight from the beginning of the session until the end in opposition to the establishment of such committees.

Now, sir, there is another phase of the situation. The ranking man on Rules never has an easy job, but he has a harder job choosing the men for recess committees in conjunction with the Speaker than any other thing he has to do. There may be occasional necessity for the appointment of a recess committee. There has been in the past a great deal of good that comes from a recess committee. For instance, one year there was appointed a committee on Municipal Finance, and the work which that committee did during the recess was of inestimable value to the Commonwealth and to the municipalities. But, sir, ordinarily those things can be taken care of by the Legislature itself; and if occasion does arise for the necessity of a recess committee, if I were a member of that body, I would much rather serve because I was interested in the subject, because I could add something to the subject, because I could be of some value to the Commonwealth, than for a mere pittance of $1,000, which might mean six months of hard work and no credit whatever.

Now, sir, it ill becomes any member of this Convention to cast aspersions upon the Legislature and the work which it has accomplished when we realize how subject we ourselves are to criticism on the very same grounds that we are criticizing the Legislature. And I hope that the discussion of this question will be confined, as the gentleman in this division who introduced the resolution (Mr. Leonard) confined himself, to the merits of the question, without reflection on the Legislature. I should like to answer the queries of some of the members of the Convention as they are propounded to me from time to time if only parliamentary usage or requirements did not hold me in leash. The trivial questions, the attempts at humor which is only buffoonery, — such things as that have no place in this Convention, and any one who indulges in that and then criticizes the Legislature ought to be invited to come some time to its sessions and see the seriousness with which the members undertake the work which they have to do. And so, sir, I trust that this Convention may remove the temptation from the path of those who are beset on all sides, who are criticized from the beginning of the session until the end of the session, criticism which runs over and spills all over the Commonwealth, when it is not de-

served, — when commendation really ought to be their reward instead of criticism. I trust that the temptation may be removed from their pathway and that in the future we may not have the necessity of paid recess commissions appointed from the House and from the Senate of the Commonwealth. [Applause.]

Mr. Glazier of Hudson: Those who have spoken before, I think, are members or ex-members of the House. They know the inside and outside. Possibly it would be well for one to speak who never has been honored by being a member of the Legislature.

I understand this question to be one of pay, and it seems to me that the committee should inform us why committees are appointed, some of their duties, what they accomplish and how much of their work is adopted by the Legislature, that we may know as members of this Convention what they are worth to the Commonwealth and why we should pay them for their duties. I have been interested in listening to the remarks of these gentlemen, the friendly spirit which has been exhibited [laughter], and the very cordial opinions which they have of the members of the Legislature. I understood the gentleman in the second division having charge of this report (Mr. William S. Kinney) to state that there were two kinds of members of the Legislature and that those outside are the parties who ought to be in the Legislature, I presume, in place of those who are in the Legislature. I have understood also from the gentleman from Somerville in the fourth division (Mr. Underhill), — and I believe I am giving him an opportunity now to qualify that statement, which I believe he will appreciate, — that those who are elected on recess committees are simply nuisances in the House. Now I have known some of these members who I have been informed have been on recess committees, and I have looked upon them as good fellows and hardly to be considered a nuisance to anybody.

Mr. Underhill: May I call to the gentleman's attention that I said that one purpose possibly of a recess committee was that it gave the Speaker an opportunity to control certain nuisances, and furthermore that in opposition to that argument, it also did create a feeling on the part of certain nuisances who could not possibly hope to be appointed on recess committees because of their inability to fill the office, — that one offset the other.

Mr. Glazier: I felt quite confident that the gentleman would appreciate the opportunity to qualify the statement which he made at that time.

Debate on the subject was continued after the noon recess.

Mr. Glazier: At the close of the morning session I was attempting to state my opinion that the question before us on the substitute was one of compensation or salary rather than a question of abolishing recess committees; and it seemed to me that the committee having this matter in charge, or this resolution, should give to us some information showing that the work of these committees is of some benefit to the Commonwealth. I feel that some of us who are unfamiliar with the workings of legislative bodies would be interested, and better fitted, possibly, to vote on this motion, if the chairman of this committee having this resolution in charge would give us some information in regard to the workings of these committees, — not only the work-

ings, but the necessity, and some of the conditions under which they do this work. It would be very interesting to know why they are appointed, and to learn a little of their experiences in securing the valuable information which the State pays for. It would be interesting to know how much they carry from the State, and how much they bring back from the places to which they go for this valuable information. It would be very interesting for some of us to know just how far and how deep they go into these questions; whether in securing this information they go so far as to enter into the very life, the material, and the experience of some of the questions which they are to report back to the State.

And so I believe that, this being a question, as it is, of "showing the goods" before we pay for the goods, that unless these points of information are brought to the Convention, it is for the Convention to support the substitute amendment as offered by the gentleman in the fourth division (Mr. Leonard).

Mr. Hobbs of Worcester: I was not a member of the committee on The General Court, and yet the question of the gentleman from Hudson (Mr. Glazier) inspires me to give a brief statement of some of my experiences with this matter in the General Court.

I have been a member of the General Court for, lo, these many years, and have been a member of two recess committees in that time. I have watched the procedure of events from a position in the upper branch. Hence I saw something of the method by which recess committees were created and appointments made, having served for a number of years on the committee on Rules, which authorizes the appointment of the recess committees.

It would be far from my intention to disclaim all the truth of much that has been said relative to recess committees. There is no question at all but what recess committees, from the standpoint of the presiding officer, are very trying problems. The presiding officer at the end of the year, if recess committees are appointed, is faced with the somewhat trying problem of deciding which of his family he is to give favors to and which he is to turn down; and that, for a presiding officer, is always a trying and difficult question. He has to solve the question of appointments, whether they shall be upon merit or whether in accord with the needs of the individual, or whether in recompense for past meritorious service. All these questions doubtless weigh in the mind of the presiding officer. In addition to that, he is subjected to pressure from all sides, most of the members not relying entirely upon their own merits to win them places upon these committees.

Take it all in all, I have no doubt that the presiding officers of both branches would have no particular objection to the passage of this resolution, because the appointment of these recess committees probably makes them more enemies than friends, inasmuch as inevitably there are several men disappointed for every one who goes away happy.

Recess committees, however, have been felt in the General Court to be something of a necessary evil. There have been years in which no recess committees were appointed. There have been years in which it has seemed necessary to appoint recess committees, and I will endeavor to state very briefly where the necessity lies.

The General Court, as I think is well known, suffers each year from having to consider a great number of propositions. It cannot devote

itself to a few segregated problems. Under its rules it must consider all matters that are brought before it; and, unfortunately, events have so shaped themselves of recent years that the volume of legislation presented to the General Court for consideration has been very large. In some years it has reached the 3,000 mark. I think in the last eight or nine years it has not fallen below 2,000 bills.

Now, 2,000 bills are a great deal for a legislative body to consider. The Convention had about 350 matters to consider, and the Convention appreciates the difficulty that we have had in considering so many propositions. Consider the position of the Legislature, sitting in two different bodies, passing upon very nearly ten times the same number of matters. It is no small task to deal with so many different problems, to deal with them swiftly, and at the same time to give them the consideration that they deserve.

It follows that a great deal has to be done in committees, and it is unfortunately the case that between committee hearings and the sessions of the General Court a member who desires to devote a fair share of his time to a careful consideration of the many matters before him finds his time pretty full. That is true particularly of the Senate, where each member is a member of at least three committees. I myself was a member of four committees last year, and I can assure the Convention that between those committees my time was very well occupied.

It follows, as a result of that, that the amount of time that can be given to each problem coming before a committee, — assuming that the committee is one that has a fair number of matters before it, — the amount of time that can be devoted to hearings and the consideration of any one problem, of necessity is limited.

The General Court does not consider solely matters that can be disposed of in a limited time. Some of the matters that come before it are matters complex in the extreme. Take the great subject of taxation, which absorbs so much of our time every year. Anybody who has dealt with the formulation of tax laws realizes the difficulties under which we labor, — difficulties not only of a constitutional nature, as has been discussed in this Convention, but difficulties of a practical nature as well. It is very difficult for a legislative committee to give the study, in the few brief months that the General Court sits, that such a complex and difficult subject requires. Many of the members come in there fresh, knowing little about the subject, and have to spend a certain amount of time becoming familiar with it. That is an unavoidable fault of our system. Our General Court changes its membership so frequently, and so much time has got to be spent in breaking in the new men, that the time, already too brief for the consideration of the various matters before it, becomes even more painfully abbreviated.

Take the subject of water conservation, which was before the General Court last year. That is a subject involving both engineering problems and legal problems of great complexity. We had before us this year a report from the Commission upon Waterways and Public Lands. They submitted a report, coupled with an engineering report, which actually was not completely printed until after the close of the Legislative session.

Now, without such information at our hands it is very difficult to

see how we could have covered that problem adequately. It is a proposition that took the Commission on Waterways and Public Lands several months to formulate, and they started with an expert knowledge of the subject. The Legislature, not being experts, might conceivably take a great deal longer to consider such a matter fairly and with due regard to the effort to do it justice.

Take the subject of the fish industry. We created last year a special committee to sit during the session of the General Court upon the fish industry. It was claimed, and I think the evidence justifies it, — to some extent, at least, — that a combination existed in the fish industry which tended to raise prices unduly, and to exact an unjust toll from the people of the Commonwealth. The committee held hearing after hearing, — I do not now recall how many it was, — but it held a large number of hearings, sitting several times a week through the greater part of the session; and in that time they were able to complete the study of that part of the fish industry only, — undoubtedly the major part, — which centers in the city of Boston.

On those three subjects, to go no further, the General Court felt that it was necessary to extend the study during the recess, by recess committees. In the confusion of the session that inevitably arises from the great multitude of matters that are being considered, through the necessary changes that have to take place from committee to committee, and the time that is spent in considering other matters, it is very difficult to get either from committee or from the General Court the time that is necessary for the study of one of these very complex propositions; and it is for that reason that the recess committee has proved in the past to be something of a necessity if these problems are to be worked out in the General Court.

There are other alternatives, of course. You can commit these matters to a commission. The vice of that is that a commission starts in with a prepossession of its own importance, and nine times out of ten a commission's report on a subject of that sort involves an extension of the function of that commission; and if the recess committee is an evil, the commission evil is probably a more pressing one.

It is possible to deal with such matters by a special commission appointed by the Governor, usually an unpaid commission. The difficulty with that is that by losing the power to control the personnel of those who are to make the investigation, the General Court loses a certain power over the course of the investigation. The executive and the legislative branches frequently are not of one mind; and unless the Legislature has pretty complete control over the means by which its investigations are conducted it loses a sensible part of its power to make investigations.

As to investigations by an unpaid recess committee, as the amendment offered by the gentleman would seem to require, this I think may be said, — and this I think ought to be said: It always is possible, either in the General Court or out of the General Court, to get devoted men who will give their time and their services freely to the State. I do not think that a member of the General Court who was asked to serve on an unpaid commission would fail to rise to the occasion and make whatever sacrifice was necessary. We have had recess committees appointed under just those conditions. At one session of the General Court, where joint recess committees were re-

fused, the House took matters into its own hands and appointed House recess committees.

The subject of recess committees had been agitated pretty thoroughly, and the Senate had gone on record against them and declined to put through the necessary resolves which would authorize compensation to be given. As a result, those recess committees served the entire fall without compensation, although next year they fell from grace and came back to the General Court asking to be compensated for their time, — and they got it. But they served without any reasonable expectation of getting any compensation. And any recess committee expects to take its place on the assurance solely of custom, — that the Governor and Council will allow them any compensation at all; because the General Court does not fix the compensation of its recess committees but allows them such compensation as shall be allowed by the Governor and the Council.

As to unpaid recess committees, although, as I say, you always can get men to serve on such committees, and I have no doubt that they would do good work, too, yet I wish to submit these two matters for your consideration: In the first place, as a rule the Commonwealth gets just about what it pays for. The result of the labors of unpaid commissions has not been always to the greatest satisfaction. In the second place, the tendency of such a rule being made an absolute rule would be to reduce membership on those committees to those who could afford to give the time. No Speaker of the House, no President of the Senate, would feel inclined to put upon such committees men who would have to make a sensible sacrifice by serving on the committees. I think the Convention can realize how great the sacrifice has been to some of the members of this Convention who have served for no very adequate compensation, month after month, and who have been faced with the problem at the end of the last session either of serving for nothing at all, or serving with the expectation of the General Court realizing the magnitude of their services and of their deserts. It is no light thing to ask a man to neglect his own affairs, to forego the opportunity of maintaining himself, if not his family, in reasonable comfort, and to give his time to the General Court. If he can afford it, well and good. If he cannot afford it, he can do so only at a great sacrifice, which sometimes is a very painful one.

There is no question but what that sacrifice would be made if necessary. The question for us to decide is whether we want to have the Commonwealth go on record as desiring to accept such sacrifices, and whether it befits the dignity of the Commonwealth, when there is no real necessity, to demand such sacrifices. That, it seems to me, is a thing we ought to consider very seriously. As to whether this resolution goes through or not, it is of very little consequence to me. My service in the General Court is probably not for many years longer, and I certainly do not expect to be a candidate for many recess committees in the future. But it does seem to me, however, as though this was, after all, a rather petty subject for the Constitutional Convention to spend its time upon, — as to whether, after all, the evil that is aimed at is not rather a petty evil, that is much better dealt with by the force of public opinion than by constitutional enactment; and that matter I leave for the consideration of the Convention.

Mr. Bauer of Lynn: As a member of this Convention who never

has been a member of either of the legislative bodies, I rise before the members advocating the amendment of the member in the fourth division (Mr. Leonard) to the document known as document No. 5, which to my mind is a simple and effective way of forever doing away with the constantly increasing and crying abuses that have been permitted by the Legislature in the appointment of recess committees. The legislators do not seem to understand what the people of this Commonwealth think of this matter; they constantly are doubling this expenditure of the State's money on legislative committees, because only occasionally a legislative committee does real good work. But the people of the Commonwealth who understand how legislative recess committees are started know that the procedure in the Legislature itself, in the conduct of starting and the receiving of appointments, and the disappointments from not receiving an appointment on those committees, has an immoral political effect in our Legislature and is against the public welfare. Every plain civilian who has not served in either House understands that thoroughly. There is a constant growing determination on the part of all the people in this Commonwealth, as I see it, to prevent, if they can, the abuse of legislative practices in this matter which the Legislature itself has not been able to prevent or curb, and which seems to be growing worse and worse as the years go by.

I have appeared before legislative committees in this State House on matters that provoked a great deal of contention, and I have had members of those committees come to me and say: "Bauer, if you will go and see the Speaker and use your influence to have a summer recess committee appointed, we think we can solve this problem in a way that will be satisfactory to you." Now, that has been done to me within two years, and several times within fifteen years. I mention it to show you some of the immoral practices that have been permitted to creep into the Legislature, to the disadvantage of the public welfare.

I have asked members of a recess committee that has been appointed on a matter that I was very earnestly interested in to report to me what their experience was in certain cities that they visited for information; about the subject-matter that the committee was appointed for; and the most that I could get from them was their experience in enjoying "high-balls," and things of that nature, and the sociability of the evenings at those places, and they did not seem to concern themselves at all about the subject-matter. When they bring in their report, and introduce a bill to this Legislature, it is such a report and such a bill that the Legislature itself will not stand for it, and they offer from five to fifty amendments to the bill, and the bill as finally passed would not be recognized by any member of the recess committee that originally was responsible for formulating it.

I know very well that this is not a popular picture to draw. I have no patience with any men of this Convention who rise on their feet and deprecate every effort that is made to criticize unfair and immoral practices of their own Legislature, — a body that they are interested in, or should be, — that governs every movement of every citizen in this State. Neither have I any patience with some men who, when they get up, compare members of this Convention with the members of a recess committee, and the purpose of this Convention with the purpose of a recess committee.

I submit such matters as I have offered to all you men here, facing that banner over there on the wall (referring to a chart showing the annual debt of the Commonwealth) as you must have faced it some time to-day, and knowing that the recess committees appointed by the Legislature this year will entail an expense of from $75,000 to $100,000, which I regard as a needless expense upon the taxpayers of this State, for information that could be ascertained easily by going to the various State commissions and sitting down with them and asking them to find out for the members of the Legislature the information that it is necessary for the Legislature to obtain on any important subject. I say that it is high time that this practice was stopped, that the Legislature is showing its inability to even curb it, and that the men on the outside, who are civilian citizens of this State, are against the practice that has produced so much immoral atmosphere in the legislative halls of this Commonwealth. I hope the amendment of the delegate in the fourth division (Mr. Leonard) will be adopted. [Applause.]

Mr. CHANDLER of Somerville: I have listened with a great deal of interest to the speeches on this subject this afternoon, but I think the members now are ready to vote. I therefore move the previous question.

Mr. BENNETT of Saugus: I am sorry the previous question has been moved, because this discussion will do a very great deal of good. Not many years ago junketing was an awful disgrace in this Commonwealth, — junketing committees. They would get leave to travel outside the limits of the Commonwealth, and they would go down to see horse-races in Kentucky, and various exhibitions in Richmond, and not attend at all to the business which they claimed was the reason for their going there. Now, I am not familiar with any legislation or constitutional amendment that has been accomplished through this junketing. The evil has decreased in recent years. I hope the amendment will be voted down and that the original proposition will prevail. My opposition to the amendment of the gentleman in this division is that it specifies a salary. I do not think we ought to specify a salary in the Constitution. But there is not a word to be said against the original proposition of Mr. Leonard of Boston, in this division, and I hope it will go through.

I wish somebody would inform me, — as soon as my time has expired [laughter], — I wish somebody would inform me what good it is, what has been accomplished in this Commonwealth by a recess committee. There was a proposition before this State to have the question of sheep husbandry examined into. It was to be by an unpaid commission, appointed by the Governor. Instead of that they constituted a recess committee of members of the Legislature who do not know anything about it, who cannot know anything about it, who cannot do any good because they do not know where to begin. They do not know the present conditions. I understand they proposed to go out to Colorado, on a junket, to inquire into the sheep husbandry in Massachusetts. You cannot do it that way. That is humbug, because you have got to consider climatic conditions, soil, the condition of surrounding industries, the competition of other forms of agriculture, the diseases to which sheep are liable incident to the climate, and many other things of that kind.

If they had appointed an unpaid commission, they could have got,

as was originally intended, men who would have begun with a sufficient knowledge of the subject to make the necessary investigation. Sheep must be housed in this State. They must not be housed in Colorado. The conditions are entirely different. Sheep here are subject to the competition, not only of other forms of agriculture, but the competition of manufacturing, which takes the men, the labor.

Mr. BROWN of Brockton: I favor the previous question. The immediate effect if this is passed will be that if a Legislature passes a provision for a recess committee it will be because they think it is necessary; if they think it is necessary, then when a recess committee is created necessarily it will go to experts, somebody who knows something about the case. In that way, if we get any recess committee it will be because it is needed.

Therefore, and because of the fundamental principle that no man exercising a legislative or judicial function should be influenced in any way or by any possibility by anything he has got, or anything he expects to obtain financially or otherwise, this measure ought to be adopted in the form offered by the gentleman in the fourth division.

Mr. CLARK of Brockton: I certainly hope that the previous question will not be ordered on this matter at this time. I regard this as one of eight or ten of the major propositions that have been placed before this Convention, and I believe we should have ample time to discuss them. No man can arise here and feel that he is going to put forth any arguments in the limited time for debate. Now, a large number of us, and perhaps all of us, feel that we are under obligations to our constituents, perhaps to say something, it may be only to vote, but we are under obligations to our constituents to discharge our full duty here on all these questions, and especially on questions of the magnitude of this question. Now I am not one of those who regard the payment of $50,000 or $100,000 for recess committees as a matter of the greatest magnitude or importance.

The matter of the expenditure of $75,000 or $100,000 sinks into insignificance when you compare that with the demoralizing influence of the system on the Legislature, — and when I say that this demoralizing influence is felt from the presiding officers down to the members of both branches, I am not saying anything derogatory to the presiding officers or to the members of either branch of the Legislature. It is incidental to the system and to human nature, and you cannot get round it. Very important legislation, that upon which the prosperity of certain interests and of the people themselves in this Commonwealth depends, is held up by certain committees because they say: "If we do not report this this year we will be enabled to get a recess committee and get an appointment on that committee." I have seen it when I was serving here, and it is disgusting, it is humiliating to many of the members of the Legislature, to see the scramble that is made for places on these committees.

Mr. LANGELIER of Quincy: I notice that this body differs somewhat from the Legislature, in which I have had the honor to serve, in that this body does not look upon committee reports with that holier than thou attitude, and that this body does not hesitate to overturn a committee report. I hope that the committee report in this case will be overturned. In my six years' experience in the Legislature, three years in the House and three in the Senate, I never was appointed

on a recess committee, I never asked for appointment on a recess committee, and I refused the opportunity of an appointment on a recess committee. [Applause.]

The gentleman from Brockton in the second division (Mr. Brown) it seems to me hit the nail on the head when he stated that there is a principle involved, and that is this: Shall we permit the legislative body to create salaried positions to which the members can be appointed? It seems to me that that is the question. I know the Legislature has passed a law to the effect that when it creates commissions no member of the Legislature can be appointed to the commission, and yet I have seen bills come in creating commissions, and some members of the Legislature take the floor and try to have that provision nullified by offering a special amendment to the bill.

Mr. SAWYER of Ware: I should like to call the attention of this Convention to what appears to me to be a very drastic provision of this resolution if we adopt it. It seems to me, while our debate has been entirely on recess committees, that this resolution is going very much further than recess committees. The resolution reads that "no member of the legislative department shall receive salary or compensation for service on any recess or *ad interim* committee, commission or other office created in whole or in part by action of the body or either branch of the body of which he is a member." It seems to me that if we adopt this resolution it means that henceforth no member of the Legislature will be eligible to any commission which is created by the Legislature of which he is a member, or concerning which any amendment is adopted by the Legislature of which he is a member, because it says "in whole or in part." Now, are we prepared, in face of the debate, which has been entirely upon the matter of recess committees, to go to the much further limit this resolution will take us and to prohibit members of the Legislature from serving on any commission in this State House which they may in whole or in part create?

Mr. LUMMUS of Lynn: Do not the words "recess or *ad interim*" modify the words "commission or other office" as well as the word "committee", and if so, does not that remove the objection that the gentleman is now making?

Mr. SAWYER: The existence of the comma after the word "committee" and not appearing again after "commission or other office" would appear to me to make it mean that the words "*ad interim*" and "recess" modified committee only. Now, there may be legal rules of punctuation. I remember, however, that one year we had a very noted case on the semicolon law, and so it may take technical legal knowledge to tell us just what recess and *ad interim* modify; but certainly as a layman it appears to me that they modify only "committee", and that we are going to prohibit members of the Legislature from serving on any commission or in any office created by the Legislature.

Mr. CREAMER of Lynn: I should like to ask the gentleman from Ware (Mr. Sawyer) if such a self-denying ordinance as he says this resolution provides for, would not make members of the Legislature pass on questions of the establishment of commissions that might come before them more on their merits than they do now.

Mr. SAWYER: There is in existence already a statute to that effect, and the statute never has been sufficiently abused that we need to reiterate the prohibition in the Constitution. I believe that we are going

too far if we adopt this proposition. Suppose this Convention and the people should have a State budget, and the next Legislature should create a State Budget Commission, and there is a member in that Legislature who has served several years on the committee on Ways and Means and is more familiar with the whole proposition than any other person in the State; shall we prohibit him from going upon the commission that we create?

Mr. Pillsbury of Wellesley: This is no laughing matter, and I sincerely hope that this resolution or something like it will be given another reading, so that it may be before the Convention for such modification of its terms as it may need and as I am inclined to think it does need. The Convention has an opportunity to inaugurate what has now become a much needed reform, which apparently cannot be looked for now or hereafter at the hands of the Legislature itself, as that body is going from bad to worse, until the practice of establishing recess committees has degenerated into a public scandal and an unjustifiable abuse of legislative power. [Applause.]

I wish to read to the Convention an article cut from the news columns of this morning's paper under the heading

$1,000 Each for Recess Workers. — Vacation Committees believe they have won.

Members of the six recess committees and commissions have virtually won their fight to prevent the Executive Council from establishing their compensation at $500 each instead of the customary $1,000, it was learned yesterday. They will probably draw the full $1,000.

Tremendous pressure has been exerted upon several members of the Council who were suspected of favoring the proposed cut. The idea originated with a member of the Council's committee on Finance, who figured that about $25,000 would be saved to the State in salaries.

Mr. President, my friend from Worcester (Mr. Hobbs) who spoke a moment ago says that he concedes that the recess committee is a necessary evil, with the emphasis, I suppose, on the evil. I am willing to admit that a single recess committee in a season, under special conditions or circumstances of emergency, may be justifiable if not actually necessary. That six recess committees, including almost a fourth of the membership, can ever be necessary, I deny; and there is no justification or excuse for this attempt, which it really is, to prolong the session of the Legislature throughout the other six months of the year, with another salary for all who can get at it; and the plain statement which I have read of what is going on at this moment under this very roof speaks more eloquently upon the subject than I can or, as I venture to believe, even my friend from Worcester can. [Applause.]

Mr. Reidy of Boston: Why use a 75 millimeter gun to destroy a hen-coop? I regret that there was some abuse of the recess committee idea in the last House of Representatives, but this excess probably never will happen again. Recess committees have done much good work in this Commonwealth. It is an excellent way in which to thresh out complicated policies which are not well understood. The recess committee saves a great deal of time for the General Court. I believe future Speakers of the House and Presidents of the Senate, hearing of present criticism of unnecessary recess committees, will curb the tendency to create them.

On almost every recess committee ever appointed there have been at least two or three members, experts in the subject-matter of the com-

mittee's work. Among the delegates to this Convention is one of the greatest election law experts in this country (Mr. Luce of Waltham). If it were thought desirable to codify or to amend our election laws, what better method than to have a recess committee with men like the delegate from Waltham on the committee!

I served a year on the committee on Taxation. We handled the report of a very able recess committee, and I have no hesitation in saying that that particular recess committee was worth many times the expense its appointment brought about.

I trust this proposed amendment to the Constitution will fail, for it is much too petty a matter to go into the organic law of Massachusetts.

Mr. WILLIAM H. SULLIVAN of Boston: As one who has served for three years in the House of Representatives and who knows the House from the inside, I rise to favor this amendment. I have served on a recess committee and therefore I am somewhat qualified to speak on the efficiency of said committees, and surely I cannot be accused of bitterness because of failure to secure such an appointment. I never have claimed that a Representative was paid inadequately, although in addition to my duties as a legislator I assumed (very willingly) the duties of Democratic House leader. As an incident the leader of the Democratic party is appointed to a recess committee. Perhaps it is added compensation for the arduous duties thereby entailed. I served on the recess committee on Workmen's Compensation because I felt that I could render some helpful service to Massachusetts. I accepted the $1,000 because I felt that I had given almost an equivalent, and for each year since I have addressed committees, sometimes unappreciated, because I felt that I even then was doing something to pay Massachusetts back. Soon after the beginning of my service in the House I saw what a debasing influence these recess committees had upon the legislators. I am opposed to salaried recess committees, first, because of the unnecessary and inexcusable expenditure; second, because the committees are not compelled to read their own reports [laughter]; third, because succeeding legislators are not compelled to read the reports of recess committees; fourth, because such reports seldom if ever are read; and, lastly, because about only one-third of the members of the recess committee understand that about which they seek to recommend legislation.

Several delegates who are or have been members of the Senate or House for years have argued strenuously that the salary paid a member of a recess committee is in the nature of added and deserved compensation for duties performed as a legislator, for which he is grievously underpaid. The political history of Massachusetts does not record that these malcontents made any struggle to escape such a fate, but on the contrary there is convincing evidence that each one struggled hard lest he be separated from the same meager stipend, and no evidence is forthcoming to prove that during those lean years any one of said legislators made any effort to secure other and more lucrative, if more laborious, employment.

Who will serve on an unpaid recess committee? Any public-spirited man who cares enough about Massachusetts to serve in the Legislature. And I contend if there was no salary attached to the House of Representatives we would get better men, because at least seventy per

cent of the members of the Legislature are incited to serve by the thought of the salary rather than the service. Inadequately paid! I served for three years, and during that time I never saw more than twenty men in the House who were worth one thousand dollars to Massachusetts.

Now, what is the real issue here? It is not alone the needless waste of money, but there is a higher and nobler principle involved that should appeal to everybody, and it is whether we shall do away with these salaried recess committees and the money which improperly influences legislative votes. Upon being criticized for his vote upon a certain measure, I heard a Representative say: "I am going to be appointed on a recess committee. I am taking no chances. I am voting wrong, but I am not going to take any chance of losing that $1,000." That is the real fact. The serious question here is: "Are you going to have paid recess committees, or are you going to have the source of your laws in Massachusetts a pure source, unpolluted by these pecuniary, selfish, personal motives?" That is the real question.

Mr. LUMMUS: I have no reason for injecting into this discussion any of the heat which has characterized it on one side or the other, because I have been somewhat removed from personal contact with these matters. But I have observed the Legislature at work and I have listened with some interest to the remarks of those gentlemen who oppose this amendment, hoping to learn what they offer as a practical cure for the dangers that they themselves have seen in this present system of recess committees. My hope has not been gratified, because the answer that they give seems to be: "There is trouble, but it is a small matter." It is a trouble that never will be removed unless we remove it. The Legislature would have created more than six recess committees in this last session if the Speaker had not thrown his influence against them. I am not accustomed to criticize the Legislature in this body, but my belief that good government in Massachusetts depends mainly, if not exclusively, upon representative government in the Legislature is what makes me favor this resolution. The people of Massachusetts are entitled in the Legislature as in the courts to as impartial and unselfish service as the lot of humanity will admit, and they are not getting it under this system. I fail to see why if the Legislature needs a special study of a particular problem it cannot select men of experience, former members of the Legislature, or citizens who are experts, to study the matter and report, with pay or without it, as the case may be. I cannot see why such a commission appointed for a temporary purpose is not a perfect substitute for any recess committee that otherwise might be desired. And since we have that perfect substitute, and no one has denied it, why should we not remove from the Legislature this temptation?

Mr. WILLIAM S. KINNEY of Boston: I have been in public life a great many years, in campaigns of much heat, in legislative bodies and in the city council, and I never have found it necessary to make a personal attack upon any man whom I might choose for the moment to oppose. A member has chosen to make a personal reference to me in connection with this petty measure. In view of that circumstance I pass the burden of defending the committee's report to the chairman of the committee, lest the attitude of that member might lead some one to believe that my words were biased by the petty appoint-

ment to which he referred. I give my time to Mr. Luce of Waltham, the chairman of the committee.

Mr. LUCE of Waltham: No member of this committee has a word to say in the nature of personal defence for his share in this unanimous report. Fifteen members of the committee had all, I think, served in the General Court. Any delegate who would cast aspersions upon that body should remember that the President of this Convention was a Speaker of the House and had a share in nominating recess committees; that another of the honorable Speakers the House has had sits in the third division; and that no more honorable men in the Commonwealth live than those two men. When you criticize the Legislature you criticize those men and you criticize every man here who has had a share in the responsibility for its work. I served in the House nine years, and I am proud of every minute of that service, and I am glad of this chance to tell you that all the authorities in this country, all the men who have studied Legislatures, agree that the Massachusetts Legislature is not only the best Legislature in the United States, but probably the best legislative body in all the world. [Applause.] It does not follow that the Legislature may not be improved. There are opportunities to better its framework, to relieve it, not to hold a club over it, not to punish it, but to try to make its work easier and better and more fruitful, and those will be presented to this body; but here is a proposition that you shall put in your Constitution a reprimand, a censure. And in support of it what do we have? Libel, accusations against individual members, all sorts of innuendoes.

Do I speak with too much heat? Pardon me. Let me call your attention in calmer terms to the fact that this Convention hitherto has held up to Massachusetts traditions by recognizing that the duty of a Constitutional Convention is to concern itself with the broad, fundamental problems of government; that it is not here to legislate; that it is not here to do that which can be done by legislation; it is not here to put into the Constitution the trivial things that rise from the animosities of the moment. My friend from Lynn in the third division (Mr. Lummus) has asked how the situation shall be met. I will tell him how it shall be met. It shall be met by an appeal to the moral sentiment of Massachusetts. That appeal never has failed. A little more than twenty years ago the lobby was bringing disrepute to this Commonwealth. There were sound reasons for censuring the Legislature. Was a Convention called? Was it found necessary to interpolate into the Constitution provisions regulating the lobby? You may find these things in other States. You may go through the Constitutions of the land and in document after document you may find these attempts to meet passing evils by the force of constitutional enactment instead of in the way Massachusetts always has dealt with them, by the force of moral suasion. So here I ask you to leave this thing to its own remedy. I ask you to recognize that time after time the Legislature has purged itself, that it always has been rising, its standards of honor have been rising, its standards of integrity have been rising, until it is purer to-day than it ever was before. So I ask you to leave the remedy where your predecessors always have left the remedy, to the people of the Commonwealth, to the good sense of the Commonwealth and to the conscience of the Commonwealth.

Sir, I would call attention to the bearing of this debate and what it hitherto has chiefly implied. It has implied that the pressure of work upon the Legislature has compelled that body to have recourse to this means for additional information. For my own part I do not think it always the wisest course. I deplore the excessive use of recess committees. I am inclined to think some better method can be suggested to the Legislature and to the people. That I shall urge upon you when the right time comes; but because I think some remedy is desirable should I vote to put into the Constitution a provision of this sort, so absolutely foreign to everything that is there now, so suggestive of the patchwork, piecemeal constitutional legislation of the southern and western States that has brought them disrepute? All the shackles that have been put upon Legislatures throughout the country have done nothing but tend to make it less honorable and creditable to belong to them. You may find the cause of their downfall in such constitutional restrictions as this. Do you want to follow such example? Do you want to push your Legislature also on the downward path by imitating these States of the west and south that have made it almost disreputable for a man to be elected to office? Why not trust your own representatives? Why not trust yourselves? Many of you will serve again in the Legislature. Every man of you will vote for somebody to serve in the Legislature. Every man of you has access to the public press. You have access to all that which creates and molds public opinion. What you have said to-day, and much of it has been well said, and much of it has been usefully said, will help to curb this evil. My good friend from Somerville in the fourth division (Mr. Underhill) in one sentence said that the Legislature could not be trusted to do this, and then he told us that during the three years that he was on the committee on Rules there was no recess committee. Sir, the Legislature of Massachusetts never will lack men as bold and fearless as my friend from Somerville, men who do not worship popularity, men who do what they think is right regardless of what may be the effect on their fortunes. And so long as the Legislature contains men like him so long you may trust your Legislature. It is true that this last Legislature has exposed itself to this. And that is the reason why when we considered the matter a year ago nobody, if I remember right, presented himself to our committee in favor of this proposal. At any rate, no earnest argument was advanced. In the meantime one Legislature has forgotten itself to some degree and has done what you and I censure. Because one Legislature has carried this program to the extreme and has done the wrong thing, are you going to embody in the Constitution a paragraph that perhaps for a hundred years will tell all the people of this country that we could not trust ourselves to reform ourselves?

The amendment moved by Mr. Leonard of Boston was adopted, by a call of the yeas and nays, by a vote of 141 to 68; and, accordingly, the new draft (No. 389) was substituted; and it was ordered to a second reading, rejection, as recommended by the committee on The General Court, having been negatived.

The resolution (No. 389) was read a second time Thursday, August 1.

Mr. Leonard of Boston: I desire to offer an amendment in the hands of the Clerk.

The PRESIDENT: The Chair will ask the member if it is the same amendment as printed in the calendar.

Mr. LEONARD: The amendment I offer is practically the same as the one printed under my name in the calendar, with some slight exceptions. It was called to my attention, after I had offered the amendment printed in the calendar, that in the last line I have the wording "except such committee as may be necessary from time to time to revise the statutes of the Commonwealth". The gentleman from Lynn in the third division (Mr. Lummus) called my attention to the fact that a committee of itself cannot revise the statutes. Consequently I have offered the amendment which I gave to the Clerk yesterday, but which has not been printed, changing the word "revise" so that it would read to "consider a revision of the statutes of the Commonwealth". The amendment which I am asking the adoption of at this time also changes the resolution in another particular. At the last debate a question was asked on the floor as to whether or not, in the event of the adoption of this proposed constitutional amendment by the people, a citizen might be debarred from being appointed to an office which had been created by a Legislature of which he formerly was a member. I think the language of the amendment I am offering now more clearly and distinctly provides that a man may be eligible to an office created by a Legislature of which he was a member some time prior to the time of his appointment. I have endeavored to be entirely reasonable in the consideration of this subject; but I believe there is one thing upon which the majority of the delegates are agreed, and upon which we feel that there should be no surrender, and that is that we should submit to the people a proposition whereby they may be able to write the word "Finis" at the end of this long chapter of legislative recess committee abuses.

At the last time this matter was under discussion the gentleman from Waltham in the first division (Mr. Luce), after the previous question was moved, and speaking under the operation of the rule whereby the gentleman in charge of the committee report gave him an allotment of time, and not allowing any interruption or questioning, made an argument with which I desire at this time to join issue. The gentleman said, as I recall it, though I am not endeavoring to quote exactly, that this proposed proposition was petty, small, and trivial; that it was a matter that was not worthy of being written into the Constitution of the Commonwealth of Massachusetts; that it was more characteristic of the statutory enactments that may be found in the constitutional provisions of some of the southern and western States. I desire, gentlemen, to take issue with that, and I wish to quote, not from the Constitution of any southern or western State, but from the Constitution of the United States, and to read from section 6 of the Constitution of the United States:

> No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

It seems to me that this provision of the Federal Constitution should be sufficient answer as to whether or not this is a trivial subject. I

maintain that the subject-matter of this resolution is strictly and properly a matter of constitutional limitation on the legislative powers, and that it is the duty of this body to write it into the Constitution; that it is not a matter that should be the mere subject of statutory enactment that might be amended, altered or repealed from time to time by the General Court. With most of what the gentleman said in praise of the General Court I am in hearty accord, and take no issue. With any desire to disparage or to detract from the reputation that properly belongs to the General Court I have neither motive, desire nor utterance. I agree that both of the departments of our Legislature are model parliamentary bodies, and that before the General Court any citizen may bring his petition and generally have a good, fair hearing of his cause; that the General Court has enacted legislation which has kept the Commonwealth well in the forefront among our sister States of the Nation, and that in our legislative halls men have received training for public service, from which they have gone forth into fields of great National usefulness. I think also that I am endowed with some degree of optimism as to men in public life, and yet I must confess I have seen nothing in all this line of encomium or in anything that may be said in praise or in eulogy of the Massachusetts Legislature, and more particularly nothing in the actions of the Legislature during the past session or for the past several years, or during the time that this matter has been under discussion in this body, which leads me to any conclusion other than that this is a matter which properly should be dealt with by this Constitutional Convention.

There is another phase of this question to which I would address myself briefly, not that it has been argued on the floor of the Convention, but to the suggestion that has been made to me from several sources since the matter was last debated that, in the event that the Legislature still should have occasion to have recess committees on certain subjects that might arise, if there was no compensation or payment allowed for services thereon, this would operate against the rendering of service by the man of poor or modest means. I think, gentlemen, in the first place, that a recess committee without compensation may be a possibility, but not a frequent probability. I think I may say something regarding the attitude of the legislator of moderate circumstances as to his service to the State, and I do this with a feeling of protest, a feeling of protest that there should be any prevalent idea that there is a line of demarcation or of cleavage whereby the service that a man renders follows in any parallel lines with his possession of worldly goods. I was a member of the General Court something over a decade ago, and from that brief period of service I then had, I feel that I am qualified somewhat to speak from the standpoint of a member of humble resources. In doing this let me first pay tribute to those other members who come to the General Court from session unto session, the men of means, of culture, men possessed of family tradition and prestige and trained for service to the Commonwealth. I trust that the State never will lack services such as these, and that they always will be true to the best traditions of their fathers. And when I say the fathers, may I without diverting from the channel of this discourse, — for the term "the fathers" has been used so frequently in the Convention, the fathers who signed the social com-

pact, the fathers who wrote the word "proportional" into the Constitution, the fathers of the Revolution and the fathers of the earlier Conventions, our predecessors in office, who have been referred to so frequently by their varied progeny, — may I also say that I should like to include in that generic term the mothers, for, as a distinguished son of Massachusetts once said, he had heard enough of the glories and the suffering of the Pilgrim fathers, but for his part he wished to say a word for the Pilgrim mothers, for they had suffered and endured not only all that the Pilgrim fathers suffered and endured, but they had to endure the Pilgrim fathers to boot. And from the hardy specimens of the seventh generation of that stock that I have seen in action upon the floor of this assembly, I have been more and more confirmed in the opinion that I long have held, that that was no slight burden to bear.

May I suggest also that there are members who come here from time to time without the association of wealth or of family prestige, and whose direction and will to serve the State may have perhaps very humble foundation, but are possessed of a patriotic inspiration not less unerring than that of those who may claim kindred with the great names graven about this hall. My mother placed in my boyhood hands the tattered books that had been her companions on many a weary mile when she sought an education, the simple rudiments of a learning, which she might much more easily have acquired from a government, but from a government which her people regarded as foreign and proselyting, and which education, received in that manner, they always, with obstinate persistency or with persistent obstinacy, sometimes politely, sometimes rudely, but always firmly declined. If I, in my course as a citizen, or in such brief period of time as I may have held public office, have strayed or departed from those paths which mark the proper standards of a citizen, or an official for the time being, by so much have I strayed from her teaching, her precept, counsel and example. And I believe this: That the poor man is not asking for any exception in his case, that he is not asking for any exception for the sake of some future undefined and unascertained opportunity to a member of his class to receive compensation on a recess job, when he knows that the granting of that exception means the continuance of an abuse within the State. We all must play our part as we come to the halls of legislation, no matter whether we be rich or poor, and we can find in the roll-calls of this body men who serve the State, not in proportion to their means, but in proportion to their ability to serve, and men who have met in this assembly issues just as grave as ever confronted members in legislative halls. If the State at any time should require some slight service from any of her sons, some such service even as the little service performed by our own recess committee, done without any idea of compensation, there will be none, I trust, who will refuse the Commonwealth that service. If there should be, I think they probably would prove more poor in spirit than in purse. And in reply to the suggestion made that we should have confidence in the Legislature that they may reform this abuse and clean their house, I say, let the Convention have confidence in itself, let the delegates here assembled have confidence in themselves, let them meet this issue that is before them, and in doing that they will do nothing that in any way at any time will deprive the Common-

wealth of any service which she shall merit and always will receive from her sons.

Mr. Luce of Waltham: I desire simply, as a member of the committee on The General Court, which originally had this matter under consideration, to call the attention of the Convention to certain features of the proposal that may not yet have received sufficient consideration. The gentleman in the fourth division (Mr. Leonard) seems to me to have thrown a stone at a sparrow and to have hit an elephant. By the wording of his resolution he has precipitated upon this body one of the great questions of political science, a question that has been discussed by countless thinkers during many generations,— the question whether the representative of the people should or should not receive compensation for his services. It has been a momentous question in England, far more than with us, because from the earliest days, and if it were a matter of interest I gladly would read to you the citations from the records of our own Colony, from the earliest days in Massachusetts it has been the belief of our people that the laborer was worthy of his hire, whether he worked in the General Court or in the field or in the shop. The opposite doctrine prevailed in England from the days of Charles II until within a very few years, and during that time was the stronghold, the very bulwark of privilege and wealth. Perhaps twenty years ago the toiling masses in England came to be of the belief that they too should be represented in Parliament. They found it impossible to secure from Parliament any wage for members. Thereupon they began paying their men, the few who were at first elected, and afterward a considerable number, out of the funds of the trade-unions. The matter was brought into court, and it was determined that this was not a proper use of the funds of the unions, whereupon the representatives of the laboring people were compelled either to forego the privilege of public service or else to expose themselves to becoming objects of charity; and the result was that in 1911 Parliament, in order that all classes in the community of England might be represented in the great National assembly, at last voted wages to members, a revolution in the spirit of English government and an innovation that was viewed with the greatest alarm by the champions of privilege and aristocracy and wealth. And now I think for the first time in the nearly three hundred years since men have been making laws in Massachusetts it is proposed to incorporate in the fundamental law a recognition of that which England has abandoned and that which we never accepted,— a recognition of the doctrine that men ought to be willing to give their services to the State, to sacrifice their own opportunities of income, through a sense of public duty, in order to remove the unfortunate effect always produced when the money factor enters. If the gentleman had seen fit to copy the Constitution of the United States, which he has quoted, and the Constitutions of many other States, simply to prevent the appointment or election to office of members of the legislative body which had passed the law creating the office, I am not sure but I would have agreed with him; for it is a fact that there have been some regrettable instances in the last few years where members of the Legislature have tried to upset the policy of the State and to amend its law, apparently with the purpose of providing places for those who had a share in creating the offices in question.

That is indeed a serious matter, as he has said. It has been greatly agitated at Washington, and there has been much dispute as to whether a member of Congress ought to be appointed to office while serving, no matter whether the office was created by the Congress in question or not. In many places in the country there have been grave reasons for anxiety over the embarkation of the State in doubtful enterprises, with the primary purpose, apparently, of affording salaries for those who promoted them. That evil exposes the community to the perpetration of laws which may have the most far-reaching effects, in order to gratify selfish personal ambitions. So if the gentleman chose to modify his resolution to meet only that evil, sympathy with him would be far more widespread than I believe it possibly can be with a proposal to imbed in the Constitution of Massachusetts a recognition of class privilege which, as I say, England has discarded and which we never have adopted. Therefore I would urge the Convention seriously to reflect whether it desires at this stage in the world's progress to say to those who have not independent means: "You shall in effect be precluded by your situation from serving your State while the Legislature is not in session, but the man who has been born with a golden spoon in his mouth, or who has been gifted by nature with the power of acquiring money and has reached the place where he can afford to serve without compensation, that man may serve." I doubt, sir, if the Convention has reflected upon the significance of that position, and if it desires to adopt this resolution in the present form.

If gentlemen desire to prohibit recess committees, that will be an absolutely different proposition. That might be argued upon its own merits. Thomas H. Benton, he of thirty years' experience in the United States Senate, was an earnest opponent of recess committees. And other statesmen who have reflected upon the subject have doubted either the wisdom or the constitutionality of perpetuating legislative power while the legislative body is not sitting. That proposition may be argued perchance with profit even at this late hour; but the proposition that you shall recognize money in the Constitution of Massachusetts is so novel and to my mind so indefensible that I trust no member of this Convention will support it for one moment.

Mr. George of Haverhill: I have been following the interesting remarks of the delegate from Waltham (Mr. Luce), and I think he has brought out the real iniquity and weaknesses of the Legislature very well. I do not know as there is any need of tying this proposition up with the policy of England some years ago, because I fail to see the analogy. Perhaps it is my density of mind that prevents me from understanding and appreciating the point raised by the gentleman from Waltham (Mr. Luce). I am not opposed to the General Court. I always have defended it; but after an experience of one hundred and thirty-seven years, we find that a certain system has grown up in the General Court that has been extravagant, unnecessarily so, and the members of this Convention know it and appreciate it, and I say that it is our duty to apply some remedy.

Perhaps you gentlemen have not looked up this matter, but I have been to the Auditor's office for assistance, and I find that since 1903 the Legislature has expended $650,000 for recess committees, providing they spend the $87,000 that is appropriated this year. I see there is

more or less contention in the Executive Council as to whether the members of these various recess committees should receive $500 or $1,000 a year each. I understand the Governor favors giving them all that was appropriated, and as much more as the Legislature will permit.

I want to call your attention to some of the great questions that have been discussed and investigated by these committees. In 1903 we had a joint committee on compensation of State and county officials. Their expenses totaled $13,177. Now, was that committee working in the interest of the people? Does anybody remember what the outcome of that committee's work was? Why, a general increase in the salaries of all the county employees. They say that that is working for the people.

Mr. Newton of Everett: Will the gentleman kindly state to the Convention that previous to 1903 for five years there were no recess committees, except the committee on the revision of the Public Statutes in 1901?

Mr. George: The gentleman's statement is quite true. Previous to 1903, as he states, there were only one or two recess committees during the six or seven previous years. One of them expended $2,467, and another one expended $2,468. But I am beginning with 1903 now, where this particular committee to consider the compensation of State and county officials expended $13,177. In 1905 we had a joint special committee on railroad and street railway laws. Of course that was a new subject. That cost us $16,762. Is there a member of this Convention who can recall a single recommendation from that committee that ever amounted to as much as the paper it was written on? In 1906 we had a joint special committee on insurance. Of course that was a new subject. Insurance is a very new subject in Massachusetts. That cost us $14,200. What do you suppose the motive was in having that committee appointed? I do not recall that the insured or the policy holders were coming up here in great numbers to advocate a recess committee of that kind. But they appointed it, and that cost $14,200. The same year they had a joint special committee on the observance of the Lord's Day. Well, now, that was a tremendously important subject, because I suppose up to that time very few people of the Commonwealth really knew what the observance of the Lord's Day meant. While it cost $8,898 to investigate the observance of the Lord's Day, I do not remember any great change in the observance of the Lord's Day following the report of that committee.

Mr. Luce: I may inform the gentleman as to the matter in question. To quote a familiar phrase, "All of it I saw and part of it I was." As a result of the report of that committee, — I trust I shall not be unduly immodest in disclosing the fact, — I myself aided in securing the initial steps in the legislation relating to one day of rest in seven, which since then has become a State wide issue and has so commended itself not only to the people of the State but of the whole country that it may be called a National issue. The legislation relating to one day in seven, I think, in its initial stages was due wholly to the report of that committee and the motion that I had the honor to make as a result of the report being presented in this House.

Mr. George: Notwithstanding the statements made by the delegate from Waltham (Mr. Luce), there are men who are working for

the Bay State Street Railway Company on Sundays and every day in the week, there are men who work for the Boston and Maine Railroad every day in the week, and there are men who work in most every walk of life Sundays, and some of them are glad to do it. I know something about the subject that the gentleman mentioned, because that same question was here in my day, and the objection of the men who worked then was that they did not want to be compelled to loaf on Monday. They would rather work than loaf on Monday, for in the average family, — perhaps the gentleman from Waltham (Mr. Luce) does not understand this, — in the average family, where a man's wife is engaged in household duties, Monday is a very busy day. Therefore there was a great opposition, and there is a great opposition, because it is impracticable. It does not accomplish the purpose for which some of those short-haired women and long-haired men who used to hang around the State House, trying to make somebody do something that he did not want to do, were striving for.

Mr. Luce: Is the gentleman aware that the proposal under consideration at the moment has been the established law of France for so many years that its utility there cannot be questioned, and that in nearly all parts of the civilized world its importance has been recognized and wherever applied it has proved of the greatest value to the health, the strength and the welfare of those who toil for a living?

Mr. George: I have little knowledge about the conditions that have existed in France, and I am rather reluctant, in view of some recent happenings, to adopt European methods. We had a commission that recently returned from France, and the chairman of the commission has endeavored to introduce some French novelties. You may have seen the pictures in the newspapers. I trust they will not be adopted permanently. I am an American, and still believe in American ways and customs. I believe that Massachusetts with her individual freedom and her just laws is as good a place to live in as France, and I doubt the wisdom of adopting French or English methods of living simply because we are engaged in war.

Now, let us proceed to the year 1906. After we had special committees on insurance and the observance of the Lord's Day, we had another special committee, — on taxation; that cost us $15,811. I never heard anything from that.

In 1907 the committee on Ways and Means became a recess committee to investigate the financial methods of the Commonwealth. They worked all summer more or less. I do not know whether it was more or less, but at any rate, the expense of that committee was $15,771. Do you know what that committee did? That committee, after a tedious summer, reported a bill to change the title of the Auditor of State Accounts to "State Auditor," and created the office of Deputy Auditor. Yes, that was the sum total of the result of spending $15,000. I tell you that any committee on Ways and Means could have done that much in regular session, without any expense whatsoever.

We also had that year a joint special committee on fire insurance. That cost $13,525. I never heard anything from that; I do not believe any member of this Convention ever heard anything from it.

Then they also had a joint special committee on labor the same year.

Do you know how they start a movement to investigate labor and insurance and all these various subjects? Some one in the Legislature starts in to have a special committee appointed. Then of course some members of the Legislature frown upon it, because there is not much show for them to get on, and they make the committee as large as they can, to increase the chances for appointments. Sometimes they have to start more special committees so as to gain the votes that are needed for the first one. Then finally, in order to run the thing through without any possible hitch, they suggest that they will put on a couple of labor leaders, who know all about labor. Of course that brings the cause of labor in to help to get the thing through beyond question. This is the reason why so many of our so-called labor leaders are in favor of commissions and recess committees.

I do not understand that this special committee on labor did anything they did not have to, but it cost us $11,392.

In 1910 they got pretty well out of subjects, so just to keep their hand in, they investigated the Lyman School for Boys at an expense of $5,978.

Then in 1911 we had the usual congressional district committee, which met in the summer, and that cost us $19,000.

In 1912 we had a commission to investigate the matter of water supply for the cities of Salem, Beverly and Woburn and for certain towns. That cost $15,895. We also had a commission to investigate the holdings in voluntary associations of certain corporations. That was not very expensive; it cost only $8,246. The committee on municipal indebtedness cost $18,000-odd. Then we had a committee on transportation facilities in western Massachusetts. Well, that cost us $9,847. I do not know what was the outcome, but we had the committee, and we also had the expense attached.

In 1913 we had an investigation of circumstances surrounding the employment of women and children. When you investigate all the circumstances that surround all the women and children in the Commonwealth, it costs a good deal of money. The expenses were $20,173. I do not know as the women and children are any better off than they were before, but I presume the committee was better off, if we should use the cost as a standard of measure.

The same year, we had another committee, — on pensions, — not to save anything; that was not the purpose of any of these commissions or committees. Our civil pension system came into existence like the creeping palsy, and the committee made a very exhaustive investigation. I trust every member of this Convention has read that report. How many members of this Convention have read that report? I wait to allow you to rise in your place. One? You are fortunate. Two! Well, I guess they must have been members of the committee.

Mr. Sullivan of Salem: I assure the gentleman that I was not.

Mr. Underhill of Somerville: The Governor did me the honor to appoint me chairman of that committee, and I refused to serve.

Mr. George: Well, I did not speak of that as a reproach to either one of the gentlemen; in fact, I am not speaking in a personal way against any of the men who served on these committees; it is against the system. I was a member of the Legislature six years, and we did not have them. We did not think them necessary.

That same year we had a committee to investigate the methods of

checking the spread of tuberculosis. Well, that is a great question, and a great investigation undoubtedly, for the expense ran up to $20,171, but I do not know exactly what the outcome of that investigation was. I have not heard anything that came from that committee.

In 1914 we had an investigation of legislation having to do with city charters. That cost $7,230. Then we had one on the laws and rules of the General Court. Now, of course the General Court could change its laws and rules any time it wanted to, and in about every General Court a majority of the members are reëlected, so that they understood what the rules were the year previous; but they had to have a recess committee to sit during hot weather. Well, that cost only $10,705. I have not heard of any substantial change in their rules. We have changed some of our rules which they had, and I think it was done in a very few minutes.

That same year we had a commission on development and extension of the transportation facilities throughout the State. That was a very large question and it cost us $9,970. I do not know of anything that that commission did in 1914 that assisted or in any way helped transportation, for shortly after that about all the transportation lines were heading for a receivership.

In 1915 we had a commission to codify laws relating to highways. We had been passing these laws for a great many years, and the accumulation was so great that people looking up any particular law in reference to highways was lost. This cost $10,069.

We had that year also a commission to investigate the laws relating to taxation, the third investigation in six years. This committee presumably investigated its predecessors, and the expenses were $10,250; and no particular result, I think, came from that.

In 1916 we had a commission on workmen's compensation, etc. I do not know what that "etc." was, but that is a very broad term. That cost $13,270. And we had a commission on special insurance again. This is labeled "special insurance." I do not know which is the most specific, a special committee or special insurance. However, their expenses were $14,662. The commission to investigate the financial condition of the Boston Elevated Railway Company cost $8,510. I think every holder of Boston Elevated stock in the Commonwealth knew about how the Elevated stood without any investigation by the Legislature. The same year we had a recess committee on building laws that cost $12,021.

In 1917 we had another street railway investigation. You will observe that the more they have investigated, the worse off the roads have been. I do not charge the committee with that, but as a matter of fact that is true. That committee cost us $17,434. The commission on special insurance, — another "special committee on special insurance", — cost us $16,245. And then we had a recess committee on taxation of corporations. While this subject had been treated by similar committees before, it cost the State $12,601. Then we had a recess committee on financial planning. Now, do you know what that was? That was a committee to find a way to spend more money. [Laughter.] This cost $11,453.

I want to tell you the Legislature has not in twenty years appointed a single committee to find a way to make government more efficient

or less expensive. Not only have the committees cost $650,000 within the past fifteen years, but nobody can compute the mischief they did, or the increased cost of government that was the direct result of these recess committee investigations.

Then there was the investigation of the Boston Elevated Railway Company by the Public Service Commission. They had three investigations going on at the same time. No wonder that the road became bankrupt. It took the office force of the Elevated all the time and at tremendous expense to grind out the material first for the legislative committees and then for the Public Service Commission. The officers and employees gave more time to the investigation than they did to collecting fares. I am old-fashioned enough to believe that fares are more important to a railroad than investigations.

We had last year another commission, on plans for compensating employees for injuries. It cost us $30,937, so the Auditor reports say. I guess it was well done; they certainly made a great showing in their expense account.

Then we had a commission on uniformity of legislation. I admit it is very important to have uniform laws, but I do not know of anybody who has observed any particular change in our laws. There did not appear to be any uniformity in its expense account, for it cost the State $40,742.

Then we had another investigation. This was a great year for investigations. We had an investigation of the method of conserving and equalizing the flow of water in rivers and streams. [Laughter.]

That was a very important question, whether water will run up stream or down stream. [Laughter.] I understand that there are some very intelligent men in this country who believe that water will run up stream; in fact one of those men sat in Congress some time ago, and he thought legislation could make the Mississippi run up hill instead of down. Well, before that act was consummated his term expired. This last committee cost the State $26,322.

Now, as a result of all this we have, as I say, spent since 1903 $650,000 in investigating all these subjects, and the end is not in sight; and if this Convention fails to give the people an opportunity to apply the brakes, future Legislatures will be reinvestigating all the investigations of the past twenty years.

Mr. LYMAN of Easthampton: I should like to ask the gentleman, now that he has told us about what the recess committees did not do, if he could name any important change in policies or any new policies established in the Commonwealth during that time that the preliminary study was not made by recess committees.

Mr. GEORGE: Yes. The first thing that the propagandists do is to organize, perhaps have a chairman and secretary and a headquarters. Then they start a petition for legislation, and you know if there is anything that the people of Massachusetts are good at, it is signing petitions. They seem to like petitions. Finally the petition gets into the Legislature, and when there is sufficient demand they have an investigation, and they say an ordinary committee of the Legislature has no time to investigate, so the Legislature appoints a special recess committee. Then these men, not the men who sign the petition, — they never show up, — but these men who hold the offices, the secre-

tary and the president, come before the committee and bring a few others with them, men of leisure mostly, who live around Beacon Hill. There are not so many of them as there used to be when I was here. Finally they develop a demand for further investigation. If they find by the Governor's attitude that there is difficulty about getting this through, they then recommend a resolve creating a special commission and allow the Governor to appoint two members and the Legislature five, and this commission usually gets by. Then this commission of course makes a report, and by and by something is done, and then the policy is changed from time to time, and the expenses mount higher and higher until the taxpayer commences to find fault, and then they appoint another recess committee to investigate why they have had to raise more taxes from year to year.

I dislike to trespass upon the question of taxation, but we have a recess committee sitting at this very time supposed to be finding some way to levy another special tax to increase our income. You know as a matter of fact we have all sorts of taxes, and if we do not get enough out of these taxes we call revenue or income, then the balance between income and the amount the Legislature appropriates is assessed on the cities and towns. I read a statement in a recent paper that one of these recess committees had saved the State $2,000,000. Do you know how they saved it? By levying another special tax to take $2,000,000 more out of the pockets of the people. They call that saving money. Now, I should say the Legislature and the recess committee that saved money would have found a way to save rather than to spend that $2,000,000. But that is not correct. As I understand the latest and up-to-date methods in financial reforms, the Legislature appropriates two or three millions more than it has money to pay with, and they meet this increased cost of government by putting on a special tax. If they get by so as not to increase the State tax they say the State has saved $2,000,000.

I have used up a good deal of time, and perhaps what I have said is of very little consequence; but when the delegate from Waltham (Mr. Luce) stands up here and repeats English history in order to cover up this iniquity, and I call it an iniquity, and when he says the spending of $650,000 of the people's money for useless work, or work that could be done by a regular committee or by some other method better and cheaper, I cannot agree with him that this is a trivial matter. Now, the Legislature will not cure this. They are going to have recess committees just as long as the majority of the members seek appointment on recess committees at $1,000 per year. That is the way to get recess committees through. In any Legislature that I know anything about within the last ten years a scheme to appoint ten committees, with ten or twelve men on a committee, would go through the same way the State built four normal schools in 1894. The State Board of Education said that we needed one normal school. Well, every city and town in that Legislature wanted that normal school, and of course every city and town could not get it. Then they said: "We won't have any. If we cannot have that school in our town we won't have any normal school." So what did they do? They got together, — my friend from Saugus (Mr. Bennett) remembers this, — they got together and brought in an omnibus bill, a sort of pig in a bag arrangement, and they provided for four, one to be located in

Lowell, one in Fitchburg, if I remember right, one in North Adams, and one in an unknown location on the Cape.

Mr. BENNETT of Saugus: Having referred to me in this connection, I should like to ask the gentleman to state which side I was on.

Mr. GEORGE: If he was not in favor of having the normal school located in Everett, where he then lived, he was the only one in the Legislature who did not take that stand. Now, they could not get one, but they put in four. Finally they built three normal schools more than the State Board of Education said were needed, in order to get one. That is the way they get recess committees through the Legislature. I think it is perfectly proper for us to put into the Constitution this proper restriction.

In reference to the members of the Legislature accepting an office which the law says they shall not accept, in 1856 or 1857 they passed a law that no member of the Legislature should be eligible to any commission which he helped create while he was a member of the Legislature. A few years ago, as the gentleman from Boston (Mr. Lomasney) pointed out the other day, three men representing a political party in opposition to the Governor were his servile tools, and when they got through doing what the Governor wanted, the Legislature and the Governor together repealed that law and the Governor appointed them to salaried positions paying from $4,000 to $4,500 apiece. Now I think that is wrong. If the law was good it ought not to have been repealed, and if it is good law let us put it into the Constitution and it will not be repealed. That is a practical way of dealing with this question.

Mr. UNDERHILL of Somerville: I move the previous question.

Mr. HOBBS of Worcester: I am rather sorry that the previous question has been moved, and yet I will not ask the Convention to vote it down, because perhaps what I have to say may be tinged with the taint of the personal interest that may come from being a member of the General Court. I think that the remarks of the gentleman from Haverhill emphasized very clearly the ease with which criticism can be uttered. It always is easy to criticize, and it always is easy to criticize unfairly. These propositions which he has mentioned are very excellent instances, some of them, of the difficulty of the Legislature in the brief space of a term dealing with the subjects that they have under consideration. Take the very one thing that he started off with, the matter of salaries. The Governor's Council took some two years to consider and report to the Legislature on the same question, and when it came to the Legislature their report was still incomplete. That report did result in legislation. On the report of the commission of 1903 to which he referred were enacted the laws which ever since have furnished the basis on which certain of our salaries have been assigned. I am going to deal with that one subject alone for the present, in view of the fact that my time is limited. The Legislature is called upon from time to time each year to pass upon increases of salaries. Conditions change. Almost everybody in the last few years has had his salary raised and it seems to be an unavoidable tendency. The Legislature can do one of two things: It can pass special bills as they come, with the net result that salaries are increased on no rational scheme at all, one man getting more than he deserves and another getting a good deal less; or it can go ahead and

work out a scheme for establishing them on a uniform basis. Well, now, such a scheme as that took the Governor's Council, as I have said, two years to work out and then it was not complete. Is it any wonder that the Legislature in the term of six months cannot work out such a scheme? I do not think it is.

I might go on through that list that the gentleman has laid out before you and designate several of those subjects that absolutely cannot be worked out in the term of six months. If you want the Legislature to do anything with them you have got to give them opportunity to do it. If you do not want them to do it, if you want them to keep botching and trifling with State affairs, why, then, cutting off the means by which they have done it in the past is a very efficient way of accomplishing that result.

Mr. PILLSBURY of Wellesley: I always listen with admiration to the eloquence of my friend from Waltham (Mr. Luce) in this division, and I am by no means so narrow-minded as not to admire it merely because it may have no direct relation to the subject in hand. I do not think that a proper understanding of the question before the Convention required him to dive quite so deep into history or fly so high into the Empyrean. It is a very simple question. Shall we put an end to the abuse, which has now become flagrant, of the power of the Legislature to establish an unlimited number of recess committees and so practically, at an expense of many thousands of dollars, perpetuate the sessions of the Legislature throughout the entire year? That is the question and all there is to it.

When this subject was last before the Convention, it happened that in that very morning's newspapers it went out to the public that the 50-odd gentlemen and patriots who had been appointed to the six recess committees of the present year were raiding the Governor's Council in advance for $1,000 each as extra compensation, instead of $500, and this great issue then seemed to be trembling in the balance. By apt coincidence it appears in this morning's newspapers that they have carried their point, that the Council has surrendered and they are to have the $1,000 apiece, whether they earn it or not, which they have not yet begun to earn.

I think I know as much about what recess committees have done as anybody knows, for it has been a part of my business to know it. I am aware that they have on occasions done some very good work, and that semi-occasionally, though very rarely, something has come out of it. But this, on the face of it, is a system of public plunder, to which it was bound to come if allowed to go on.

Mr. HARRIMAN of New Bedford: I cannot believe, with the gentleman in the fourth division (Mr. George), that all the work of these recess committees has been useless. I can conceive that perhaps they have not attained to all that they ought, but as he read over that list you realized that the questions of social insurance and other great industrial problems ought to be investigated and it is the only way the General Court can do its full duty. I also believe that the working-man is worthy of his hire.

Mr. GEORGE: I want to suggest to the gentleman from New Bedford, why not appoint a commission of capable men who have made a study of the insurance situation outside of the Legislature and let them investigate it? By adopting this proposal we do not prevent

the Legislature from authorizing the appointment of a commission, but they cannot appoint commissions and at the same time make themselves members.

Mr. HARRIMAN: I can conceive of cases where men particularly interested in a certain question have come into this chamber as members of the Legislature and perhaps would be the most efficient men in the whole Commonwealth to serve on such a committee. They ought to be there. I speak now as a working-man. While the system has been abused and when this first proposition came before the Convention I was inclined to favor it, I have changed my mind, if change there be, in this matter, and I can see now and I know, — and we have only to go to English history for the short space of six or seven years. Some of the brightest men in this Commonwealth, men who have the affairs of the Commonwealth at heart, are men who work for wages and who if they were obliged to serve for nothing could not serve on these committees.

Mr. BROWN of Brockton: I ask the gentleman what chance labor has or has had on commissions, whether paid or unpaid. When have they ever got one? [Laughter.]

Mr. HARRIMAN: There is not a commission of the Commonwealth to-day on which a labor man is serving but what he is there by force of law. But it should be changed and labor should and will demand more; and when labor asserts its right and comes in here as it ought, the Legislature will truly represent the people. It should be possible to place their own men on boards and commissions and they can investigate these matters from the working-man's standpoint.

The main question was ordered.

Mr. UNDERHILL of Somerville: There is one phase of this question which has not been presented to the Convention, and that is that frequently matters which come before the Legislature are shunted off onto a recess committee in order that the proposition may be killed. The gentleman in the first division (Mr. Harriman) talks about labor, what labor has done, and all that sort of thing. Why, sir, one of the commissions which the gentleman quoted this morning was a commission to investigate the hours of labor for children and the surroundings of women and children in industry. And what was the purpose of that bill? What was the purpose of that commission? Why, sir, it was to defeat a bill introduced by me for shorter hours of labor for women and children and for the extension of the school age of children. And who introduced it? Who offered that amendment? Why, a labor leader on the floor of the House, for the purpose of killing the proposition. And, sir, my vote against the *investigation* of the hours of labor of women and children in mills and factories was used later in my district to defeat me for reëlection. It was camouflage to show that I was opposed to laws favorable to women and children, when the very purpose of the amendment for a recess committee to investigate was to kill a proposed law for their benefit.

Now, sir, that is the way those things are worked, and labor has no excuse to offer. They are not always without blame, and there is one instance of it, and I can tell you of a number of instances. The proposition for a commission to study pensions was put in the Legislature for the purpose of defeating a bill introduced by me for a uniform

pension system which was before the Legislature at the time. Every chance you give the Legislature along that line is taken advantage of by some one. I do not blame the whole Legislature. They do not understand the questions in the Legislature, perhaps, any better than members of the Convention understand some questions. Consequently they are perfectly willing to shove them over to a recess committee.

The gentleman mentioned several recess committees and said that he did not know what they had done, and thereby showed his ignorance, for some of those legislative committees did a great deal of good. You cannot reach the evil through the Legislature; you have got to reach it through a constitutional amendment, and I believe the people of the Commonwealth are ready to vote on that amendment. They are ready to vote favorably on that amendment and thereby remove this temptation, thereby remove this scandal, — for it has become a scandal, — from the Commonwealth. And I prophesy when this is accepted that you will have more efficient recess committees serve without pay than you ever have had with pay.

Mr. Robbins of Chelmsford: If there is any one act of this Convention that will meet with the approval of the voters of the Commonwealth, it is this chance to prevent by constitutional amendment the creation of paid recess committees. The members of the Legislature were elected to do the work assigned them, not to delegate some members to do work which they have neglected. This proposition does not prevent the creation of recess committees, but it does take away the salary of such committees, and I think it thereby would prevent the abuse. Be honest with yourselves, be honest with the people who have sent you here.

Mr. Harriman: I should like to ask the gentleman if it is his opinion that a commission appointed by the Legislature without pay would represent the working people of this Commonwealth?

Mr. Robbins: I believe that the Legislature could delegate a commission or a committee to do work that they already have been paid to do under the salary allotted to them as members of the Legislature.

Mr. Harriman: Do I understand the gentleman to say that the Legislature would divorce themselves from the salary that they would allow to the members of the commission other than themselves?

Mr. Robbins: I do not quite understand the gentleman's question.

Mr. Harriman: In that case where is the money to come to pay these men who serve upon the committee?

Mr. Robbins: I should consider the salary allotted to the members of the Legislature when they took office took care of the payment for some extra service which they might render upon some committee outside of the work during the session.

Mr. Luce: I should like to ask the gentleman if he thinks I was in error in urging the committee on Ways and Means of the recent Legislature to provide additional compensation for the members of this Convention?

Mr. Robbins: I was not familiar with the action of the gentleman from Waltham.

Mr. Curtis of Revere: I desire to say one or two words on this matter. I was very glad to hear the figures as presented by my friend from Haverhill (Mr. George), with whom I had the honor of serving in the House, and also the gentleman from Saugus (Mr. Bennett),

and I remember the facts about the normal schools very well indeed, — all true, as the gentleman has stated. If Massachusetts needs anything it needs not only this, but it needs a finance commission outside of State officials, something after the style of the Boston Finance Commission, to investigate and probe leaks. Oh, there are some. I could tell this Convention of a few. I am not impugning the honesty of the men who get the money, not in the least, but the custom that has grown up. It is like the condition in small places, my own small city, for instance, where there was a little petty system of graft that had grown and no one had fought it for twenty years and everybody who came into office thought it was all right; but finally by drastic action it was stopped. Now in Massachusetts there are some things going on. I will cite only one instance. Within a week a certain commissioner, — I will not name him, it is not necessary, — drawing, I believe, $4,000 a year from the Commonwealth, put in a bill for $269 for personal expenses, and a very high official of the Commonwealth sitting with the Council was perfectly willing it should go through because such vouchers always had gone through. But one member of that Council said: "Let us look into the law; I never have seen a decision of the Attorney-General that permitted this thing." And the high official said: "Yes, I am glad to have you." So the Councillor got the opinion of the Attorney-General, and the Attorney-General said: "No, he has no right to the money." That had been going on and would have gone on if that Councillor had not taken a different stand from the majority of the Council. He saved the Commonwealth by that one act alone $25,000. I believe this is a good thing to put through; I believe that the sympathies of the Commonwealth are with this measure.

Mr. Pillsbury of Wellesley: I will add but a word to what I was attempting to say before. It happens, in the dispensations of Providence, that we are afforded at this opportune time the most striking illustration that our legislative history affords of the consequences to which the abuse of this power may come. And let me say a word upon another aspect of the matter which cannot be overlooked. Some public criticism has been passed upon the Speaker of the House in connection with what occurred in the recent session, some unjust criticism, as I believe, for he is a personal friend, with whose views in general I am reasonably familiar; and I do not believe that he approved the policy or sought the opportunity or that he would abuse it. But this is no personal question. Whether one man or another is in the office of Speaker or President at any particular time, think of perpetuating a system which puts into the hands of the presiding officers of the Legislature, being at the time, as they may be, candidates for other public offices, the power practically to present $1,000 apiece of the public money to 30, 40 or 50 members, more or less, of the Legislature! There is but one way of putting an end to the practice. It has come to be an abuse of legislative power, and it can be terminated only by a constitutional limitation upon it.

Mr. Lyman of Easthampton: I should like to inform the gentleman that the Speaker voted against all recess committees at this last session.

Mr. Pillsbury: I am indebted to my friend for bringing out the fact and should have had little doubt of it, although I did not happen

to know it. Now, then, the occasion having arisen and the opportunity being here and the only method of availing of the opportunity being to put into the Constitution a limitation upon legislative power to do this thing, it ought in my opinion to be done. I am not satisfied with the present form of the resolution and I had prepared a substitute draft, but on looking for it in my desk I find that some appreciative friend has abstracted it. [Laughter.] I hope that the resolution will be given another reading and sent to the committee on Form and Phraseology, who probably can be trusted to put it into better form, which I think is needed.

Mr. Luce: Perhaps we could expedite matters and come to some agreement if we found out whether this proposed change is an elimination of what seems to me the very obnoxious salary provision. Does he not think it possible to meet the evil by the prohibition of the exercise of legislative functions except when the Legislature is in session, rather than by introducing this feature of prohibiting salary?

Mr. Pillsbury: The best conclusion I have been able to reach which was embodied, so far as I recollect, in my amendment, is to forbid the creation of more than one recess committee at any session of the Legislature. I would not attempt to fix a salary or compensation, but I would leave room for one emergency committee, — largely in view of the fact that a special committee has always been appointed in recent times to examine and pass upon a general revision of the statutes, in advance of the special session of the Legislature to which it is to be submitted for adoption, and this practice seems to be generally approved.

Mr. Leonard of Boston: I admire the skill with which the gentleman from Waltham has tried to drive a salient into the forces that are supporting this resolution. The gentleman said that I was throwing a stone at a sparrow and striking an elephant, and immediately he brought into the discussion the consideration of an obsolete practice of the English parliamentary system. When I pointed out to the gentleman from Waltham that the Federal Constitution has a provision against the appointment of members of Congress to offices created by them, he said in effect: "Well, I might agree to something of that kind because that is a different proposition from recess appointments." And yet when this was up before, the gentleman said there were no prohibitions as contained in my resolution to be found in any Constitution except that it was characteristic of what might be found in the Constitutions of some southern or western States. Does that mean anathema in this Convention?

Again the attempt is made to arouse opposition to this measure by saying that a man who has not been born with a golden spoon in his mouth could not afford to serve when he might be apointed to some committee in the future. Again the gentleman, in making the argument about appointments to office, says the law does not allow the appointment of a member of the Legislature to an office created by the Legislature, but that the Legislature occasionally has changed the statute so as not to apply to certain offices created by it. Those cases are bad, he admits. And yet when there are fifty or sixty appointments to be made on recess committees, those are not bad. These are not the tones of high political morality that ordinarily come from the gentleman from Waltham, and which we generally respect and pay

attention to. Then he makes this inquiry. He asks: "Does the Convention approve of my going before the Ways and Means Committee and asking compensation for the Convention's sitting this summer?" All those subjects are intended to divert the attention of this body from the issue presented in the resolution. This body already has passed the resolution by a vote of 142 to 68. I just wish to conclude in my brief allotted time with this sentence from the Boston Herald of June 10, 1918:

> The fact that these committees at somewhat rare intervals do work of conspicuously high quality is no reason for perpetuating a system which on the whole costs infinitely more than it is worth. If the Constitutional Convention will propose a measure prohibiting the payment of legislators during the intervals between legislative sessions the voters of the State will do the rest.

Mr. Luce: The proposition by the gentleman from Wellesley seems to me so clearly to meet all my individual objections and, I surmise, those of the committee for which I am exercising the duty of speaking, that I would express the belief if his proposal could be substituted for the one under consideration, it would come near meeting unanimous acceptance; and therefore, sir, in the expectation that it will be submitted, before final action on this matter, I would withdraw all objection to having the matter take another reading at the present stage.

Mr. Hobbs of Worcester: I was about to reëcho what the gentleman from Waltham has said. I am far from denying that the number of recess committees appointed at the last session of the Legislature was entirely indefensible, and what I have said on the subject dwelt on the utility of recess committees as a method of investigation which in the past has proved valuable rather than an attempt to defend any such procedure as was had in the last session of the Legislature.

Now I want to add one further thing with regard to the amendment of the gentleman from Boston (Mr. Leonard) which I think has not been mentioned, and I am going to speak of this in connection with a specific case. In 1910 there was a recess commission, I believe, appointed to draft the Workmen's Compensation Act. It reported to the Legislature in 1911. One of the members of the Legislature of 1910 was on that recess commission and he was also in the Legislature of 1911. The act was passed by the Legislature in that year and that man who had lived with that proposition for a considerable time was appointed by Governor Foss, — he was appointed as a labor man, and he was a thoroughgoing and very earnest and honest labor man indeed, and he has proved one of the most valuable members of the Industrial Accident Board. I refer, — if it is necessary to mention names, — to the Hon. Joseph Parks, whose work on the Industrial Accident Board is appreciated both by labor, I think, and by capital.

Now if that amendment went through the net result would be that if conditions had been as they would be under the amendment, he would have had to serve on that board practically for nothing for six months.

Now there is no question but what he was one of the best men in the Commonwealth to be put on that board, a man who knew all about the law, who had drafted it, seen it grow up under his eyes. It was new law to be put into effect, and nobody who had not an expert knowledge of the law could fill the position as well as he could.

The amendment moved by Mr. Leonard was adopted and the resolution, as amended, was ordered to a third reading Thursday, August 1.

It was read a third time Tuesday, August 13.

Mr. Pillsbury of Wellesley moved that the resolution be amended by striking out lines 3 to 10, inclusive, and inserting in place thereof the following:

No person elected to the General Court shall, during the term for which he was elected, be appointed to any office created or the emoluments whereof are increased during such term, nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption.

Mr. PILLSBURY: When this subject was last before the Convention something was said which may have led to the inference that at the next stage I should offer a substitute, which I now do, and ask that it be read by the Secretary.

This does not wholly represent my own view of the subject, but a consensus of the opinion of several members of the Convention who have taken the most interest in it. I will say a word by way of explanation. It accomplishes two things: First, to disqualify any member of the Legislature, during the term for which he was elected, for an office created during that term. It seems to be generally desired that this feature of the original resolution, similar to the existing statute, should be carried into the Constitution.

Then we come to the recess committee feature:

nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption.

In dealing with this branch of the subject there is room for difference of opinion, and I incline to think that upon my own judgment I should have gone somewhat farther than this proposal goes. But it seems to be the prevailing thought that the door should be left open for a paid recess committee upon a general revision of the statutes when that occurs. It has been the custom in recent revisions of the statutes to appoint a large and representative committee to meet in the recess and go carefully through the revision to put it in shape for immediate adoption by a short session of the Legislature to be called in the fall, to sit only a day or two and practically accept the report of this committee. That has been done, and the practice, as far as I know, has worked well and is probably entitled to approval. It would seem that the door should be kept open for such a committee, with compensation if deemed expedient. But in doing this, it is necessary to guard the approaches with some care, for otherwise we shall be liable to have every year, under one pretext or another, a recess committee upon revision of the statutes. It is for this reason that the phraseology of the last clause has been adopted, which I will read again, in order that gentlemen may see that it confines the liberty of a paid committee, which the resolution permits, to a single committee appointed to deal with a revision of the statutes when such a revision has been made by commissioners or other proper authority, and submitted to the Legislature —

nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption.

I hardly need call attention to the fact that this leaves the way open to other recess committees if the members of the Legislature think they ought to be created and are willing to serve upon them from a sense of duty, without additional compensation.

Mr. Harriman of New Bedford moved that the resolution be amended by striking out lines 3 to 10, inclusive, and inserting in place thereof the following:

No person elected to either branch of the Legislature shall be appointed to any office created during the term for which he is elected. No recess or *ad interim* committee shall be authorized by the General Court or by either branch thereof, except by a two-thirds vote taken by the call of the yeas and nays.

Mr. Harriman: When this matter was under discussion before I was of the opinion then, and I am now, that recess committees should be appointed, — that the Legislature should have the authority, and it should not be taken away from them. I believe that it has been abused in the past, but because of abuse it does not follow necessarily that such committees have not been of service to the Commonwealth nor that in the future they may not be of service. I can conceive, sir, that in the time immediately following the war it will be necessary to study some of the great problems that are confronting the people of this Commonwealth, and I for one do not believe that this authority should be taken from the Legislature. I believe, however, that it should not be made as easy to appoint them as it is at present, and I do not believe, as I said the other day, upon this floor, that any man should be asked to serve without pay. Every member should be paid for his services. A non-paid commission means that workingmen would have absolutely no chance upon commissions of this kind.

I believe that it is the duty of the Legislature to care for the legislative arm of our government. I believe it would be wrong to curtail them in any duty which they may have. If you notice in reading my amendment, it is provided that no recess committee shall be authorized except by a two-thirds vote of the various branches by roll-call. And if there are two-thirds of the members of the Legislature who thoroughly believe and are willing to go on record by roll-call that a recess committee should be appointed, I believe that that committee should be appointed, and should serve with pay.

The first part of the resolution provides that no man can hold other office created during the term for which he is elected to the Legislature. I am perfectly willing that that should be adopted, — it ought to be. But there is one thing that I want to say, and I want to close with it. If a board of directors want to investigate its corporation it should have a right to appoint a special committee. The Legislature should have that same right. I cannot conceive of any man voting for six, seven or eight recess committees by roll-call. Let me say, too, that the time is coming when the light of publicity is going to be turned more and more upon our Legislature; and if two-thirds of the Legislature believe that they want a recess committee appointed and are willing to go on roll-call, this Commonwealth ought to have it and those men ought to be paid for their services.

Mr. Luce of Waltham: Years ago when I was introduced to a subject entitled rhetoric, I recall one of the exercises given to me from time to time was that of taking an extract from some author and rewriting it for the purpose of presenting precisely the same thought by the use of other words. It was an exercise meant to give one training

in the study of the dictionary and synonyms. We have an excellent example of it, sir, in the amendment offered by the gentleman from Wellesley, who has taken the words of the committee on Form and Phraseology and exercised his genius in saying the same thing in other words. This may or may not accomplish the purpose which we were led to understand he had in mind at the previous stage of the debate, when we were given to believe that an amendment would be offered permitting the appointment of at any rate one committee in case of emergency or crisis or exceptional need. I do not observe in this amendment anything of the kind, nor do I find before the Convention any opportunity to meet such a situation, except that presented by the amendment offered by the gentleman from New Bedford (Mr. Harriman), which ought to commend itself to the Convention.

The Convention has said that it does not desire to relieve the General Court, and now it is asked to say that it still further desires to hamper the General Court by restricting the opportunity to do good work. There are times when recess committees do useful work. They have been abused, perhaps, and it happens that just at this moment, with such an abuse before our eyes, we are tempted to forget the fact that study between sessions often has proved and often will prove to be of public utility. Is it a wise and prudent proceeding to cut off your nose to spite your face? Is it a wise and prudent thing to say that we will have no *interim* work, no study by men elected to serve us as representatives, unless they are well enough off in this world's goods to be able to sacrifice their time without compensation? That is the nub of the whole thing. Do you desire to throw your between-session work into the hands of only those representatives who are of independent income and can afford to give that time without compensation?

I gathered the other day that gentlemen of the Convention desired some midway proposition between the extreme measure that first met approval and the perhaps extreme opposition that some of us presented against it. If that be the case, if the Convention does desire a compromise, surely the safeguards contained in the amendment offered by the gentleman from New Bedford ought to commend themselves as sufficient to prevent further abuse of the evil while leaving the opportunity, in case of great need or emergency, for the Legislature by its two-thirds vote to use still this valuable method of supplementing its ordinary resources.

Mr. LEONARD of Boston: I wish to say a word in favor of the amendment offered by the gentleman from Wellesley. My only regret is that the amendment has not been printed. I think it is somewhat unexpected, — it is to myself and probably to others, — that this matter has been reached again so suddenly upon the calendar. The gentleman from Wellesley showed me his amendment this morning and offered it with the expectation that it would be printed, and I see in the amendment not, as the gentleman from Waltham has said, a mere change of expression or a dictionary exercise in the use of synonyms, but rather an improvement on the amendment submitted by the committee on Form and Phraseology. The committee on Form and Phraseology did make an improvement on the amendment as it was passed by the Convention; but the gentleman from Wellesley, I

think, has put it in much better language. There are also at least two changes of substance. Let me read his amendment:

> No person elected to the General Court shall, during the term for which he was elected, be appointed to any office created or the emoluments whereof are increased during such term, nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption.

Now that is not a mere change in synonyms. In the first place, the gentleman's amendment says "No person elected to the General Court shall, during the term for which he was elected, be appointed," etc. It does not leave the opportunity of a member who is elected resigning his position and then being appointed to some office. Moreover, the gentleman also has incorporated in his amendment that no such person shall be appointed to any office the emoluments of which are increased during the term for which he was elected. In that respect he follows the Federal Constitution and also changes the amendment which was passed to a third reading. Again, this present amendment offered by the gentleman provides that a committee to consider the revision of the statutes shall consider that revision only when the statutes are submitted to the General Court for adoption, which is a different proposition, I think the gentleman can see, from that which was contained in the former proposal. I say it is not a mere change of form or an exercise in the use of language. I believe that the pending amendment expresses what we desire in the best language that has yet been offered the Convention.

Now the gentleman from New Bedford has offered an amendment which the gentleman from Waltham says is a midway proposition. I hardly think that the members of the Convention who have had any legislative experience whatsoever will regard that amendment as a middle proposition. For, as was explained very well in the last discussion by members of recent Legislatures, it is more easy to have several recess committees appointed than to have one recess committee appointed. If the members of the Legislature or a certain group wish to have a recess committee appointed upon a given subject, they will find that in order to have that committee appointed they must get the support of other men, other groups who wish to have recess committees appointed upon their particular subjects. And so if the members want to appoint five or six recess committees, the chances of those committees being appointed are much enhanced over what would be the case if there were only one, two or three committees. I think that is a principle that is very well understood. Those who have had legislative experience know that it is so.

What does the gentleman from New Bedford propose? He proposes that a two-thirds vote be required, — and a two-thirds vote would mean simply that in order to have your recess committees appointed you would have to have enough recess committees to command the support of two-thirds of the members of the Legislature. So, instead of calling this a midway proposition, I would say that it was a sort of Midway Plaisance in which we have a regular summer revelry of recess committees.

Now I do not think that the Convention wants to do that. If the

gentleman from Waltham believes that there has been an abuse, an abuse, as he says, of recess committees, I am at a loss to understand or to follow the method of reasoning whereby he says that having a two-thirds vote, — which I think most of us would agree would mean an increase in number of committees, — is going to meet this situation. I therefore urge upon the members the adoption of the amendment of the gentleman from Wellesley.

Mr. Benton of Belmont: I do not agree at all that this Convention ought to attempt to abolish any recess committees. The proposition of the gentleman from New Bedford to my mind covers the whole situation and meets it very clearly and very concisely.

Now the Legislature of Massachusetts is elected for a calendar year. It is in existence to-day. It can be called together by His Excellency the Governor to consider any question. There may be many problems that will come out of this war in which a recess committee, or a committee sitting while the Legislature may adjourn after a short session, may be absolutely necessary or at least very important. This proposition to have no committee so appointed except on a two-thirds vote meets the situation exactly. I do not wish to reflect on any member of this Convention at all, but I have heard while I have been a member of this Convention constant slurs upon the Legislature of this Commonwealth. I for one do not take any stock in it at all. Whether or not you have got to log-roll to get a majority of votes for some proposition is something that has absolutely no weight with me whatever. I believe that a majority of the present Legislature is composed of honest men. I believe that they have been honest men in the past, and all this hunting around corners reminds me of the lines, —

> He who looks behind the door
> Hath himself been there before.

Mr. Buttrick of Lancaster: I dislike to usurp the prerogative of the member from Somerville (Mr. Chandler), but I feel constrained to move the previous question.

There being no objection, Mr. Hobbs of Worcester moved that the amendment moved by Mr. Harriman be amended by inserting before the words "be appointed to any office", the words ", during the term for which he is elected,"; and by striking out the words "the term for which he is elected", and inserting in place thereof the words "such term".

There being no objection, Mr. Clark of Brockton moved that the amendment moved by Mr. Harriman be amended by adding at the end thereof the words ", and in no one year shall a sum exceeding twenty thousand dollars be paid as salaries and expenses of recess committees."

Mr. Hobbs: I have only to say as to my amendment that it is intended to bring out, I think, the meaning of the gentleman from New Bedford. It is more in the nature of a third reading amendment than any change in substance. I think that it brings out his idea, which was that the man elected to the General Court should not be eligible during that term to any office created during such term; and it accomplishes that, and no more.

I have no desire to speak on the merits of the question. It has been my somewhat unfortunate experience as a member both of the General

Court and of the Convention to have been called upon in both branches to speak in defence of the one which was not in session. It is not entirely a pleasing task to see any body of which I am a member subjected to criticism which I think in many respects is unfair. There is this much of justice in the criticism of the General Court, — that, on occasion, too many recess committees have been appointed. That does not do away with the fact that many of them have served an extremely useful purpose. I therefore hope that the midway proposition of the gentleman from New Bedford will be adopted rather than the one which apparently considers a member of the General Court on a basis with a candidate for State Prison, — that is, makes him ineligible for anything.

Mr. Clark of Brockton: If the Convention will pardon me for just a moment I wish to refer to the amendment offered by the gentleman from New Bedford (Mr. Harriman). It has been designated as a half-way or midway proposition. I am totally unable to place it in any such position. It does not limit the number of recess committees that may be appointed. It does not limit the amount of money that may be expended as salaries and expenses for recess committees in the least. It simply places a premium upon a corrupting, demoralizing influence to secure a two-thirds vote in both branches of the Legislature. That is just what it does, nothing more. I would prefer the amendment offered by the gentleman from Wellesley (Mr. Pillsbury), but if we are to have any recess committees, or if we are to provide for any or allow any, I wish to limit the amount of money that may be expended each year. The amendment that I have proposed limits the amount that may be appropriated in any one year for recess committees, salaries and expenses, to $20,000. I think that is ample. Committees are sitting here this summer which will sit but a few days comparatively, and they are to receive $1,000 for the same. They limited the amount of salaries that the members of this Convention should receive this summer, regardless of how long they might sit, whether it were three, four, five or six months, to $500. I commend the Legislature for that, but I do not commend them for voting $1,000 for each member of a recess committee, some of whom are to sit here but a few days. I met a man the other day, a member of one of those committees. He said: "We have just had our first committee meeting." I asked: "When do you meet again?" He replied: "Some time in the future." "Are you likely to do much?" I asked. His answer was: "It does not seem as if we were." A thousand dollars per man, and all the expenses, and $1,000 for the secretary.

I hold in my hand a report of a committee appointed by the Legislature last winter to investigate the fish business in Boston. They came in with *that* amount of literature. They have exposed the business of the fish combine in Boston. They came back to the Legislature. It was the duty of the Legislature to pass legislation that would protect the people against the enormous prices that we are being charged, 200 and 300 per cent more than before the combine, which took place two years ago last May, — 200 and 300 per cent more in this short time. The United States Government has asked us to do without wheat, to do without beef, and to live on fish, and these men here have taken advantage of us, and the members of the Legislature

refused to act on the information, full and complete, that was given them. Why? That they might have a recess committee!

The main question was ordered.

Mr. George of Haverhill: I am not surprised to see members of this Convention advocating certain radical changes with respect to certain departments with a view of lessening expenses of the government, which really adds more, when a proposition comes in here which will save $600,000 to the Commonwealth of Massachusetts within the next twelve or fifteen years say: "This is a trivial affair. Nothing so trivial as this ought to be adopted by this Convention." I have been looking to see how much we have spent in investigating insurance. Now, who do you suppose suggested to the Legislature that insurance ought to be investigated? Did it come from the insured? No. There were certain propositions in the Legislature concerning insurance, and finally the insurance companies suggested that they have an investigation as the easiest way out of it. And since 1906, up to and including the present year, if they spend what already is appropriated, and I am inclined to think they will, they will have expended upon this one subject $58,632. Now, I want to ask any member here if he can recall that that $58,632 has brought about any decided change in insurance, either for the companies or for the insured. That has been the real difficulty in this proposition.

Certain interests may suggest that we have an investigation, and out of that has grown up a system which has cost since 1903 $650,000, with no substantial results. I do not mean to say but what there have been committees that have done some good. Of course they have, but I am saying this: The Legislature at any time can create a commission, and the Governor can appoint men who are competent to sit on that commission, — men who are not allied with the Legislature, or with any interests. And such a commission can do just as good and I believe better work than a legislative committee.

Previous to 1890 a very few committees were appointed, and when they did appoint committees the State paid only the expenses of the committee. They did not charge anything for serving. The members of those committees thought that it was their duty to serve just as they would in the city government, just as they would in many other public activities. But now the moment they get into the Legislature under the present system they are looking for the salary. They say that a member of the Legislature who meets two days a week for about three or four weeks this summer ought to receive $1,000, but those who sit in this Convention four days a week all summer ought to have only $500. Do you see the difference?

I feel that this is the only opportunity that the people ever will have to deal with this proposal. The Legislature never will submit it. This Constitutional Convention can send it to the people and allow the people to say whether they want to spend $75,000 to $100,000 a year for recess committees, when they know that it simply adds expense to the government with no substantial result.

I hope that the members of this Convention have sufficient confidence in the people to permit them to vote on this proposal as presented by the gentleman from Wellesley (Mr. Pillsbury).

Mr. William S. Kinney of Boston: Very often I find myself able to agree with the conclusions on practical governmental questions advanced by the gentleman from Haverhill who has just spoken (Mr. George), but the illustrations which he has used in this argument, if he had stated correctly the full facts, would have been the most convincing argument that could have been made in favor of rather than against recess committees. For instance, he said: "Who suggested the question of investigating the subject of insurance to the Legislature?" and intimated that no one had made the suggestion. As a matter of fact, we have had an executive for the last three years who has been urging upon the Legislature the passage of certain forms of social insurance, and he has preached the doctrine throughout the Commonwealth, and a certain number of citizens has been attracted to vote for him on that issue. He has sent annual messages to the General Court on the subject, and in due deference to the attitude of the executive the Legislature has investigated the subject, and my brother says figures show they have spent $58,000 during the investigations, but they have reported adversely; whereas had the recommendation been adopted without that study and investigation, instead of $58,000 the Commonwealth would have spent several million dollars annually. While it is true that this year there probably are more recess committees than the necessities of the times demanded, there are some recess committees sitting this summer which are meeting with commendation from the public. One in particular, the creation of which has caused a little ripple on the surface of the debates of this Convention, the investigation of the fish combination, which has been bleeding the people of this Commonwealth for years, is an investigation which I believe the people of this Commonwealth commend. It has furnished information on which the Attorney-General of the Commonwealth is now proceeding, and facts have been presented and are now being laid before the grand jury of Suffolk County which undoubtedly will lead to indictments and prosecutions which may have a salutary effect upon the conduct of that industry in this Commonwealth. So after all is said on this subject, while there have been abuses the fact remains that millions of dollars have been saved to the Commonwealth by recess committees.

The amendment offered by the gentleman from New Bedford (Mr. Harriman), as perfected by the amendment of the gentleman from Worcester (Mr. Hobbs), will go as far, I believe, as any man who believes that the creation of these committees should be restrained and kept within reasonable limits, would desire. I believe those two amendments will meet the views of such a man and such a delegate in this Convention. They will prevent abuse, and at the same time they will preserve the possibilities of the system, which occasionally at least has rendered valuable and efficient service to the Commonwealth.

Mr. Waterman of Williamstown: I rise just to make a statement. This matter of compensation of recess committees has been laid to the Legislature, whereas it was left to the Governor and Council. For two or three weeks that Council wrestled with the matter to see whether they would give recess committees $500 and expenses or $1,000 and expenses, and the result was $1,000 and expenses. So you have got to blame both bodies if you want to blame anybody.

Mr. Walker of Brookline: So far I have said nothing in this discussion, because I have been in some doubt as to what it was wise to do. I simply wish now to express my judgment in the matter.

I might preface my remarks by saying that, generally speaking, I am opposed to recess committees. I think there are too many appointed. I think that the good we get out of them is often so little as not to be worth while. I think it is fair to say that during the three years that I was Speaker, there was not a single recess committee appointed, except a committee on redistricting. That shows the attitude which I have taken toward recess committees. But we cannot deny that sometimes they are of great value. We cannot deny that it is wise that they be appointed occasionally. Any one familiar with legislation knows that well enough. Therefore it seems to me we cannot prohibit them, and if we are not going to prohibit them then we have got to permit proper compensation to be paid. Why, it is bad policy and it is bad principle to provide that the members of a committee which may sit all summer shall not be paid. It amounts to just this: That those men who can afford to sit in the summer time and come up here and attend to the business will be the men who will be appointed, and those who cannot afford it will not be appointed. That is not right in principle. I think, therefore, that perhaps the wisest solution of this problem is the solution which has been suggested by the gentleman from New Bedford (Mr. Harriman), modified by the amendment suggested by the gentleman from Worcester (Mr. Hobbs). I think that that goes far enough, and I think that it is a proper thing to do.

Mr. Sanford Bates of Boston: I want to take a moment to make one suggestion which it seems to me has been overlooked by the critics of recess committees, who have said that if it is necessary to study a problem during the summer let us have an outside commission appointed and let them be paid, and do not influence legislation by promising recess committees. It seems to me that those gentlemen overlook the necessity of having representatives of the Legislature studying these questions themselves, because all the study in the world is not of any use unless that study is crystallized into legislation. When you take the results of the recess committee's study and put it before the Legislature, those of us who have served in legislative bodies know the great importance of having men on the floor of the House and Senate who have studied the thing outside and who can explain the thing to the members of the Legislature. It seems to me that that argument alone is sufficient to warrant us in refusing to prohibit the appointment of these committees.

I agree with everything that has been said, — at least most of it, — that there have been too many committees; but I believe also that there has been more good done by committees than evil, and I honestly think that if the recommendations of most of these recess committees had been adopted by the Legislature this Commonwealth would be a good deal better off to-day. I had the privilege of serving on what was known as the Boston Elevated Railway Commission, and that commission made recommendations which, if carried out, would not have cost the public a cent, and the Boston Elevated Railway Company would have been extricated from the position that it was in. The result of the Legislature not following that recess committee's

recommendation is a seven-cent fare. And so we could go on giving you some of the other examples of what recess committees have done.

I think that the gentleman from New Bedford (Mr. Harriman) has hit upon a very happy solution of the whole proposition. Fix the responsibility for the appointment of these committees by a roll-call, and make it appear that there is a substantial sentiment for them, and that is all that the public demand in this emergency. I sincerely hope that his amendment will be adopted.

Mr. LEONARD of Boston: I just want to take the opportunity of saying, after these various amendments have been offered, that the most carefully considered, the best worded amendment, and the amendment that will carry out the desires of this Convention now twice expressed is the amendment offered by the gentleman from Wellesley (Mr. Pillsbury). I wish to make that position clear.

Mr. MORRILL of Haverhill: All the accusations that have been made against recess committees are true, and then there has not been enough said. During nine years' service in the House of Representatives I find that the man who votes right does not get on recess committees. I mean those who always vote for the interests of the common people. Those who vote with the political machine and vote for the invisible government or corporation interests and move the previous question frequently, so as to gag the opposition after the machine members have spoken, and do other work that the State machine wants in the line of political trickery, and in regard to amending the election laws and putting jokers here and there in other laws, get on recess committees, and a few good men, so called, are put on with them to take off the curse. [Laughter.] I am going to vote for this resolution because it will not do any harm if there are no recess committees for a while. I am going to vote for this, not because I believe it to be a solution, but because I believe something should be done to save the Commonwealth whatever amount of good reputation it still retains.

I believe the remedy for this recess committee graft lies in a change whereby the members of these committees would be chosen just as the members of a jury are selected. The jurors are twice selected men. The Legislature is composed also of twice selected men. Therefore why not have it do the same as is done in court? When twelve men are desired to try a case the wheel is turned around, the cards are drawn out one at a time and examined to see who are the twelve who are chosen. Why not have the Great and General Court, — the Legislature, — do likewise? Then all through the year the members will be able to act upon the bills before the House on their merits and vote conscientiously, instead of from ninety to one hundred of the two hundred and forty going against what they admit, out in the corridor and elsewhere, they know to be right, going contrary to that, with the expectation or hope that thereby they may be one of the twenty or thirty, more or less, who will get $1,000 extra on a recess committee or recess commission. To correct this recess committee evil by removing the temptation to stand in with certain interests all through the year would greatly purify legislation and be one of the best things that this Convention could do during the two years of its sitting. I am surprised that no one has offered a proposition to have the members of recess committees drawn as are jurors, because

if there is any necessity whatever for recess committees, and there may be once in a while, then they should not be tagged in advance, as it is alleged they frequently have been, and their report forecasted or predetermined by packing the committee with a majority whose opinions are known in advance.

Mr. CLARK of Brockton: Just one word in regard to the amendment I offered, as I fear many of the members did not fully understand it. It was an amendment proposed to the amendment offered by the gentleman from New Bedford (Mr. Harriman), and has been considered a part of it. I believe that if we are to authorize the appointment of recess committees we should limit the amount that may be expended in any one year. That is what my amendment proposes, to limit it to $20,000. That will pay ample salaries and expenses for three committees at least. A thousand dollars is too large a sum. The gentleman sitting right in front of me, from Williamstown, I believe (Mr. Waterman), stated that the Governor and his Council had approved of the $1,000 salary. I think that is a mistaken idea, though it is somewhat prevalent. The Legislature itself voted the funds for the six committees at the rate of $1,000 each, $1,000 for a secretary for each committee, and an abundance for expenditures going hither and thither, and I was told by a gentleman in the other end of this building the other day that the only duty really that the Governor and the Council had was to rubber stamp what the Legislature had done. It is not an approval. They did not approve of it. Some of them voted against it, and some of those at least I know who did vote for it voted for it because they believed that their duty, their function, merely was to place the rubber stamp on what the Legislature had done.

The amendment moved by Mr. Pillsbury was adopted, by a vote of 97 to 50; and the putting of the amendments moved by Messrs. Harriman, Hobbs and Clark was precluded thereby.

The resolution, as amended, was referred to the committee on Form and Phraseology Tuesday, August 13.

The resolution was reported by that committee Wednesday, August 14, in the following form (No. 422).

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

No person elected to the General Court shall, during the term for which he was elected, be appointed to any office created or the emoluments whereof are increased during such term, nor receive additional salary or compensation for service upon any recess committee or commission except a committee appointed to examine a general revision of the statutes of the Commonwealth when submitted to the General Court for adoption.

Mr. HARRIMAN of New Bedford: This is the matter on which I asked that the amendment be printed, not thinking it would be reached to-day. As the matter is now before the Convention I move the amendment which is in the hands of the Secretary.

Mr. Harriman moved that the resolution be amended by striking out the article of amendment and inserting in place thereof the following:

No person elected to either branch of the Legislature shall, during the term for which he is elected, be appointed to any office created during such term. No recess or *ad interim* committee shall be authorized by the General Court or by either branch thereof, except by a two-thirds vote taken by the call of the yeas and nays.

Mr. HARRIMAN: I shall not weary the Convention with a repetition of what I said when the matter was before the Convention at an earlier stage. I am thoroughly convinced, however, that simply because the Legislature sometimes has abused the privilege it should not be deprived of its use. I am emboldened also to offer the amendment because the Convention did not vote upon that phase of the matter yesterday. It voted upon the motion of the gentleman from Wellesley (Mr. Pillsbury), which precluded a vote upon the amendment which I offered. I have talked with men who were in the last Legislature at the last session, when six committees were appointed. As near as I can learn, if a two-thirds vote by roll-call had been required we would not have been afflicted with six recess committees.

Let me say in passing that I believe the privilege has been abused. If this resolution in the form in which it was passed by the Convention yesterday goes to the people, there is no alternative but for them to refuse it and place their seal of approval upon the wild array of committees, or else adopt it and forever say that their servants cannot have such a committee to work with unless its members work without pay. I believe that the restriction outlined in the amendment is perfectly safe. I do not believe that any Legislature, by a two-thirds vote on roll-call, would appoint committees unless they were needed; and I am thoroughly convinced, having talked with men who have been in the Legislature, that such committees have done wonderful work. The committee on Labor several years ago, of which one or two members of this Convention were members, compiled information which is valuable and which would not have been obtained under any other circumstances. The conditions after the war are going to make such investigations necessary, and I believe, as was said by the gentleman from Waltham, that we should not cut off our nose to spite our face. The sane way to do is to say to the Legislature: "Yes, you can have committees, but you first have got to go on record and you have got to do it by the preponderance of the vote that will say that they are needed." And if you do this I believe there will be very few committees appointed unless they are necessary; and I submit to this Convention that if they are necessary the Legislature should have authority, because the Commonwealth needs such investigation and such committees from time to time. I trust the amendment will be adopted in lieu of the present form, which would debar forever the Legislature from enlarging its power to do thorough investigation, and that we shall allow men to be paid, and paid justly, for such work. I believe it will be far better than to say that they cannot have any such committee, regardless of what conditions may occur in the future.

Mr. CLARK of Brockton: I move the amendment which I proposed yesterday and which is in the hands of the Secretary, an amendment to the amendment proposed by the gentleman from New Bedford. If his amendment is to prevail I desire very much that mine shall be adopted. Hence I ask that the Convention adopt my amendment to his amendment and then do what it sees fit with his. My amendment proposes that in case committees are allowed the Legislature shall be

limited to a sum not exceeding $20,000 in connection with such committees in any one year.

The SECRETARY: Mr. Clark of Brockton moves that the amendment moved by Mr. Harriman be amended by adding at the end thereof the words ", and in no one year shall a sum exceeding twenty thousand dollars be paid as salaries and expenses of recess committees."

Mr. QUINCY of Boston: I merely desire to ask the gentleman from New Bedford, in view of the differences of opinion in regard to this matter and the desire of many gentlemen to do something, without doing too much, to restrict this admitted evil, whether he would be willing to accept an amendment to his amendment which would limit the number of committees which could be authorized in one session to one committee. If he would be willing to accept such an amendment I should like to offer it and would vote for his amendment if so amended.

Mr. HARRIMAN: In reply to the gentleman from Boston I would say that I would object to limiting the number of committees. A two-thirds vote would limit the committees to what the Legislature thought was wise.

Mr. LUCE of Waltham: I feel so keenly the possibility of error if this Convention puts the dollar mark into the Constitution that I feel justified in exercising my prerogative as a member of the Convention, in contributing as I may toward the possibility of a night's calm reflection upon this subject. I quite understand that there are members of the Convention who in their anxiety to speed the work desire an instant vote, and I quite understand that it is no popular position to take to remonstrate against that and ask the Convention to consider what it is doing. I am not certain that for one I should be seriously disturbed if this Convention decided to recommend to the people that there should be no recess committees. Personally my view is to the contrary. I will waive my judgment for that of the Convention; but, sir, the way to stop recess committees is to stop them, — to say: "We will have no more recess committees." What I object to, and what I shall insist upon calling to the attention of the Convention to the last moment, is that for the first time in the history of the Massachusetts democracy, — for this is a democratic State, — for the first time we contemplate cementing into the Constitution of this Commonwealth a declaration that men shall not receive compensation for work. It is the unfortunate wording of this resolution that ought to receive the severest strictures of which we are capable; a wording that says now, when democracy is spreading through the world and we are in arms for democracy, that for the first time we shall implant in the Constitution of Massachusetts the dollar mark, — for the first time we shall give the most solemn sanction to the theory that public service should be restricted to men of independent means. This is the theory that after centuries of struggle has been thrown overboard in England. At last England has become in this respect the pure democracy that we always have been. And now, within a dozen years after England has said that the members of Parliament shall be paid, we propose to put into the Constitution an unhappy phraseology which shall tell the world that we believe the constitutional recognition of money should be made. If gentlemen will substitute the simple

declaration: "There shall be no more recess committees," then my objection will fall to the ground; but I beg of you to pause and in the closing hours of this Convention, when everything tempts us to haste, reflect what we are doing when we specify in this manner for the purpose of curing an evil which we all recognize, — when we specify a method of doing it which is absolutely contrary to and foreign to the very foundation principles of a democratic government.

I understand, sir, that there may be personal motives imputed to me in taking this attitude, and in anticipation of that criticism you will pardon me if I say that as a member of the committee on The General Court it was one year ago, and long before any personal considerations could affect my own attitude, when I joined with the rest of my committee in saying that this was an unwise step. Fate has left me the ranking man on the committee, and it is a duty falling to me in that capacity to continue my protest against this pernicious proposal.

Debate on the measure was continued Thursday, August 15.

Mr. Clapp of Lexington: This subject has been debated pretty thoroughly and I do not propose to try to add very much to what has been said. However, I do want to support the principle of the Harriman amendment. It seems to me that we should make a great mistake to adopt the pending resolution in its present form so that under no circumstances could any compensation be paid to a recess committee. The proposed article itself recognizes one exception. It excepts the case of a committee appointed by the General Court from its own members to pass upon a revision of the public statutes. Such a committee may receive compensation. Are we wise enough, gentlemen, to foresee and to say with certainty that that is the only case in which it would be proper to give compensation to members sitting upon a recess committee? It seems to me that, safeguarded as the matter will be by the adoption of the Harriman proposal, which requires a two-thirds vote in each branch of the Legislature, we shall have nothing to fear. Undoubtedly the matter of recess committees has been worked so as to produce abuses, but it is conceded on all hands that we have had such committees that produced very useful results, and results which were much better than they would have been if the members had not received compensation for honorable and useful public service. So I say that if you limit the creation of these committees to cases where the proposition receives a two-thirds vote of all members of the Legislature, you will be surrounding the passage of bills with sufficient safeguards. I for one am perfectly willing to trust it to the Legislature with that barrier set up. But the Harriman amendment ought not to be adopted, in my opinion, just as he has proposed it, and I shall offer an amendment which the gentleman from New Bedford assures me is satisfactory to him. The pending resolution in its first half, — in its first six lines, or first five lines and a fraction, — is in admirable form. It is a duplication substantially of what is in the United States Constitution, and says:

> No person elected to either branch of the Legislature shall, during the term for which he is elected, be appointed to any office created during such term.

Now the first half of the Harriman substitute does not extend the prohibition to a case of an office where the emoluments have been increased by the members of the General Court. My proposition,

therefore, is to amend the resolution by striking out everything after the word "such term", found in line 6, and by adding the following sentence:

No recess or *ad interim* committee shall be authorized by the General Court or by either branch thereof, except by a two-thirds vote taken by call of the yeas and nays.

That sentence which I seek to add for the purpose of succeeding the last half of the pending article of amendment is exactly the sentence contained in the concluding part of the amendment offered by the delegate from New Bedford sitting on my left. As I said before, I am assured that he will ask consent to withdraw his own amendment.

Let me read in conclusion the article of amendment as it will stand if adopted in accordance with the recommendation which I now make. It will read as follows:

No person elected to the General Court shall, during the term for which he was elected, be appointed to any office created or the emoluments whereof are increased during such term.

So far it coincides with the text of the resolution as reported by the committee on Form and Phraseology. Then it will conclude with the last half of the Harriman amendment, namely:

No recess or *ad interim* committee shall be authorized by the General Court or by either branch thereof, except by a two-thirds vote taken by the call of the yeas and nays.

I move this amendment, which I have just handed to the Secretary.

Mr. HARRIMAN of New Bedford: The gentleman in this division (Mr. Clapp) came to me and pointed out where my amendment would be improved. My idea has been to make it workable, and to prevent there being an evil, and I believe the amendment offered by the gentleman from Lexington, which does not change the wording of mine, but is a further precaution that will meet the approval of this Convention, should be adopted. And may I say also that if perchance the people of this Commonwealth should vote to adopt biennials there will be more need of recess committees and recess work than there would be under present conditions. And I would withdraw my amendment in favor of that offered by the gentleman from Lexington (Mr. Clapp).

Mr. AVERY of Holyoke: I just want to say a word in favor of the resolution presented by the gentleman from New Bedford as amended by the gentleman from Lexington. A few weeks ago I wanted information in regard to a certain matter and I went to Mr. Evans in the State Library and I worked with one of his assistants a long time. I could not find the statistics I wanted. I finally went to one of the departments in the State House and I found that about six years ago a recess committee had been appointed by the Legislature and had collected just the information that I wanted, and I found by an examination of what they had in the State Library that it was the finest collection of information on a very important branch of government there was anywhere in this country. That had been done by a committee appointed by the Legislature.

Now they do appoint sometimes too many committees. Sometimes these committees do foolish things, but do not let us make this remedy too drastic. Just because we have a boil on our leg, do not let us cut our leg off. Now let us show some common sense in this thing. That amendment that those two gentlemen have drawn will

cure any trouble as far as it ought to be cured, and will leave us the benefit of what recess committees have done in this State and what they will do in the future.

Mr. Besse of Newburyport: I rise to ask for information. To my mind the way the resolution reads it says that no member of the Legislature can be appointed to a recess committee, and then it goes on to say that no recess committee can be authorized without a two-thirds vote of the Legislature. What I wish to inquire is, what would be the sense of authorizing the appointment of a legislative committee if the Legislature could not appoint members on the committee?

Mr. Hobbs of Worcester: I would undertake to say in answer to the gentleman's question, — although it probably was not addressed to me, — that the two sections are not at all in conflict; that a recess committee is not properly an office. It is a subcommittee of the Legislature, and is therefore not an office of the Commonwealth, but an office under the Legislature, which has the same authority to appoint recess committees as it has to appoint its regular committees.

The only reason that I am inflicting myself further on the Convention in this matter is due to the fact that certain arguments have been used in this debate which I desire to comment upon. The gentleman from Haverhill (Mr. George) yesterday said: "The Legislature gave us $500 a year, while they are making for some of their own members jobs of a thousand dollars a year. Do you see the difference?" I think I am quoting his language accurately.

The inference to be drawn from that, if any inference could fairly be drawn, was that he considered the Legislature had not treated the Convention fairly. I want to say something in regard to the Legislature's record in that respect. The Legislature was asked by members of the Convention at the last session to allow them $500 apiece for compensation. The Legislature gave them just that amount. I do not think you can charge the Legislature with an unfair action when they gave just what they were asked to give. There was some opposition, to be sure. There were members of the General Court who were considerably aggrieved by some things that had been said in this Convention and who carried their grudges to the extent of trying to slap the Convention in the face. The Legislature, however, did not yield to their arguments, and as the Legislature is an entirely human body it even deserves some credit for not so yielding. It always must be borne in mind, too, that they had a very plausible argument. The language of the statute under which we exist fixes our compensation at not more than $750; and the argument was used there, as the argument is used here, that by accepting office under that statute we entered into an implied agreement with the Commonwealth not to take more for our services.

The answer to that argument and the answer to the argument that has been advanced in relation to the recess committees receiving additional compensation are just exactly the same, — that the Commonwealth ought to pay a proper price for services rendered in its behalf to enable the men of small means who desire to exercise those offices to do it without a serious sacrifice on their part. I think that all the members of the Convention can see what would have been the result if the General Court had refused to grant compensation. Doubtless the result would not have occurred that was predicted there, that our

sessions would have stopped. Doubtless the result would not have occurred that our deliberations would not have been carried on fairly and with due consideration of the matters before us; but I do not think anybody can deny that it would have been with great sacrifice on the part of the members. You can say the same thing about recess committees. If recess committees are needed, doubtless they will be appointed. It will be no more serious handicap to get unpaid recess committees than it is to get unpaid commissions, of which we appoint numbers each year, but I do not think it will be denied that the presiding officers will have either to restrict the membership of those committees to those who are able to serve without regard to their own financial means, or else ask men to do it at a considerable sacrifice to themselves. I regard patriotism as not entirely extinct in the General Court, and I have no doubt that men could make that sacrifice and would make it. But I think that the Commonwealth is big enough not to demand that sacrifice of men who are not able to make it.

Mr. Foss of Springfield: It seems to me that this resolution in its present form is too drastic, and in regard to the amendment of the gentleman from Lexington it seems to me that if we have recess committees enough it will not be a hard job to get two-thirds of the members of both Houses to pass it. Therefore by way of administering an anti-spasmodic I move an amendment which is in the hands of the Secretary.

Mr. Foss moved that the resolution (No. 422) be amended by adding at the end thereof the following:

, except that, if His Excellency the Governor, the President of the Senate and the Speaker of the House of Representatives shall deem a proposition to be one of public necessity, there may be appointed one recess committee the members of which shall not be subject to the foregoing restrictions.

Mr. George of Haverhill: I do not know whether my friend (Mr. Foss) from Springfield is aware of it, but that is a very reactionary proposition. Now we have had experiences like this: When the Legislature cannot work all the committees they want, and we have a Governor who is opposed, then the President of the Senate and the Speaker of the House confer with His Excellency; then they fix up this measure: "You appoint three and I will appoint five," and when they do that, it goes right through.

It seems to me, if we are going to make any changes, that the gentleman from Lexington has made a great improvement on the suggestion offered by the gentleman from New Bedford. I did not intend to say anything more on this proposition. I have said enough already, but I want to say this: That I do not agree with the gentleman from Waltham (Mr. Luce) in his attitude yesterday afternoon, when he said if a man was public-spirited enough in Massachusetts to do public work without compensation it is going to defeat democracy in Massachusetts. Perhaps the gentleman is not aware of it, but the present Governor made a campaign three years ago and one of the issues was to reinstate non-paid commissions. He said that the non-paid commissions of the State did a great deal better service than the paid commissions, and we have a whole list of non-paid commissions in the State. So that if we did have a member of the Legislature who happened to serve on a committee that met once a week for five weeks, and if he did not get any additional compensation, he

would not be doing any more than what the unpaid commissions are doing, and I do not think that it would prove that democracy is a failure in Massachusetts.

I think that we ought to give the people an opportunity to pass upon this proposition. It is not for my friend from Waltham and myself to say. The people of Massachusetts will decide whether they want recess committees or not, if they are given the opportunity.

Now suppose that the people of Massachusetts do not want recess committees, and suppose the gentleman from Waltham does, why, it only proves that he is not in accord with the people, that is all. Now when I find that this Convention disagrees with me I do not continue to try to interpose my objections on this Convention, because I am not entitled to anything. I am in the minority. It is the majority that counts in this Convention, and when I am not in accord with the majority I simply subside. And if the gentleman from Waltham has any views that do not meet with the majority sentiment of this Convention, he ought to subside. We already have taken action on this proposition; and if a majority of the Convention thinks that the proposal of the gentleman from Lexington is the best solution, I have no objection to offer, but I should like to see it tried out for a few years and not have any recess committees. There have been a great many years in the history of the Commonwealth when we did not have recess committees, and I never have heard any fault found by the people. I never heard of any difficulties ever arising from it, and I do not think that we need them now. I am perfectly willing to trust the people to vote on a proposition that has cost the State $631,000 within the past fifteen years, with no adequate results.

Mr. WEBSTER of Haverhill: I am well assured that the people of Massachusetts have had their attention directed to this recess committee matter in such a way that they desire some relief from what we are agreed has resulted at last in an abuse of the custom of appointing paid recess committees. I want to see some measure that will eliminate the possibility of abuse, and let us place it upon the ballot in a form in which it will meet popular approval. But, sir, I am well convinced of this: That, widespread as the desire may be to cure the evil, if you go to the people with a proposal upon the ballot which says to them: "Occasions have arisen in the past, and may again when it will be necessary to appoint a recess committee, and under this scheme they will simply put on rich men who can afford to give their time for nothing, and they will bring in their report, and great weight will be given it because it has been an unpaid and gratuitous committee," the people will see the danger of that proposition, and, in my opinion, this resolution in its present form never will receive their approval when this matter is explained to them as it will be explained, of course.

Let us be frank about this thing. The resolution in its present form should be designated properly upon the ballot in some such way as this: "A prohibition to create recess committees and *ad interim* committees of any other membership than those whose financial resources will permit their gratuitous service to the State." That is what the thing means in its present form. I believe, sir, that every interest that has been aroused in the popular mind and in the press by a discussion of this subject will be met by the proposition as it

emanates from the mind of our honorable friend from Lexington (Mr. Clapp). I hope, sir, the Convention will adopt it in that form, which to my mind will relieve the abuse and meet none of the opposition which the present form surely will arouse.

Mr. CHANDLER of Somerville: I think that I am entitled to say a few words on this question, and I therefore move the previous question. [Laughter.]

Mr. SMITH of Provincetown: I am one of those men who have been fortunate or unfortunate, sitting in the Constitutional Convention, to have been a member of the Legislature. Now there have been a good many hard things said about the Legislature and I have heard the Legislature say a good many hard things about the Convention, and I was able to keep my seat until one day I thought they went too far. Now the strongest argument in favor of this Convention receiving $500 was this: They said: "You came to the Convention for $750." I agreed to that. I told them that the members of the Legislature came here for $1,000, but two or three years ago they were called here for a few days for a special session and they took $50 per man. They did not hesitate last year to increase their mileage fifty cents a mile. Now I think this is a proposition that should go to the people and let them settle it for themselves.

My contention on the matter of recess committees always has been this: We have about a hundred commissions in this State. Now all matters that come before the Legislature and are sent to recess committees are matters pertaining to some of those commissions. Now, sir, if the Legislature cannot handle them what is the matter with putting those matters up to the commissions and letting them make their report? Will you not get as fair, as impartial and intelligent a report from our commissioners as you would from a recess committee? I hope that we shall do something to curtail this matter in a way to be satisfactory to the people and let them do it.

The main question was ordered.

Mr. LEONARD of Boston: The gentleman from Waltham (Mr. Luce) in a recent discussion of another subject called the attention of the Convention to the fact that in the Legislature amendments were offered in good faith on pending matters very often at dangerous parliamentary stages, and frequently amendments that were well intentioned entirely altered or nullified proposed legislation. If that is true in the Legislature it equally is true in a Constitutional Convention upon a matter pending in one of its final stages. In spite of the support which the gentleman in the first division (Mr. Harriman) has received on this proposition from his colleagues, largely in his own division, I think that the gentlemen who believe that they are curing this recess committee abuse by his amendment really are deceiving themselves. If they believe for a moment that a two-thirds vote is going to decrease the number of paid recess committees, I think they are subject to great self-deception, because, as I already have said, this is, I believe, the fourth time the matter has been before us. It has been passed by a substantial majority each time. The development of the practice of appointing recess committees in the Legislature has demonstrated that four or five recess committees can be created more readily than one or two. We all are honorable

men when it comes to that, but the trouble with honorable men in the Legislature in this matter under debate is that each one believes that his subject should be investigated and studied by a recess committee and other honorable men believe likewise on their particular subjects. And because we want our matter investigated and studied we are not in a position to dispute the claims of the other honorable members or their contention for a study of their issues. They go before the committee on Rules as they also would under this two-thirds rule; and if there are not enough men on that committee to make a stand against it you will find recess committees appointed by the next session of the Legislature. The very next session of the Legislature, despite what has been said here of recess committees, will show what they think of this Convention and of the opinions here expressed, by appointing as many recess committees with compensation as they may deem fit, and on a two-thirds vote by roll-call, too, and I may observe that any proposition for recess committees which is approved by the legislative committee on Rules would receive a two-thirds vote on roll-call in either legislative branch.

The gentlemen have referred to the good things occasionally accomplished by recess committees, but is it not a more apparent fact that many good results might have been obtained but for the fact that they came from such committees?

Last week there were two charts which hung upon our western wall. I wish they were there now, but the gentleman from Haverhill in this division (Mr. George) secured a mortgage on the charts, foreclosed his lien and, like a harsh, unyielding creditor, removed the property. What new mischief *ad hominem* he next intends, we wot not of. Yet there was value in those charts, for, as he well said, by them you could prove, why — anything! If you will recall the chart which hung farthest from where I now stand, it was labeled "Chaos." Upon it were depicted circles, squares, and other figures of various sizes, colors and diameters, all in disorder, disarranged, jostling, crowding, overlapping, each the other. Let that represent our legislators as they first assemble, their various sizes, creeds, opinions. And then the other chart which was named "Proposed order." Here we find the circles and squares joined by stems to branches, these to limbs, until all are gathered in one large branch which led to the magic circle which bore the letter "G" in green. Now, here, methinks, I see the opportunity, if the biennial election system is adopted, of all the members of the General Court grouped in their recess committees leading to the magic "G", in green, and what that magic "G" in green may represent, I hardly need to specify. This paid recess committee practice cannot be amended into a logical and honorable legislative system. I will call it an historical development, or rather, a political practice which has grown up in the last few years. Let us pay the members of the Legislature an honorable salary, let them do the work that comes before them each on a par with the other. It is not a matter of saving dollars and cents to the Commonwealth. I think we ought to cast that aside. It is an indefensible system; you cannot get away from it. A majority of the members of the legislative body looking for favors and appointments from the Speaker, — you cannot defend that system in theory or in practice, and we have got to get another method of procuring information for

the Legislature than by the appointment of these recess committees. I trust the Convention will stand by the action it has taken.

Mr. JONES of Melrose: I should like to say a word growing out of nine years' experience in the Legislature, five years in the House and four years in the Senate. I believe the amendment goes altogether too far and that such a restriction as this ought not to be made part of our Constitution. In the first place, I believe the evil will tend to correct itself. When I first became a member of the Legislature the scandal of committees traveling outside the limits of the Commonwealth had reached large proportions, and as a result of the agitation against that practice it has corrected itself entirely. We have no committees of the Legislature now traveling outside the limits of the Commonwealth, because the practice has been done away with by general consent.

Now, simply because there is a good deal of public resentment at the action of the Legislature of this year in creating an unusual number of recess committees, we do not want to be carried off our feet. I do not think it is right to enact a constitutional provision which will make it either impossible for a recess committee to be created by the Legislature, or if it should be created, that only members of the Legislature can serve upon it who have independent means and can give their time without compensation. I think that is a very unwise practice to establish.

We do not know what is ahead of us in the new years which are to come during this reconstruction period following the war. We may be face to face with a situation which absolutely may require the appointment of a recess committee to consider some special questions which will not come within the scope of any commission which now is established in the State. I think all that we ought to do and all that is necessary is included in the amendment offered by the delegate from New Bedford as it is amended by the delegate from Lexington. All that we have to do in this matter and all that it is necessary to do, in my judgment, speaking from my years of experience, is to surround the creation of these recess committees with a certain dignity; and the dignity which is given to the creation of these recess committees by the suggestion of the gentleman from New Bedford, as properly amended by the gentleman from Lexington, is all sufficient, in my judgment, and I think that ought to express the wisdom and good sense of the Convention.

Mr. CARR of Hopkinton: I think that this amendment is not coming from the friends of those who are opposed to recess committee appointments. The only thing in this amendment, this so-called Harriman amendment, is that by a two-thirds vote taken by the call of the yeas and nays recess committees may be appointed. It was pointed out before, in the other debates on this subject, that the reason why recess committees are created and are allowed to go through the Legislature and go through it so easily is that practically two-thirds of the membership of the House are candidates for positions on the recess committees. Nearly every member has a hope that he is going to get a recess committee appointment, and that hope is fostered by the so-called party whips in the Legislature, who, to keep a member in line on certain measures, say to him: "Now easy! Easy on this! Confidentially, you are slated for a position on a recess

committee. Easy on this proposition. Remember, you are slated for a position on a recess committee." There is your evil. When that hope is spread in this manner among two-thirds of the Legislature, how simple a matter it is to get a two-thirds vote! It is so easy that we might as well drop the subject here completely as permit this amendment. Do not insult the intelligence of the people of Massachusetts by presenting to them this resolution with such an amendment as this requirement for a two-thirds vote. Why, it is as easy as rolling off a log to get a two-thirds vote of the Legislature for creating a recess committee when there are more than two-thirds hopeful aspirants for positions upon these recess committees. If you want to have recess committees leave the Constitution alone; do not attempt to change it. If you do not want recess committees, why, kill the so-called Harriman amendment and let the amendment that this Convention already has sent along to this stage be adopted.

Mr. Clark of Brockton: I wish to occupy only a minute. I am one of the members of this Convention who has felt very strongly on this matter, and I continue to feel strongly that something should be done. As I said on a former occasion, it is not the fifty thousand, seventy-five thousand or a hundred thousand dollars that is taken from the public treasury to pay the salaries and expenses of these recess committees; it is the demoralizing influence that it has on the members and on the Legislature which holds up legislation that is needed. Rather than let this matter go as it is and let the committees continue to be appointed as they are, I would much prefer that the members of the Legislature should have their salaries increased to $1,500, that they might be enabled to sit for a longer time and complete the business that is due to come from that Legislature. I hope that something will be done and that this Convention will not be put in the plight that it perhaps was yesterday, as looked upon by some outside, as having got tired of its work, as having shirked its duty and thrown everything overboard for the sake of getting out of here a day or two earlier. I admit there is considerable merit in the amendment proposed by the gentleman from Lexington as grafted on the amendment of the gentleman from New Bedford, and that it is much better than nothing. If there were added to that an amendment limiting the number of recess committees to two or three at the outside, I think it would cover the ground very well.

The amendment moved by Mr. Foss of Springfield was rejected.

The amendment moved by Mr. Clapp of Lexington was rejected, by a call of the yeas and nays, by a vote of 90 to 101.

After the recess the resolution (No. 422) was passed to be engrossed Thursday, August 15.

It was considered on its final stage Wednesday, August 21.

Mr. Jones of Melrose: I very much regret personally the form which this resolution has taken. The first part of the resolution simply seeks to write into the Constitution a provision which has existed in our general law since 1857, which is now section 21 of chapter 3, which provides that no member of the General Court, during the term for which he is elected, shall be eligible to any office under the authority of the Commonwealth created during such term, except

an office to be filled by vote of the people. The provision of our general laws follows a provision of the Constitution of the United States. The pending resolution leaves out what seems to be an important exception, "except an office to be filled by vote of the people". So that the first part of the resolution, it seems to me, is open to the objection that it prevents any member of the General Court being eligible to any office created during the term for which he is elected, which office is to be filled by vote of the people, to which it seems to me there is no reasonable objection. But unfortunately, there has been attached to this resolution a provision which is in the nature of a rider, which relates to recess committees. As I intimated when I spoke upon this resolution the other day, it seems to me that the Convention has been carried off its feet by reason of the fact that the present Legislature has abused the privilege which it had of creating recess committees; and we now, if this resolution is adopted, are in danger of writing into the Constitution a provision that hereafter there shall be no recess committees created by the Legislature, except a committee on the revision and codification of the public statutes. That very exception shows that there are occasions when it is proper and necessary that a recess committee of the Legislature should be created. I say that we are providing then that if they are created they shall serve without any compensation. That simply means that no member of the Legislature can serve on any recess committee unless he is a man of independent income, for no man in ordinary circumstances could possibly serve on a recess committee under those conditions, pay his expenses, come from some distant part of the State, work here during the summer. It would be absolutely impossible. It seems to me that it is creating a very unfortunate condition of things, and that it is a very unfortunate provision to enact into our constitutional law.

Regarding recess committees, I wish simply to say this: There are occasions when a recess committee is necessary, and there are occasions when recess committees do very fine and efficient work. There are always a number of very efficient men in the Legislature who are very conversant with the subject-matters in hand, who properly can inform the Legislature of the result of their study and investigation. And there is this advantage of a recess committee of the Legislature over an outside commission made up of so-called experts, that these outside — I yield.

Mr. GEORGE of Haverhill: I was going to ask my friend from Melrose (Mr. Jones) if this Convention had not set a good example to the Legislature. We have had a recess committee sitting during the last summer without compensation. We are going to have another recess committee sit till next June without compensation, and the Legislature can do likewise if the Legislature wishes.

Mr. JONES: I do not think that it is a parallel case. This is an exceptional instance. The committee on Codification of the Constitution which we are about to set up is to do a special and particular work, and any member who is a lawyer would find it amply to his advantage to serve on such a committee without compensation by reason of the prestige which would come to him for such service.

Mr. SAWYER of Ware: I sincerely hope that this Convention will refuse to submit this proposal to the people. It looks as though the

one hundred and fifty-seven lawyers in this Convention were going to try to take care of the lawyers in the General Court. Of course on a recess committee to revise the statutes few would get a place outside the lawyers, and as there is no limit to the size according to this constitutional provision they might put twenty or forty or fifty lawyers on a recess committee, all of whom will be paid. It looks to me like almost a cut and dried scheme to take care of the lawyers, who already are taken care of too well, and I hope that those of us who are not lawyers will arise and refuse to submit this thing to the people.

Mr. BENTON of Belmont: I hope that on the last day of this Convention we will not submit any such proposition as this to the people. I regret very much that the time of the gentleman from Melrose (Mr. Jones) was so limited that he could not have repeated more of his address of the other day. Of all of the speeches that I have heard in this Convention I think that the remarks made by our delegate from Melrose on this particular subject the other day were worthy of your careful consideration and reflection. He rehearsed to you, after many years' experience in the Legislature, his experience relative to recess committees. He called to your attention the abuse made years ago by committees of the Legislature that traveled outside of the State at the expense of the Commonwealth, and how public opinion had eradicated that evil. He pointed out in a very able way that this would rectify itself if left alone, and I think it will. But this Convention should not be influenced by a number of delegates so warped because they have got particular personal objections to recess committees, or simply because some members have been disappointed possibly because they themselves did not succeed in getting on some committee or have become aggrieved because some one they dislike did happen to get on a committee! There have been abuses with recess committees; there is no doubt about that, gentlemen, to those of us who are familiar with it. I happen to be engaged in the insurance business, and there has not been a year for the last ten but what there has been some recess committee sitting on our affairs; and that, with the Legislature sitting the other six months, has kept us busy the whole year. But there is no reason why I should so far forget myself and the dignity of my position that I am going to vote to put any such provision as that up before the people, because it is an insult to our General Court.

Mr. ROSS of New Bedford: Just a word. I will not tire members. If we desire to have a dignified amended Constitution it seems to me we ought not to pass this matter at this time, prohibiting the appointment of recess committees with pay. I want to say that I served on a recess committee on Labor some years ago, and I think the information we secured and filed with the State Librarian has been very helpful ever since to those in search of information regarding the matters we were asked to inquire into. I want to say in the first place that I voted against recess committees. I know the matter has been abused in the past; I have seen it abused and I have seen it right. I have seen where the Legislature could not or dare not appoint recess committees because of the attitude toward them of the public in general. The position that this Convention will take if it passes the matter in this form will be this: That those who can afford to serve on recess committees will be those who are appointed, and those who

cannot afford to serve, because of not having sufficient of this world's goods, will not be able to serve and consequently will not be appointed. If that is not class legislation I do not know what is.

Mr. BUTTRICK of Lancaster: Personally I am prepared to vote now and to vote against this resolution, and I think every member of the Convention has his mind made up. I therefore move the previous question.

Mr. CARR of Hopkinton: This matter has been fully debated, and I guess every member in the Convention here has his mind made up how he ought to vote. We have had several roll-calls on it, and now it has got to the point where the question is: Shall it be submitted to the people? The matter has been thoroughly discussed. Amendments have been offered to try to cripple the purpose of the resolution, and they have been rejected, and rejected by substantial majorities. One of the many questions you will decide by the adoption of this resolution is preventing the suspension of the statute that the member in the second division has referred to. You will notice that whenever a new commission is created by the Legislature there generally is, or there has been in a great many cases, a section in the law enacted that says that the statute prohibiting the appointment of a member of the Legislature on that commission shall be suspended. That has become such a flagrant abuse of legislative power that our papers, the principal papers in Massachusetts, have come out calling attention to this shameful practice and asking for relief by constitutional amendment. Why, you remember that not more than a month or two ago, our leading papers unanimously asked us, as one of the things that we ought to do, to prevent this continued abuse. There is no other way that you can prevent it than by sending this resolution to the people. We have heard all the doctors on the question here, and we have made up our minds there can be no way to cure this evil but by the adoption of this resolution. If you kill the resolution at this stage you permit the abuse to go on, not only of recess committees, but also the abuse of suspending that part of our statutes that says that no member of the Legislature shall act on a commission or be appointed to any office created by a Legislature of which he is a member. Send the resolution to the people and you are curing the two evils.

Mr. HART of Cambridge: The weakness in the arguments in favor of turning our backs upon our own judgment and our own decisions is that it assumes that we must have recess committees, that we cannot have any government of the State without them. Many States to-day do entirely without this system. It is unknown to them. It has been practiced to some degree by Congress, but it has brought a great deal of criticism upon Congress. One of the great things this Convention is doing for the Commonwealth, or is likely to do, is to submit an amendment which will bring about a rearrangement of the executive department, including the commissions. There is where we ought to get the information for the Legislature.

At present the recess committees usually are intended to collect bodies of facts and to adjust and classify them for the use of the Legislature; but their reports do not seem to be used carefully. They make very little impression upon the public mind. It is to be hoped that in future the work now done by the recess committees will be performed in most cases by executive departments upon the request

of the Legislature, departments always in session, having the machinery for investigation. We ought to learn to depend more than in the past upon the reports of such commissions and of such executive bodies; and if the executive is properly organized, as it is likely to be under the amendment now about to come before the Convention, it will not be necessary to appoint so many, — it will not be necessary to appoint any, — recess committees in future.

One argument that I have heard upon this floor is that there will not be any more recess committees, because the people of Massachusetts are no longer in favor of them. If that is the case, let the people of Massachusetts embed their conviction in the text of the Constitution.

The main question was ordered.

Mr. LEONARD of Boston: I would not inject myself into the discussion at this time if I did not feel it was necessary to reply to one or two of the statements that have been made. The gentleman refers to this being the last day of the Convention. Let me state that this resolution was presented on the very first day that resolutions were introduced into the Convention, on June 19, and it became document No. 5. The gentleman has referred also to a rider. I supposed, from his manner when he said that, he had discovered something. There is no rider. Document No. 5 refers to the appointments to office as well as to the appointments on recess committees.

We have discussed this on the question of substitution for the report of the committee. We have discussed it on third reading, on engrossment, on the amendment offered by the gentleman from Wellesley (Mr. Pillsbury), on the amendment offered by the gentleman from New Bedford (Mr. Harriman), — on all occasions. On every roll-call we have passed this by a substantial vote. I think that there is not a respectable opinion left in this body that this is not a subject-matter of constitutional limitation and restriction upon the legislative body, that this is a mere matter of statutory enactment that might be amended or repealed at any time. The gentleman admits an abuse regarding the appointment to offices created by the Legislature. Why, gentlemen, we know that the offices created and the appointments made under a suspension of the statute in that particular are immeasurably less than the recess committee appointments that are made. I am not going to attempt in a few minutes to recapitulate the various arguments; but one that has been urged very strongly and with great force and still persists is the argument regarding a man of modest means, the possibility that he may decline to serve and cannot render service to the State. I should like to ask the Convention to look on the other side and ask how the people with modest means, or the poor, are best represented: whether they profit more by a system like the recess committee system, which has become an intolerable abuse, and we know it, or whether they are going to better profit by the occasional appointment of some individual of their class to a minority position on a recess committee. You say recess committees do good work. Occasionally they do, but their results very rarely are accepted.

At the very beginning of this discussion, I said that I had nothing to say in disparagement of the Legislative body. I have endeavored to maintain that attitude throughout this entire discussion. I have refrained from all personal references, and I have endeavored to keep

myself strictly within the lines of parliamentary procedure. This resolution was introduced at a time when there could not be any controversy between the Legislature and this body. It was introduced with no idea of recrimination, taunt or reprisal. It was introduced at the beginning of our deliberations to rectify an abuse. And I wish at this time to express my appreciation of the members of the Legislature, the past members of the General Court who are sitting in this body and who have given plain testimony as to the working of the recess committee practice. I believe that when this is submitted to the people, — and our duty now is merely to pass on the question of submission, — and when the people accept it, the members of the General Court who are going to assemble here in the future years will bear the best testimony as to the value of the task that we are about to perform in removing a system that is a severe handicap to proper legislative work and procedure.

Mr. Clark of Brockton: This Convention will recall that only a few days ago there hung on the wall over in that corner of this hall a chart illustrating the evils of our heterogeneous commission business in this Commonwealth. Now it is common knowledge, and no one can deny it, that several of those commissions were created for the express purpose of making places for members of the Legislature sitting and voting thereon. The first part of this resolution proposes to prohibit such work in the future. Why do not the gentleman from Melrose (Mr. Jones) and other gentlemen who oppose this measure, instead of coming here in the attitude of opposition, with their constructive forces and powers of mind do something that shall be constructive, something that shall be practical and get rid of this evil? It is an evil. I admit that some good has been accomplished by some of these committees at times; but I want to say that the evil that has been done in the corruption of the Legislatures, in demoralization of legislators, in the waste of money drawn from the public treasury, outweighs, in my humble opinion, ten times over, all the good that has been accomplished. I have read somewhere in a book, — you young men know where it is, perhaps; it is that great and good book, — that "the last state of that man was worse than the first." And after the discussion that we have had in this Convention, after the reports of the press throughout the Commonwealth and the information given to the people of the gross evil in the Legislature as seen and recognized by the Convention, if we go back on the position that we already have assumed, the last state of the recess committee evil will be worse than if we never had raised our voices against it. [Applause.]

Mr. Dennis D. Driscoll of Boston: It was not my intention to participate in this affair at all, and up to the present time I have voted in favor of abolishing recess committees. I have changed my mind. There is no more crime in a political candidate for office seeking his reward by asking the labor men to give him their support because he voted in favor of a labor bill, than in an individual seeking his reward and asking the Speaker of the House to place him on a recess committee for his vote. It gives to the people outside the opportunity to say it is the same thing in return. I do not believe any harm would be done. I criticize the Legislature as much as any individual in this Commonwealth. I was abused as much as any man in this Commonwealth for favoring the appointment of a recess committee, and I still

stand behind the recommendation I made at that time. I believe the Legislature itself is the best judge of this matter. We should send men to the Legislature who, no matter whether they are disappointed at not being appointed on recess committees or not, are ready to do their part in the fight for better representative government. During the past month what has worried me wonderfully is this: There may be some attorneys here representing people who are going to be brought before the courts for helping to bring about the high cost of living in this Commonwealth. There may be some feeling growing out of that, but if the recess committee did a good job in investigating the fish business and bringing about the prosecution of those responsible for creating the monopoly it was a valuable service to the people of this State and to all the country.

Mr. GEORGE of Haverhill: May I ask my friend in the first division if the prosecution of the fish trust was not based on the investigation by the committee which sat during the session of the Legislature?

Mr. DRISCOLL: By the recess committee and the special committee both combined, and the prominent work of the gentleman now in office, — if I mention his name I may be booming him for political success, so I will not mention his name at the present time, because both he and his opponent are in the Republican party. But he is deserving of as much credit as anybody else. But if recess committees will be able to do in the future what has been done in the past on many questions, such as the matter of injunctions and in the adjusting of some of our other labor problems, so that there will be a better feeling in this Commonwealth, we always shall be glad that we have not abolished the system. I am against referring this resolution to the people. I trust that the men who will be sent to the Legislature in the future will be such men as will act in the interest of the people and fight for the people, and not in the interest of any such matters as we are now discussing here.

The Convention voted, Wednesday, August 21, by a vote of 112 to 50, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 152,800 to 87,009.

XXXI.

ADMINISTRATIVE LEGISLATION.

Mr. Robert Luce of Waltham presented the following resolution (No. 269): —

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have full power to authorize any department, commission, bureau, board or other administrative agency to issue ordinances which shall have the force of law until rescinded by the agency which issued them, or until annulled by the General Court.

The committee on State Administration recommended that the resolution ought NOT to be adopted. It was considered Tuesday, August 7, 1917.

After debate the resolution was referred to the committees on State Administration and the Executive, sitting jointly, by a vote of 131 to 101.

Those committees reported Tuesday, July 30, 1918, the following new draft (No. 409), based in part on the foregoing resolution:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The Council, with the approval of the Governor, may on petition and after advertised public hearing, pass statutory orders relating to local, special, or private matters, or to the carrying out of provisions of existing law: *provided*, that no such order shall involve an expenditure of money by the Commonwealth unless out of an appropriation already made, or shall impose a penalty exceeding one hundred dollars. Before a petition for the passage of such an order shall be considered by the Council, it shall be reported upon by that department or agency of the Commonwealth, if any, which in the opinion of the Governor exercises functions embracing in their scope the subject-matter of such petition. The form of an order shall be approved by the Attorney-General before its final passage, and after passage, it shall be engrossed and filed with the Secretary of the Commonwealth, and advertised and published in the same manner as laws enacted by the General Court. Unless otherwise defined by law, local matters shall be deemed to include any matter relating only to a particular political subdivision or district of the Commonwealth, and special or private matters shall be deemed to include any matter relating to one or more particular individuals, associations, or private corporations.

A statutory order relating only to a particular city or town shall be designated as a municipal statutory order and shall take effect only upon acceptance by the city or town in such manner as may be prescribed by such order. Any order other than a municipal statutory order if passed by the unanimous vote of all the Councillors voting thereon, by yeas and nays, shall take effect upon its approval by the Governor, or at such later date as may be fixed therein; if not passed by a unanimous vote, it shall be transmitted to the General Court and shall take effect

three months after the date of such transmittal, or at such later date as may be fixed therein, provided that if it is transmitted within less than three months before the date when the General Court shall be prorogued or adjourned, it shall, unless specifically confirmed by the General Court, only take effect three months after the convening of the next session of the General Court; and provided further, that no such order shall take effect if within such period of three months either branch of the General Court shall pass an order annulling the same.

The General Court shall retain full power to pass or to repeal any law or statutory order relating to a local, special or private matter, or to the carrying out of provisions of existing law; and the General Court may authorize the Council, with the approval of the Governor, to pass statutory orders under other conditions or relating to other matters than those herein set forth.

The resolution (No. 409) was read a second time Tuesday, August 13.

Mr. Arthur H. Wellman of Topsfield moved that the resolution (No. 409) be amended by striking out lines 3 to 53, inclusive, and inserting in place thereof the following: —

The General Court may delegate to the Council the power to pass, with the approval of the Governor, and under such rules and limitations as the General Court shall prescribe, acts and resolves of a local, special or private nature, and orders for the carrying out of provisions of existing law, but all such acts, resolves and orders shall be subject to alteration, amendment or repeal by the General Court.

This amendment was rejected, by a vote of 30 to 103.

Mr. Albert Bushnell Hart of Cambridge moved that the amendment be amended by striking out the word ", special".

This amendment was rejected.

The resolution (No. 409) was rejected Tuesday, August 13, 1918, by a vote of 55 to 94.

The committees on State Administration and the Executive, sitting jointly, also reported, July 30, 1918, the following resolution (No. 410) based in part on resolution No. 269, which had been referred to those committees:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

All petitions for the passage of legislation relating to local, special or private matters shall be filed with the Secretary of the Commonwealth on or before December first or such other date or dates as the General Court may require, and the Secretary shall forthwith transmit a copy of the same to that department or agency of the Commonwealth which in his opinion exercises functions embracing the subject-matter thereof. In conformity to such rules and regulations as may be established by the General Court such department or agency shall make written report thereon, and until such report has been received the General Court shall not consider such petition unless admitted by not less than a two-thirds vote of the members of each branch present and voting thereon. The General Court shall have full power to determine what petitions relate to local, special or private matters.

The resolution was read a second time Tuesday, August 13, 1918, and was rejected the same day, by a vote of 44 to 56.

THE DEBATE.

Mr. Luce of Waltham: This proposal concerns the thirtieth article of the Bill of Rights. It is a famous article. In view of its importance to our deliberations I shall ask your indulgence while I read it to refresh our memories.

> In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

It will be observed that this section is the concluding article of the first part of the Constitution. In our tortoise-like progress we are now concluding our consideration of the fundamental rights of mankind which our fathers thought to be unalienable and unalterable, and the permanence of which we in large measure have approved. We now approach the Frame of Government. We have been discussing right; we are now to discuss expediency. This article is the bridge between the two parts of the Constitution, and in theory, though not in time, we are now half way through our labors. And inasmuch as this article involves both right and expediency, with indeed the possibility that it might better have been put under the heading "Frame of Government" than under the heading "Declaration of Rights," I would ask your indulgence this morning while I use it for the purpose of a somewhat broader consideration of affairs than the simple resolution before you on its face suggests; and yet before I conclude perchance I may bring the threads together so you will see that my remarks are bearing upon the specific question.

There is danger that we may not see the forest for the trees. There is danger that in the isolated, separate consideration of these resolutions, we may forget that there is a broad, comprehensive purpose to be sought by this Convention. There is danger that in rejecting proposals for improvement one by one, we in the end may find we have accomplished no advance, or but slight advance, and may leave this hall with a feeling that we have thrown away an opportunity for constructive action to the benefit of all the Commonwealth.

In view of that danger I wish to ask this morning that you consider for a moment the broad need of the hour. We are at the moment in the very jaws of war. We see before us, when that war is finished, a renewal of economic competition on a scale never before known in the history of the world. So whether for war or for peace, the prime duty of this Convention is to improve, if possible, the efficiency of government.

Here is no question of right or wrong, here is only a question of expediency, — the question of how to make our machinery of government more adequate to the vital, the crying, the imperative need of the hour, and to this end the committees of this Convention have been considering how our methods of government may be made more efficient. Those who are concerned with the judiciary are to present to us, I understand, measures for making our judicial machinery more efficient, by a somewhat thorough reform of judicial processes. Those of our membership who are concerned with the executive are to bring before us a proposal for the organization of the executive department which contemplates making our executive machinery more efficient.

Those who have been concerned with the legislative department of our government will bring before us, next on the calendar, a proposal to supplement or to supplant the present methods of making law.

But beyond that no proposal presents itself, so far as I am aware, which goes to the root of things, barring the very simple proposition that I am laying before you. This proposal on the face of it is brief, simple and perchance not revealing its whole significance. Let me read it to you:

> The General Court shall have full power to authorize any department, commission, bureau, board or other administrative agency to issue ordinances which shall have the force of law until rescinded by the agency which issued them, or until annulled by the General Court.

Mr. WALSH of Fitchburg: Would not the adoption of the amendment proposed prevent anybody from having a knowledge of the law of the State unless they consulted not only the Constitution and statutes, but the ordinances passed by every single commission authorized by the Legislature to pass ordinances?

Mr. LUCE: It would put the citizen in precisely the position in which he now stands, with the exception that a certain book for which I have sent, labeled now "Special Acts and Resolves" would probably hereafter be labeled "Statutory Ordinances," or something of that sort, as it is now labeled in England. Here comes the text of my address; it is called "Special Acts and Resolves of Massachusetts." I am urging upon this Convention to ask its committees to give further consideration to this book: "Special Acts and Resolves of Massachusetts."

Mr. LOMASNEY of Boston: I should like to ask the gentleman, if I understand him correctly, is he trying to give different State commissions the power to pass ordinances, that are now called special laws and passed by the Legislature?

Mr. LUCE: I am asking that the Legislature, if in its judgment at any time it ever sees fit, may authorize any or all of the administrative agencies of government to do precisely the thing that my friend in the third division inquires about.

And now, having clarified that, so that we may be perfectly frank at the outset, permit me to address myself to this volume, — disclosing the most iniquitous feature of the whole government of Massachusetts, — for which, as far as I am aware, the only proposal of remedy before this Convention is this that I have read to you. And I call it iniquitous, not because of personal bias or prejudice, or solitary conviction, but because such it has been pronounced in respect of legislative bodies in every State in the land. I must not take time even to skim the mass of testimony that can be brought upon this subject. I will cite to you simply the opinion of two men of the highest eminence in their respective political parties, whose names will command, as they should, the respect of this body. One single sentence from the second message of Grover Cleveland, delivered in January, 1884, to the Legislature of New York. He says:

> Another evil which has a most pernicious effect in legislation is the introduction and consideration of bills, purely local in character, affecting only special interests, which ought not upon any pretext to be permitted to encumber the statutes of the State.

He reiterated that again and again in the course of his public life. And now, perchance, if gentlemen of the opposite political faith should

hesitate to accept the views of Grover Cleveland, let me read you one more sentence, from the valedictory address of Elihu Root as presiding officer of the recent Convention in New York State. This is what Elihu Root, Republican, said of a Legislature, Republican, — and I confess it with shame:

> We found that the Legislature of the State had declined in public esteem, and that the majority of the members of the Legislature were occupying themselves chiefly in the promotion of private and local bills, of special interests, with which they came to Albany, private and local interests upon which apparently their reëlections to their positions depended, and which made them cowards and demoralized the whole body.

Using the words of Elihu Root, I appeal here for such change of our Constitution as shall prevent men from making themselves cowards and demoralizing the General Court of Massachusetts; and I base this appeal upon the experience of all the States of the land. Let me tell you briefly what has been attempted in this matter.

The first great line of action concerned itself with the positive prohibition of special laws. It probably began with a provision by the State of Georgia in 1798, which forbade the Legislature to enact four certain kinds of laws. From that time on the Constitutions began to contain more and more of specific prohibitions. They prohibited laws relating to lotteries, they prohibited legislative divorce, they came presently to prohibit incorporation by special acts. In 1851 Indiana started on a new line of procedure by taking a group of prohibitions and putting them in the Constitution. State after State followed. The Constitutional Convention of Pennsylvania in 1873, as the courts in their formal decisions have declared, was held primarily and almost solely to grapple with this evil of special legislation.

New York took the same step. And after those two great States, New York and Pennsylvania, had set the example, a score of others followed, until now more than two-thirds of the States of this Union attempt to meet this evil by the specific prohibition of certain classes of legislation. Only the New England States refrain from it, and the result in our own State has been this exhibition of incompetency in the handling of government, — this exhibition of incompetency known as the "Special Acts and Resolves of Massachusetts." What is the harm done by special legislation?

Mr. Bryant of Milton: I should like to ask the gentleman, through you, Mr. Chairman, if he would kindly explain what is the difference between the ordinances which he proposes to authorize and the present ordinances such as are issued by a city or town government, or by the fire prevention commissioner, or by several other public service bodies in this Commonwealth?

Mr. Luce: When I reach that subject in the due and orderly arrangement of my remarks, if my memory prove so treacherous that I do not address myself to it, I shall deem it a great personal favor if the gentleman in the fourth division will remind me of it, but meantime I ask his kind indulgence if I refrain from putting the cart before the horse.

I was about to say that in the matter of the evils at which we aim I should put first, only because it occurs to me first, the great waste of time. Two years ago a recess committee of the Legislature, en-

trusted with the investigation of legislative procedure, presented certain statistical information upon this point to which I have added by my own computations. I find that in the last eight years our Legislatures averaged to pass each year 308 special laws. They averaged to pass 306 general laws. The number of special laws is actually greater than the number of general laws. In the same time they averaged to enact each year 151 resolves and 121 appropriations. Inasmuch as many of the resolves and appropriations are special in their nature, it is probable that our figures bear out the aggregate experience of the States of the Union, which is that about seven-tenths of all American legislation is special in its nature.

It is safe to say that if this special legislation were treated as it is treated by every other country in the civilized world, the annual sessions of our Legislature could be cut in two.

Secondly, there is the item of expense. The Auditor recently has issued a statement to the effect that our legislative session just finished cost something more than $400,000. There were introduced something more than 2,000 measures, making the average cost per measure introduced about $200. There were enacted something more than 800 measures, making the average cost per measure enacted nearly $500. The average cost of every proposition heard, considered, debated, put into law, in this State, is about $500.

Now, absolutely at random, — because this book has only just been put in my hands, — I am going to open some of its pages, and ask you to consider whether it was worth $500 to settle the questions I shall lay before you in this way. Here is the first one:

An Act to revive the corporation of Fobes Hayward & Co. (Incorporated) for purposes of liquidation.

That was actually the first thing that my eye fell on, — "An Act to revive the corporation of Fobes Hayward & Co. (Incorporated) for purposes of liquidation." Mr. Chairman, was it worth $500 to do that thing in that way?

Mr. Reidy of Boston: I should like to ask the gentleman by what rule of three or six he arrives at that kind of computation. To dispose of all the measures that were introduced into the committee on the General Court, it took less time than to dispose of what the gentleman from Waltham has so far introduced. Is he going to charge that all of these measures, thirty-one in number, cost exactly this Convention what his efforts apparently are going to cost us?

Mr. Luce: I make no charges, but attempt to continue the orderly course of my remarks.

Now, let me read the next one, Chapter 276. And this was taken entirely at random, and I would ask my good friend in front of me (Mr. Reidy), not if he thought it worth $500, but if he thought it worth $50, — if he thought it worth fifty cents, — to proceed in this manner to secure Chapter 276:

An Act to authorize the alienation for public purposes of a part of a town burial ground in West Springfield.

Mr. Reidy: Like the gentleman, Mr. Chairman, I am not familiar with what is sought to be obtained in that act. I assume under a former act of incorporation, in days when we were extremely strict with reference to cemeteries, that there was some limitation which

prevented what is now desired. But I beg the gentleman to bear in mind that there are other expensive departments of the Commonwealth besides the General Court; and these ordinances and these laws which he proposes that boards and commissions shall make, — do not let him forget for one moment that they are going to cost something. The expenses of boards and commissions mount in dollars, while the expenses of the General Court mount up in coppers.

Mr. Luce: Again to proceed with the story in front of me, again at random I turn to another instance of using a trip hammer to crack walnuts, of asking 280 men in General Court assembled, by the deliberate processes of committee hearings, advertisement, debate at the several stages, and final consideration by the Governor, — again an illustration, as I say, of using a trip hammer to crack walnuts, — Chapter 278:

An Act to authorize the Shepard Congregational Society and the Church affiliated therewith to hold additional property.

But it would tire you if I attempted to go through this list of trivialities, with which that great body must concern itself.

As I have said, the first aim of the States was to prohibit absolutely this class of legislation. That was found to work great injustice. There are many special needs, in the way of the redress of grievances or otherwise, that ought to be met, and wherever prohibition is absolute, with no equitable remedy available, the result has been evasion of law. The courts have been crowded in these States with questions arising from the attempt to determine whether a measure was private, local, special, or not, and the result has been an aggregation of uncertainty about the law, and an interference with the proper business of the courts, that has been costly and damaging to the public welfare.

Other methods have been suggested; but we shall not reach the true remedy, in my opinion, until we try to ascertain the cause for the criticisms heaped upon our legislative processes. As soon as this measure is out of the way, if the committee that has reported the initiative and referendum proposition is ready, we are to engage in a long and interesting debate, wholly due to dissatisfaction on the part of the people with the present processes of legislation. You and I, sir, may deplore some of this criticism. You and I may suspect that we are in part being made to suffer by reason of offences committed beyond the Hudson River, that the odium which attaches in all other parts of the country to the law-making process has been unjustly reflected to the extent of casting undeserved suspicion on our own General Court.

After somewhat unusually long service in the General Court, I lose no opportunity to testify to its high purpose, to its excellent machinery, to its product, which leads that of any other Legislature of the land, perhaps of the world, in its thoroughness, in its adequacy, in its wisdom; and I should be very sorry if these remarks of mine could be construed into an aspersion on the purposes and the general results of our Legislature. But a man may see, even in his best friends, an opportunity for improvement, and he may see his best friends threatened by evils or disasters of which they are not aware. And so, in no spirit of carping criticism, throwing mud at a body

which I would rather honor, but in a spirit of kindly suggestion, I desire to point out why and wherein the General Court of Massachusetts may be improved.

In the first place, it may be improved by taking out of its committee-rooms and out of its corridors about nine-tenths of the lobbying that there prevails, about nine-tenths of the expenditure of money, removing about nine-tenths of the cause for suspicion; for nine-tenths of all the expenditures of money and effort in the way of lobbying in this State House is due to this volume: "Special Acts and Resolves of Massachusetts." And therefore I ask that this institution, so dear to us, may be freed from suspicion in a very large measure, by taking out of its committee-rooms and its halls those topics to which nine-tenths of all its bad reputation, such as it is, may be ascribed. Is not that worth a little more consideration on the part of the committees of this Convention?

I do not this morning ask this Convention to say Yes or No to the proposition.

Mr. Brown of Brockton: I was going to ask the honorable member, if he feels so disposed, to deal with the subject of how far delegated powers ought to be delegated; whether or not there is any danger in that line in what he suggests, or otherwise.

Mr. Luce: Mr. Chairman, once more, if my memory does not prove treacherous, I shall reach that bridge in the course of a journey that I hope will not be too long. If it be, then, that there is opportunity to improve the processes of the General Court, in what direction ought that improvement to go? Any man who will read the history of Legislatures will find that with the growth of population, with the increase in the complexity of social interests, with the development of industry and transportation on a great scale, there has come an enormous increase in the pressure on our legislative bodies. I suspect that our fathers misconstrued the sources of evils with which in the last generation they found Legislatures afflicted. At any rate, they suggested meeting a problem, then as now almost wholly due to overwork, by some very singular remedies. At first they said: "Inasmuch as the Legislature has more to do than it can do well in the time now permitted, we will meet that situation by cutting down the time during which it can do its work." In many cases States limited the length of the session; in others they limited its frequency, restricting it to once in two years, or in some instances to once in four years, — providing a very singular remedy indeed for a state of affairs due to the pressure of demands from the people. They said: "We will meet this increased pressure by cutting in half the opportunity to meet it." And so they devised biennial sessions and limited sessions and quadrennial sessions, which in every single case have failed to meet the evil at which they were aimed, and, on the other hand, have developed new evils.

It is hardly worth while spending more time on this, because in my judgment this Convention is not going to approve that particular form of remedy, for one very simple reason: Because everywhere that it has been tried our abominable rotation system has resulted in putting each new Legislature in the hands of untrained men, so that legislation in the United States under the biennial system has deteriorated into legislation by greenhorns, and Massachusetts is not likely to prefer legislation by greenhorns to the system that it now enjoys.

Other remedies have been tried. None of them has achieved satisfactory results, for they all have failed to recognize, what now is more generally and commonly being seen, that the fundamental trouble with our Legislatures and with our Congress is the attempt to do too much work, to do more work than any human being can well accomplish.

Why, sir, in the years during which I was in the Legislature there were but one or two men in the whole body who ever made a serious attempt even to read every proposal. I tried to be a faithful legislator, and I never read even once all the proposals that came before us. How can a man read, much less understand, between two and three thousand propositions, and, in the brief space of five or six months, give an adequate reply?

In Congress the situation is five times as bad. Twenty or thirty thousand proposals are coming in there each session. And everywhere the same difficulty prevails, — a difficulty due to the pressure of work, — legitimate pressure. Why, sir, when I was in the Legislature man after man, eminent gentlemen, men of standing, thoughtful men, would come to me and say: "Luce, you pass altogether too many laws up there, you ought to adjourn earlier, your Blue Book is too thick, there is too much legislation; but, Luce, there is one thing you ought to do." Every man within the sound of my voice who has been in the Legislature has had that come to him again and again. Everybody says: "There is one thing you ought to do." And if each one of us in the Legislature had secured one tithe of the things that somebody said to us that we ought to do, these Blue Books would have been five times as thick. You who have served in the Legislature know that there is nothing here that is superfluous. You know that no useless thing runs the gauntlet of a committee, the gauntlet of two bodies, the gauntlet of the Governor, and becomes law. And there are some men within the sound of my voice who know that the real reason for this Convention, who know that the real reason for the great measure we are about to discuss, the initiative and referendum, who know that the real reason for the revolution of 1912, which swept some of us off the political ladder and into political oblivion, who know that the real reason for the Progressive party, was the fact, not that we passed too many laws, but that we did not pass enough laws of the kind that the people wanted.

May I trespass on your attention by recalling some of the delays of the Legislature, some of the failures of the Legislature, to give the people what they wanted? Francis C. Lowell, chairman of the committee on Ways and Means of this House, afterward judge of one of the United States courts, wrote an article after service here in which he told how long it took to get the Torrens system of land registration in this State. Year after year the committee on the Judiciary refused to report the Torrens system, which we all now think to have been so inevitable that we wonder why it was not enacted years and years ago. The committee refused to report it, not because they objected to it, not because they thought it unwise, but solely because they did not have time to report it. I could name over to you twenty other reforms of the last twenty years that were delayed year on year on year, because the Legislature did not have time to accomplish them.

I remember very well one afternoon when I chanced to ride to the western part of the State with a man who now holds a high position in

this Commonwealth, almost the highest to which the people may elect a man, and he was unhappy because that day the Legislature had postponed the Workmen's Compensation Act he had urged. You and I, sir, now wonder why we did not pass the Workman's Compensation Act thirty years ago, — at least twenty years ago. It was more than ten years ago that I rode home with this man in the train, and saw his disappointment and grief because the Legislature had put over to the next year the solution of this great problem, solely because it did not have time to act.

It postponed for year after year dealing with the inheritance tax. I may recall, in possible anticipation of what very likely will be my fate at the conclusion of these remarks, that in this hall I stood up for six separate years, in behalf of the direct inheritance tax, and six times was I knocked down, and in the seventh year I saw that measure become a law without a single vote in opposition to it. And it may be that it will take me six years, or, if my life is spared, six times six years, to make the people of Massachusetts listen. But after my experience in this chamber, after finding that constant defeat ultimately brings a hearing, I indulge the hope and confidence that some day I shall make even this "voice crying in the wilderness" heard from one end of the State to the other, until its people wake to the fact that unless this General Court of ours responds more quickly, more accurately, to the will of the people, then it must give way to other methods of putting in force the will of the people. I am here to plead for the General Court, that it may be saved, that it may have the opportunity to do good, that its machinery may not be forever clogged by hundreds and thousands of trivial measures, that its members may not be so distracted from the great problems before them as to waste and fritter away all their hours here in consideration of these petty things. So I pray that you may follow the example of the Parliament of England, of the legislative bodies of every other country in the world outside the United States, and confine your law-making to the making of laws, and not spend your time and your substance in the making of rules and regulations.

And that may bring me, sir, to the palpable, the open, the well-tried and familiar remedy, — well-tried and familiar in other lands, — untried here. And yet do I say that it is here untried? Why, no, I am wrong. It has been tried here for a hundred years well nigh, ever since we amended our Constitution and made it possible for those administrative agencies that we call cities, to make rules and regulations. No man will rise here to-day and expostulate because the administrative agency known as a city, — and it is nothing else, — is allowed to make rules and regulations. And also, so far as the Constitution would permit, we have extended this practice, authorizing our boards and departments to make rules and regulations. And I am arguing this morning that the impediment may be removed, so that this practice, — not even in Massachusetts a mere experiment, but already established, — may be allowed to bring to us all the benefits of which it is capable.

What stands in the way? There stands in the way the Thirtieth Article of the Bill of Rights, which says that the executive never shall exercise legislative power, and there also stands in the way a theory of the law which says that legislative power shall not be delegated.

These two things must be met: First, the construction put upon that article of the Bill of Rights, already liberalized in practice, must be made somewhat more liberal. And, secondly, there must be the opportunity to delegate minor legislative powers.

Now, why do we not do these things? But first, consider how far we may do them if we can extend present practice. The committee on Legislative Procedure, to which I have adverted, pointed out two years ago that in the preceding five years there had been on the average about eighty petitions a year for pensions, annuities and kindred purposes. There are about eighty bills a year for increased or special compensation. Those are but two classes of bills that should be taken out of the Legislature. The same committee also called attention to recent action in upsetting a program to which the Legislature had been brought in 1909 through the efforts of Governor Draper. Of those efforts I feel warranted in saying: "All of them I saw, and part of them I was;" because as chairman of the committee on Ways and Means in the preceding year I had taken part in getting under way a movement for persuading the Legislature to make its appropriations for harbors in the lump sum of $100,000 a year. The Legislature was convinced of the wisdom of such a policy in 1909, and for a while that program, which also has been urged by President Taft for the Nation, and by Senator Burton of Ohio, — that program was accepted, but gradually men resumed coming to the Legislature for the old purpose of log-rolling, swapping votes for harbor appropriations, until the particular aim of the new policy was in large measure thwarted. Those features of legislative work, log-rolling and swapping votes, are well known by every man here who ever served in the Legislature to be most injurious and most disastrous to the public welfare. The familiar procedure was renewed in the matters of harbors and public lands, until now thirty or forty matters a year of that sort come along. We had secured and we maintained for years a decision to allow the State Highway Commission to spend the money on the highways of the State; and now, in the last few years, an invasion of that program has become so conspicuous as to alarm all those who cherish fondly the fair name of the Legislature. So these invasions, these impediments in the way of true reform, are to be discouraged, in the first place, by formal sanction of a practice already tried that ought to be developed.

But there comes a further reason for us here to act. In the year 1907 a board of embalming undertook to say that undertakers should not be licensed anywhere in this Commonwealth until they were familiar with embalming. I had the honor of being a member of the Legislature in the year the Board of Embalming was created, and I have asked others what was their impression of the purpose of that board. We agree, with somewhat hazy recollection, that its purpose was to regulate the occupation of caring for the bodies of the dead, so that in matters of concealment of crime, and evidences of crime, and in matters of health, the public would be safeguarded. The board undertook to prohibit one Wyeth of Cambridge, who had long been an undertaker, from practicing his calling, because he was not able to embalm bodies. He took the case to the Supreme Judicial Court, and there it was held by Chief Justice Knowlton, speaking for the court, that this board might not make any rules and regulations which would affect or alter what were construed by the court to be the general laws

of the State. That decision is one thing standing in the way of the delegation of power.

Sir, I am looking at a very good friend of mine in the second division who adorned the office of Attorney-General in this Commonwealth (Mr. Malone). Eight years ago he was asked if it would be permissible for the Insurance Commissioner to prepare a general form of insurance policy. The Legislature had instructed that the Insurance Commissioner should so proceed; and the Attorney-General, very properly I have no doubt, said the Legislature could not delegate that power to its Insurance Commissioner.

I have been at some pains, sir, to attempt to reach the bottom of this matter of the delegation of power. I have read cases on cases on cases, for the books are full of them, until my head has become dizzy, in the attempt to understand and find out what is the rule in the matter. There is wide divergence of opinion. Only one thing is evident, after such an examination, — that it is a most uncertain and perplexing subject, and that unless we see fit to clarify it, and to say what our bureaus and departments may do, every rule and regulation they issue is put in peril; that the citizen never knows where he stands; that every act under those rules may be taken to the highest court of the land; so producing the very worst of all features of the law, — uncertainty.

It has been suggested that there is danger in authorizing our administrative agencies to exercise more power. It was a danger intimated by my friend in the third division (Mr. Lomasney), and by other members of the Convention, who propounded questions. I admit, sir, all the dangers that come from this system. But public life, like private life, is always a balance between good and evil. You cannot make an omelet without breaking eggs. You cannot make progress without incurring risks. You cannot relieve your Legislature without inviting some of the evils which come from what is known as bureaucracy. That word would have been one of great alarm three years ago. Such a speech as I am now making would hardly have been adventured at that time. But within three years we have had the greatest illustration the world ever saw of the benefits of organization, of the benefits of efficiency; and we see to-day a people hardly more in numbers than our own, standing with back to the wall and defying almost the whole world, because they organized government, because they made available every resource, because they foresaw the things to which we must open our eyes. They foresaw the economic competition of races and of nations, and, foreseeing it, they took the risk. They said: "We will have an efficient government."

Does Germany, think you, does the German Parliament, does the Prussian Parliament, concern itself day after day with "An Act to Validate the Annual Town-Meeting of the Town of Duxbury in the present year," or does it concern itself with "An Act to Authorize the Town of Swampscott to borrow money for Playground Purposes," or "An Act Relative to the Maintenance of a High School for the Town of Marion in connection with Tabor Academy," or "An Act to Authorize the Town of Holbrook to incur Indebtedness for a Water Supply"? Why, there is no German so insane, however much we may doubt the sanity of the German in some particulars, — there is no German so insane as to take a great legislative body, gathered to consider the funda-

mental problems of human welfare, and waste its time in determining whether an act of this sort should be passed: "An Act to authorize the Mayor of the City of Worcester to appoint Thomas J. Monroe as Police Ambulance Attendant."

Would I had voice enough to make it ring through this Commonwealth that 280 men, in their committees, in three stages of debate in either House, and then by the act of an overworked executive, decided whether the mayor of the city of Worcester might appoint Thomas J. Monroe as police ambulance attendant!

Why need I add argument to that citation? Why need I plead for opportunity for the Legislature to get rid of such absurdities?

Sir, let me once more point out precisely what I am asking. The committees on the Executive and State Administration have in hand a program for improving, perfecting, the executive department of this Commonwealth, to which some of us look with great hope. Without committing ourselves as yet to any of its details, I imagine nearly all of the Convention, like myself, view with interest, at least, these proposals for organizing better the execution and administration of our government. This particular measure that I am urging seems to me a necessary corollary to that program. In my judgment, it would be most unfortunate if we give our executive department better organization and deny to it the opportunity to enact rules and regulations. And inasmuch as this proposal is an attendant to, a corollary of, the work in hand by these committees, I am asking a chance for its consideration by them in connection therewith; and I am asking this chance, sir, with as little personal interest as ever attached to any position taken by me while in public life. I have no favors to ask, I have no rewards to seek, and no punishments to fear. But it has happened that chance has directed my studies in the last two or three years to these problems of political science, and the result of many, many hours of research and of reflection is to convince me that the remedy for the greater part of the evils of our body politic is to be found in improving the processes of administration.

Therefore it is that I view with comparative indifference some problems of the higher legislation, some problems that concern themselves with the ascertaining of the people's will on broad questions of public policy, feeling they are not at the moment the vital things. Where in contrast with the rest of the world we are failing, where after this awful war we shall fail still further in the economic contest, is in the processes of administration. It may be, sir, as has been often said, that inefficiency is the penalty of democracy. I have yet to be convinced of that fact. I have yet to be persuaded that democracy may not utilize all its resources to the common welfare. And because I believe in democracy, because I believe in representative government, because I believe in the principles handed down to us from the fathers, I am addressing myself to this one point, that seems to me the very center of the whole problem. Without attention to it our progress will have been small. Decision, not now made, must some day be made, if we are to allow our Legislature to do its best work, if we are to allow our executive to make the effort it wants to make for the public good. [Applause.]

Mr. Dutch of Winchester: While the motion which is pending is a motion to commit this measure to two committees, State Administra-

tion, which heard it carefully and in full, I believe, in the first instance, and also to Executive, sitting jointly, I assume from the extensive and very interesting remarks of the proposer that he has talked on the merits of the proposition, and in the absence, as far as I have yet determined, of Mr. Waterman, who you will see is supposed to handle this matter for the committee on State Administration, I have been asked to say a few words with reference to the merits.

As was stated, and very accurately stated, this resolution does appear simple, and, as was also stated, the real purpose of it and the real extent of it do not appear in it on a first reading or a second reading. Primarily there is extreme difficulty with the measure, because it is not clear; it is entirely nebulous. You are carried into a region that you cannot define. For example, what meaning are we to give to the word "ordinance"? We have had the word "ordinance" used here, as the member indicated, accurately, as a rule issued by a city council. It does not even extend to rules of selectmen or by-laws of towns; it is confined to rules of city councils. Does the gentleman mean that these boards may pass similar rules and regulations? Apparently in conversation with him, and from his speech this morning, he intends to go much further. He says plainly, in the first place, that he intends to get rid of the special acts which are in the Legislature; in the second place, he points out that he desires to go further and take away the bar which the Wyeth case raised.

I think it quite essential that you understand what that bar is in the Wyeth case. The decision came down to this, as my learned friend said to me the other day in conversation, that the rule of the Board of Registration in Embalming in that case was thrown down, first, because it was entirely unreasonable and the court would not stand for it as an administrative rule, and secondly, apart from that, because it was a rule that purported to change the general laws of the Commonwealth for the benefit of the people of the Commonwealth. Now, what my friend desires to get rid of is exactly that bar which Chief Justice Knowlton spoke of, that you cannot have a delegation of authority to change a general law for the Commonwealth. So that you are right face to face with the question here: Do you want to give authority not merely to make rules and regulations of an administrative character, but to permit changing the general laws of the Commonwealth?

To examine this thing further, how far do we need to go? So far as strictly administrative regulations are concerned, I submit that we have plenty of authority already. I would ask you to turn now or at your leisure to page 132 of the Manual of the Constitutional Convention, which was furnished to us, and on that page you will find a considerable citation of authority on this matter of delegation of authority. I submit that an examination of those cases will indicate that there is plenty of authority to-day to delegate the making of administrative rules and regulations, rules and regulations intended to carry out the detailed application, the local application and the special application of the general laws which your General Court enacts. To show you, just think of some of the rules that are being made to-day. Take your civil service rules for the Commonwealth. An opinion of the Justices, the citation for which is given on this page, held that the Legislature did have power to provide for the commission and to delegate to that commission the power to make rules, — what? Not inconsistent with

existing laws, but consistent with existing laws, yes, all the rules and regulations you need to carry out the various phases of civil service.

Without wearying you, you know that you have exactly the same situation in the State Department of Health to-day. You have your State Department of Health ordinances. Does the Legislature purport to say what are infectious diseases, what shall be the quarantine period of each disease, etc.? No. It says those regulations shall be made by the Department of Health, and they are. They determine what the diseases are, and what the quarantine shall be, etc., and the protection of health from A to Z. They are making rules and regulations of this private and special character throughout the Commonwealth, and administrative rules in the true sense, in that they must be consistent with existing law and, one further point that later I shall speak of more at length, they must be reasonable. You have pilot rules. You have the rules of the Public Service Commission. Has any one any question under the statutes that the Public Service Commission has full authority to take care of all the administrative details on our railroads? Why, they can order this thing, that thing and the other thing. You know their authority over fares. You know their authority in making a railroad put in an investment for a side track here, increase their freight facilities there, etc. The whole thing has been worked out in those cases. In other words, you have plenty of authority to-day to permit administrative rules and regulations. In what I consider and I believe you will consider the proper interpretation, administrative rules and regulations mean exactly the carrying out in detail the process of administration of the existing law. That is what they are for. That is what administrative rules are. If I have been told correctly the use of the English language, administrative rules and regulations are not intended to change existing law, they are not intended to change your statutes.

You have to-day, then, authority to go right up to that point. In other words, if the Legislature wants to provide, as it has, that machinery shall be duly protected, or a minimum wage established under certain conditions, does the Legislature say what the minimum wage is or what adequate protection of the buzz saw or the emery wheel is? No, it leaves that, it is coming more and more to leave that, to some administrative board. It makes a general declaration of policy, namely, that we shall look after the health of people, or that we shall look after dangerous machinery, and it hands over the working out of it to administrative boards and they have to-day the entire authority to carry out that mandate from the Legislature.

Now with reference to many of the special acts which the gentleman has referred to and which aroused your mirth, I submit the Legislature has entire authority to-day to make provision for most of those special cases if they choose to do so. Take all those questions of municipal authority. Take the thing that was flaunted here about the police ambulance attendant. Is there any question to-day but that if the Legislature sees fit it can say that the city of Brockton, whatever that city was, or any town, may establish a police department, with such employees as the city council shall determine? It is absolutely in the authority of the Legislature to-day. Cities and towns are the creation of the Legislature. They can be abolished by the Legislature. Their functions are changed by the Legislature. When the Legislature sees fit to hand

over those detailed matters it can do so to-day, and you do not need this enabling measure, because of course that is all this resolution purports to do, to give the Legislature power to delegate. So that the very case which he wants to ring from one end of this Commonwealth to the other can be taken care of, I submit, by the existing law, which gives the Legislature the entire control over the police and fire departments, etc., of our cities. Take these other things that appear in the special acts. Take the size of school-committees. If it is desirable to let a town or a local body determine what the size of a school-committee shall be, the Legislature can do it to-day. It has not seen fit to do so. You do not need to change this organic law in a way that cannot be understood in order to bring about that remedy. And so on with your other cases.

Take your private corporations. As was pointed out by a gentleman back of me who is not here now, as long as you have private corporations established you always will have problems as to their powers, unless and until the Legislature sees fit, again, to say that these charities may hold all the property they want, or, as I believe is entirely possible, shall say that within certain limits those matters shall be checked up by the Commissioner of Corporations. The whole matter of winding up corporations to-day can be left free to be worked out between the Commissioner of Corporations and the court; it can be under the Constitution just as it stands at this time.

Now, what further? Do we want to go beyond this point? Do you want to face and put right in here a proposition which will permit and is intended to permit the alteration of an existing law?

Mr. BENNETT of Saugus: That is just what the trouble is. We do not understand the point at which those powers end, I should say. That would be my difficulty. For instance, within my recollection a business corporation had to be chartered by the Legislature. Then we delegated to the Commissioner of Corporations the right to charter business corporations. If I am right, a short time ago we delegated to the Bank Commissioner the right to charter trust companies. I think I am right about that; am I not? We delegated to the Bank Commissioner the right to charter trust companies and savings banks. I have read that the probate of wills used to come before the Legislature, and then the change of names, and was referred to the Probate Court. That power was delegated to the Probate Court. Now, it does seem to me that this measure, — I had not heard of it before, — is in the direction of what we have been doing all these years. We delegated to the Bank Commissioner the power to charter trust companies. Is that administrative? I presume it may be in a broad sense administrative. But there is just where the trouble is. That is what I think ought to be explained. If this Constitutional Convention is here for the purpose of revising the whole Constitution I think we ought to understand about that.

Mr. DUTCH: It is of course difficult to define, and it would be very presumptuous of me to attempt to define, the limitations of the police power. The difficulty which the gentleman points out is the difficulty which is inherent in the nature of the matter itself, and the law cannot change that. In my opinion no definition will make that clearer.

Mr. BENNETT: Then does it not leave us in doubt as to the scope of what the gentleman from Waltham (Mr. Luce) proposes here, and as

to the dangers? My attention has not yet been called to any danger in what he proposes.

Mr. Dutch: I am going to proceed to point out what I believe are the serious dangers. That was the course that my argument was to take. Should we go beyond these police regulations, which are entirely established under the police power, the carrying out of which can be delegated by the Legislature, including the regulation of corporations, just as the gentleman in the fourth division suggests, and the regulation of trust companies? As you know, your police power has been extended beyond matters that concern life and limb, matters that concern health in general; it is extended now to include the welfare of the people, and you are going to have more things brought in here under that extension. We have taken care of the life and limb; we have taken care of the pocketbooks of the people, as in our regulation of trust companies and corporations, and all that, and I believe we are going to take care of the welfare of the people to a very much larger extent.

The carrying out of those general propositions has been in part and can be left, and more and more will be left, as the propositions become settled in public opinion, to administrative boards. The reference here to the delay in enacting the Workmen's Compensation Act simply meant that it took the public a long time to come to that new conception of the responsibility of an industry to pay for its own accidents which are inevitable in the conduct of that industry, in other words, to make that industry stand for itself. It took several years before people got to the point where they could grasp that simple, — what now seems a simple, — economic principle, and when they did, then your Legislature passed the bill. It always takes time to educate. And so when we get these other matters of social welfare properly threshed out and know where they land they, too, can be made the subject of general statutes and the details passed on to administrative boards.

But now suppose you go further. Suppose you go further and upset the Wyeth case, and give your administrative boards the power to change a general law, because that is what is asked for squarely and fairly. It is asked that they have power to make rules and regulations with the force of a law, which may be inconsistent with an existing general law. The first effect of that is on a doctrine which is mentioned here on page 132 and is referred to by Chief Justice Knowlton, that there is a presumption, as it is called, in favor of the constitutionality of an act of the Legislature. If the Legislature passes a law, the court is loath to say that it is unconstitutional as unreasonable or beyond the scope of the subject-matter, because it says the decision of the Legislature as to the facts and the application and the need of the change must be upheld unless it is clearly wrong. That is the so-called presumption of constitutionality. That would extend, and the gentleman who proposes this measure admits to me in conversation that that presumption automatically would extend, under his proposal, to these rules and regulations made by administrative boards. They would be put on a par with law, because this proposal says they shall have the force of a law, the force of a statute and an enactment by the General Court, so that the presumption in favor of their constitutionality, using that phrase because it is used, though I take it it is a somewhat inaccurate phrase, would apply to them.

What is the present situation? The present situation, as Chief Justice Knowlton points out, is that these rules and regulations have no such presumption, — they have no such presumption. They are not statutes. They are not the considered action of 280 men; they are the action of one, three, five, seven men, and that is all, so under our law they do not have that tremendous presumption. They are held up to a test of strict reasonableness. And so the court in the Wyeth case threw down that attempted rule of the Board of Embalming, because it said everybody knew that a man could serve as an undertaker time and time again without any knowledge of embalming. It became my most sad duty a week ago to engage the services of an undertaker on that very basis of an immediate burial, with nothing to do with embalming. And so that rule was held up to a standard of strict reasonableness by the court, and thrown down, and also the judge said right out that there was no presumption in its favor, that it was a good rule, and a proper rule. Now, do you desire to throw down that safeguard on the rules and regulations of merely an administrative board? Is it safe?

For example, take your problem of the men who spend time in so-called lobbying, trying to get through these special laws. Do you want, for the sake of protecting the people, to transfer that influential lobby from its job of influencing 280 men, to the job of reaching one, three, five or seven men? Are you going to increase the popular trust in those who make the rules, if the people find that these rules affect existing laws protecting them, affect their business, as in the case of that Mr. Wyeth, who had been in business over thirty years? Do men want their business entrusted to one, three, five or seven men when it comes to changing existing laws, rather than making administrative applications of existing laws? Do you think it will help the public any? I submit not. I submit you are transferring your evil in a way which will create greater evil.

What are you coming to? Every lawyer in this room knows that administrative law is in its infancy. Every lawyer in this room knows that one of the greatest difficulties we are facing to-day, with the tremendous increase in the business that the Commonwealth is doing, is to have our administrative boards act according to some rule and law, and not according to some whim or some personal equation. The greatest problem we are facing to-day with these administrative boards that are not bound by rules of pleading and rules of evidence and rules of procedure, is that their rules and orders shall be the reflection of a government of law and not of men, as our Constitution calls for.

Why, I am reminded of one little thing that came in my experience. I had to go to the town of Marblehead in connection with an application for a garage license. In illustration of the attitude of the local board, which refused the license, refused to hear an attorney at a statutory hearing, refused everything that the law would seem to call for and the rights of the parties would seem to call for, simply because they were everlastingly high-handed and, as an administrative board, could do pretty nearly anything without any recourse. I was told of a remark of a former selectman of Marblehead who, when he was confronted with the laws of the Commonwealth of Massachusetts, said, — and you will pardon me, because this is a quotation: "What the hell have the laws of the Commonwealth of Massachusetts got to do with

the town of Marblehead?" I have served for years as counsel for the municipality that I have the honor to represent, and I know the extreme danger of a power which already is committed to an administrative board, a board of selectmen, of passing on administrative matters in connection with fire prevention, which is partly an administrative proposition. So that I say we are not going to gain; I say we shall increase this evil.

There is an evil. Too much time is spent on special laws. There is a very considerable remedy under the present Constitution. I believe the whole thing can be taken care of if the Legislature shall see fit, in pursuance of a scheme which I believe the committee on State Administration will report, to set up a State department which shall have under it the consideration of local matters, a sort of local government board. We shall not report that one but we shall report something into which that can fit if the Legislature so desires.

And so it seems to the committee, which was unanimous in reporting this matter after consideration, that you have all you need to-day, you have all that this apparently on its face means. You do not have what this is intended to cover, you do not have the power to make rules and regulations which change existing law. And therefore the report of the committee, as I believe it will be made, will be this: That so far as the resolution provides for truly administrative affairs, truly administrative regulations, it is entirely unnecessary; so far as it goes beyond that it is inherently and necessarily dangerous. Therefore we report against it. [Applause.]

Mr. BENNETT: I should like to ask the last speaker a question which is, in my mind, an amplification of my previous question. Suppose I put it this way to begin with: Is the charter of a trust company an administrative function? I should like to ask the gentleman that question.

Mr. DUTCH: I think that cannot be answered as the gentleman intends, either yes or no. I take it that the enabling act for incorporation must come from the Legislature, which must set down the general rules and the general policy of this Commonwealth with respect to safeguarding trust companies. Then the carrying out of all that, the application of it to the particular trust company in question, or to the particular petition for a trust company, can be delegated to an administrative officer or board.

Mr. BENNETT: Very well, then. In that case it was not a constitutional question at all, it was a question of statute, was it not? It was a question of statute. Very well, then why is the chartering of a trust company an administrative function and the chartering of an insurance company not an administrative function? If there is that difference I do not understand it. I do know that the public has been howling for years for the lessening of the work of the Legislature in the direction in which it has been continuously lessened. As I say, if a man wanted his name changed he used to go to the Legislature, now he goes to the Probate Court. It seems to me what the gentleman proposes is to refer this matter to two committees sitting jointly. If this Convention is here for anything but two purposes, namely, the non-sectarian amendment and the initiative and referendum, if it is here for any other purposes besides those two, it seems to me that this is an eminently fitting piece of work, and I do not believe that I am alone in

thinking that it ought to receive a good deal of attention, whether it does so in this way or not. I think the Public Service Commission, and previous to that the Railroad Commission, were given year after year authority that had been formerly retained by the General Court; but as we go along we delegate the authority to the Railroad Commission and to the Public Service Commission, and I am unable to see any dangers in this proposition.

Mr. QUINCY of Boston: I desire to ask the gentleman from Winchester (Mr. Dutch) a question, if he will kindly enlighten me as to his views. I should like to ask whether in his opinion the Legislature possesses the power of delegating to any other authority the right to alter or amend any municipal charter.

A municipal charter stands upon the statute-book as a law. It is not a regulation, it is a law; it is a law of local application, to be sure, but none the less a law. Now, as I understand it, there is no way in which the Legislature, if it desires to do so, can delegate to any other body, whether an elective body, like the Governor's Council, or an administrative body, the right to amend in any particular the charter of a city. The gentleman from Winchester (Mr. Dutch) nods assent, so perhaps he agrees with that statement.

Now, Mr. Chairman, that being so, I desire to take that as a text for pointing out one very important field which would be covered by some step in the direction of the amendment offered by the gentleman from Waltham (Mr. Luce). City government, as we all know, Mr. Chairman, is one of the largest and most important problems before this Commonwealth. We all of us realize its magnitude, but until we look at the statistics perhaps we do not realize its overshadowing magnitude, even as compared with the direct business of the Commonwealth itself. This report of the Bureau of Statistics which I hold in my hand, the latest report, tells us that in our thirty-three cities we have a population of over two and one-half million of people, much more than a majority of all of the people of the Commonwealth. It tells us that the general revenue of those thirty-three municipal corporations was seventy-eight millions of dollars. It tells us that the cost of maintaining the departments of those cities was fifty-five millions of dollars. It tells us in another place that the indebtedness of those thirty-three cities, — the net funded or fixed debt, — amounted to the staggering sum, even in these days when we are accustomed to tossing about figures running into the hundreds of millions or the billions, of $189,000,000 in the year 1914. In other words, the major part of the public problems of this Commonwealth is concerned with the government of cities and the questions connected with city government in one way or another.

Now I want to call attention to this fact: Under the twelfth joint rule of the General Court, as it now stands, there are just ten days in the year in which, without the suspension of a rule by a four-fifths vote, it is possible for any one of these thirty-three cities to bring forward, to propose and to get action upon, any amendment, no matter how small, which affects its charter, which affects one of these local laws in the form of charters now upon the statute-book. There are just ten days, because all measures, all petitions, have to be presented, under the twelfth joint rule, not later than the second Saturday after the assembling of the General Court, on the first Wednesday in Jan-

uary. No matter how minor the change may be, supposing it is as small and minute as the change which the gentleman from Waltham called to our attention, there is no way, except during these ten days of the year, without the suspension of a rule, by which that municipality, even if its mayor and city council and people are unanimous in desiring the change, even if there is no possible objection to it, can get that change legally made.

My interest in the general proposition of the gentleman from Waltham (Mr. Luce), — and I want as one member of the Convention to express my sense of obligation to him for placing his speech upon the record of the proceedings of this Convention and for calling our attention to this most important and fundamental question, — my own particular interest in his broad proposition relates to the possibility of establishing some easier method of securing what may be called minor changes in municipal laws, in the charters of cities. Those changes can be authorized in one of two ways. We either can greatly enlarge the powers of home rule of all of our cities, or of particular cities if we choose to discriminate, — which is certainly a good way, and one with which I myself am heartily in sympathy, — or else, if we are going to change the present cumbrous method of dealing with these minor municipal questions, we can allow the Legislature, if it sees fit to do so, to vest in some administrative body, or some other elective body, power between sessions of the Legislature, or during sessions if you like, to pass these minor changes in municipal laws.

We have at the present time a situation of this sort. It is not possible, except during the session of the Legislature, and subject even then to the limitation to which I have called attention, to pass a law, even though that law is petitioned for by the mayor and city council, and even though it is made subject to a local referendum so that it cannot go into effect until accepted by the city council or by vote of the people of the municipality. I long have believed that it should be feasible in this Commonwealth to establish some kind of an administrative authority which would make it possible to deal with more freedom, with less delay, with less trouble, with these minor questions of municipal charters which now take up so much time in the Legislature. Remember that in this proposition we simply are seeking to untie the hands of the Legislature, and that to my mind is a most hopeful direction in which this Convention can bring about improvement, — not to say in the Constitution that so and so shall be done, that such and such a body shall be established, with such and such powers, but to take off of the hands of the Legislature some of the constitutional manacles which now prevent that body from doing things which it might otherwise be glad to do.

I do not say that the amendment as drafted by the gentleman from Waltham may not be too broad in its terms. We all of us realize that such a matter as this must be handled with great care and discretion. But I do say that this Convention might well take some step to make it possible for the Legislature, if it is unwilling, — and as its past record unfortunately shows that it is unwilling, — to give adequate, large powers of self-government to the thirty-three cities of Massachusetts, to have it within its power, subject to any restrictions which it may wish to impose, to allow some body, whether elective or administrative, to deal with these minor municipal questions, many of them

absolutely uncontested, without compelling the city to wait until they get attention at the annual session of the Legislature, or taking up the time of 280 men to pass upon them.

I therefore hope, Mr. Chairman, that some action will be taken, I care not what it may be, which will enable this most fundamental and important subject to be further considered. It is not for me to express any approval or disapproval of the particular motion made by the gentleman from Waltham (Mr. Luce). I do not care how this subject is dealt with, whether it is referred to any committee or left on the table to be acted upon, but I do believe that this subject, this resolution of his, — which is the only basis before this Convention, as I understand it, under which such action as he has advocated broadly, and as I suggest in the case of cities, could be passed, — that in some way or other this amendment should receive such further consideration as may enable additional efforts to be made to avoid the objections which have been well pointed out by the gentleman from Winchester (Mr. Dutch). We surely can avoid the possible dangers of giving this power to the Legislature too broadly and still make it possible to take some step to diminish the evils of special legislation, particularly to make it more possible for our thirty-three municipalities to secure prompt and intelligent attention to such local needs as may arise from time to time in the way of amendment of their charters. [Applause.]

Mr. Dutch: In reply to the previous speaker (Mr. Quincy), it would seem to me obvious that the matter which he suggests properly comes before this Convention under some half dozen measures which you will find on pages 4 and 5 of this docket, dealing with municipal home rule and the control of municipalities. Now, the committee on Municipal Government is the proper committee to consider that, and they have entire authority under our rules to initiate such a measure as they believe deserves the attention of this Convention. In the consideration of those various matters we have entire authority to request that committee to present to us such a measure, and the gentleman from Waltham (Mr. Luce) and the gentleman from Boston who has just taken his seat, have the right and privilege of going before the committee on Municipal Government to seek that which he has just suggested.

Mr. Anderson of Brookline: I rise more to raise a question than to offer any views. Before the committee on Public Affairs, of which I have the honor to be chairman, have come various propositions to enlarge the power of the Legislature. Therefore I am very much interested in the general proposition which is here presented; for, as has been said by the gentleman from Boston (Mr. Quincy), all that is proposed by the gentleman from Waltham (Mr. Luce) is to untie the hands of the Legislature. If perchance the functions of the government of the Commonwealth, under some of the measures reported by my committee and by other committees, should be somewhat enlarged, we shall have, I fear, an increase of that great and manifest evil of special legislation or petty legislation pointed out with so much force by the gentleman from Waltham (Mr. Luce).

Now, I was not quite certain what was intended to be intimated by the gentleman from Winchester (Mr. Dutch) in the latter part of his statement, when he said, admitting the existence of that great evil, that some committee, — I was not sure whether it was his committee

or not, — proposed to report some plan under which some State administrative board might assume some of these functions which are crippling the Legislature. But, unless there be some well-digested plan of that kind, I hope that this matter shall receive further consideration by a joint committee or some committee; so that we shall not close this session without providing adequate means by which the Legislature, if sufficiently intelligent, may free itself from a lot of the special and petty business that hitherto it has been wasting a large part of its time in doing. I may say that I shall continue to think fairly well of the Legislature, in spite of the manifest contempt with which those who have served in the Legislature continue to express themselves about that body. I therefore am not afraid that the public will suffer any great and permanent detriment from either absurd legislation or seriously unjust legislation. There always will be imperfect legislation, which will call for amendment or repeal.

But I do hope that this proposition will not be brushed one side as a matter of minor importance. I do hope that this Convention will untie the hands of the Legislature in the particulars pointed out by the gentleman from Waltham (Mr. Luce), assuming that power given for legitimate purposes will not be abused.

My notion of a Constitution is that certain fundamental rights should be asserted in the Constitution, which the Legislature should not be permitted to take away or abridge; that having asserted such fundamental rights we should leave the Legislature a free hand to enact such legislation as may make for the common welfare. I believe in the proposition that the gentleman from Waltham (Mr. Luce) makes as in accord with these general views which I shall have occasion to urge further upon this Convention in support of some reports of my own committee. I therefore hope his motion will prevail. [Applause.]

Mr. Walsh: As chairman of the committee upon State Administration I feel I owe a duty to that committee to say that fifteen members considered at length this question and have reported to this Convention unanimously against the adoption of this amendment. I ought to say in justice to them that the suggestion that they should sit with another committee did not come to the attention of the chairman of that committee, or so far as I know to any member of that committee, until the motion was made upon the floor of this House. I am confident that if the suggestion had been made to the committee at any other time that the gentleman interested in this question desired that two committees should sit in judgment upon it, I, for one, and the members of the committee also, would be very glad indeed to sit jointly for the consideration of this question.

I do not rise to oppose the motion now that two committees sit and deliberate upon this question. I leave that to the Convention. I do want to point out what is proposed in this amendment. A radical change is to be made in the fundamental law of this Commonwealth. We have now one Governor. We have one law-making body. We have one judiciary, the Supreme Judicial Court of Massachusetts. If this proposed amendment is adopted we shall have one Governor, one judiciary, and God only knows how many law-making bodies, because it is proposed that instead of one Legislature, one body determining what shall be the statutory law of this Commonwealth, every commission whom the Legislature may designate shall have that power, in

some cases one man, in some cases three men, in some cases five and seven men. Indeed, in the months of May and June and July you will have the spectacle of a Legislature in session, the fire prevention commissioner, the Metropolitan Commissions, the Public Service Commission, and all the various commissions passing what, — laws to bind you and me, under which we may be prosecuted and punished. It is not proposed that they shall have the power to pass ordinances, but *laws*, and *laws* which, even so far as this amendment goes, will not be subject to the scrutiny of a Governor, as the laws passed by the Legislature have to be examined and scrutinized. This is a dangerous step, exceedingly dangerous.

Now, what is the evil which the gentleman so eloquently and so well points out, and which I appreciate, and some of the language of which I hope to repeat in discussing a question which later will come before this Convention? What is the evil? The evil is this: That the Legislature has too much of its time taken up in considering special acts. But the Legislature has the power to pass general laws and permit administrative boards, city governments and town governments to assume the task of passing upon many of these special questions which make special laws. So that the remedy is in the Legislature itself, and it does not seem to me that we are prepared in Massachusetts to have an unlimited number of law-making bodies, but that we want one tribunal only, to which every one can turn to find out what the statutory law is, one Constitution, one law-making body, one public record, to find out what the law of the State may be. [Applause.]

Mr. WATERMAN of Williamstown: It is presumed that we understand the intent of the suggestion of this amendment, and as the ex-Governor (Mr. Walsh) has just pointed out it lays down a new policy in Massachusetts whereby four hundred men from one hundred commissions or more can go forth and dictate the laws under which you and I shall live. Now, I ask you, Mr. Chairman, is this a democratic government, or is it going to be a government of men who have been created by the Legislature and then turned loose to do that which they see fit to do? What do you know about the personnel of these men? How much do you trust them to-day? Only two years ago we tried to get a law through here whereby we might know what the rules and regulations were, that we might abide by them, but because of the expense of publishing the same it was turned down in the wisdom of the Ways and Means Committee. This last winter, however, though not published in a volume, those rules and regulations and orders had to be filed with the Secretary of the Commonwealth and remain there three months before they had the effect of law. Do you suppose it is an easy thing when a matter is established that a body can rescind that, or that the Legislature will rescind that order, be it good or bad? I submit to you, gentlemen, it needs but very little suggestion here to see where the thing will run to. The trouble to-day is that legislation has run away in this Commonwealth of Massachusetts; that all these rules and regulations by a hundred boards or more are the law of the land, and it is very difficult when these commissions are appointed to get at them. The Governor well knows how little power he has over the administration of the matters of this State, and yet you ask him to hold down the State tax. How can he do it when he has so little power and all these commissions are creating business that they may

enhance the value and the importance of their office. I leave it with you now here, and I trust this matter will not be referred, but that the committee's report will be accepted.

Mr. Hart of Cambridge: I desire to call the attention of this body to the fact that the evil against which the last speaker protested is not an evil which might arise only if the proposition of the gentleman from Waltham (Mr. Luce) were carried out, but it is at the present moment one of the greatest evils in the government of Massachusetts. We have sixty or seventy administrative bodies, each of which has some power of legislation within its own sphere. The people of Massachusetts, through their General Court and their present system of government, have for years been tearing down that principle of separation between legislative and executive powers which was one of the things that our forefathers most cared to establish in the Constitution. They have been doing it, first of all, by tearing the executive power apart; instead of vesting it in the Governor they vest large portions in bodies appointed at irregular intervals, not responsible to the Governor, and taking from day to day a share of the executive power of this Commonwealth upon themselves. As between the executive and the legislative, the government of this Commonwealth has permitted those bodies to exercise legislative discretion in many directions. We see the same tendency in the national government. What is the Interstate Commerce Commission? A Legislature, a court and an executive. What is the new Federal Reserve Board? The Trade Commission? They are all of the same kind.

The suggestion of the gentleman from Waltham (Mr. Luce) is phrased in a manner subject to many objections; as has been said, it is vague, it is uncertain. One purpose of the gentleman from Waltham (Mr. Luce), however, is to recall to this body the fact that after two months of our sessions we are now in a sterile condition. The great committee on the Judiciary, composed of as able men as can be found in this Convention, have reported as the single positive result of weeks of deliberation that women ought to be notaries public! They find nothing else to propose or criticize in the Constitution of the Commonwealth as respects the judiciary. The committee upon the General Court has reported that the General Court ought to have power to adjourn for thirty days, and nothing else.

Continuing after the noon recess Mr. Hart said:

At the conclusion of my remarks at one o'clock I tried to bring out the great, significant, fundamental fact that after sitting two months and receiving the reports of the committees appointed by this body, twenty in number, the Convention is now dealing with a small crop from an almost barren field. Only one question of great magnitude has come before the Convention, and has been debated; and even that is not yet disposed of. Another big question, the initiative and referendum, is impending. As has been remarked to-day, if the question of a sectarian amendment and the question of the initiative and referendum are all that this Convention is going to consider it has not the right to the name of a Convention.

I called your attention to the fact that the Judiciary Committee sees nothing whatever that needs amendment in the judicial system of the

country. It is perfectly true that the committee on Judicial Procedure, of which the eminent gentleman from Wellesley (Mr. Pillsbury) is chairman, has offered two propositions looking toward changes in that department of the judicial activity of the Commonwealth which will in due time come before us; but it is equally true that the committee on General Court, including doubtless, — I have not examined the list to verify that fact, — a number of persons who have had long experience as members of the General Court, has also not seen fit to recommend anything whatever. Now, what does that mean?

Mr. George of Haverhill: Lest the gentleman from Cambridge forget, I should like to have him state how many meetings his committee has held during this session, and how much actual work it has done, while he is criticising the other committees.

Mr. Hart: The speaker is perfectly willing to answer the question, though it has no connection with the subject before the house. The committee on Amendments and Codification has had frequent meetings; I cannot say whether there were eight or ten. We considered every subject before us upon which it was possible to come to a determination and have reported two important propositions that are now in the docket, and will be duly reached in their turn. In addition several other subjects are, by permission of the Convention, now before the committee awaiting the decision of this Convention upon the important matter of the codification of the present Constitution, upon which it is impossible for us to act without special direction. If the gentleman who inquired wishes to raise inquiry whether the committee on Amendments and Codification has been equally sterile, no more productive than the committees to which I have alluded, I am happy to assure him that it has produced several measures which he will have the opportunity to discuss in due time.

The committee reports so far in general indicate that this Convention thinks that in most respects the Constitution of Massachusetts is already a satisfactory, a perfect instrument. That is curious, because, with regard to the judiciary, everybody here knows that the constitutional provisions are few and slender, far fewer than in other State Constitutions, and that as a matter of fact our judiciary department, and our judicial procedure, are to a very large degree built up on decisions of the courts, there being no articles of the Constitution that will cover all those cases. When you plead, therefore, for the sacred Constitution of 1780 and urge that that is sufficient, you are pleading in part for the written instrument of 1780, in part for an accumulation of judicial precedents and decisions, which in bulk and importance I undertake to say are quite as significant as all the text of the Constitution relating to the judiciary. You are perpetuating, therefore, or the committee on the Judiciary, so far as its power and authority and recommendation go, is perpetuating a system in which the Constitution is not the main issue. We as a Convention are denying to the people of Massachusetts well articulated articles upon the judiciary, such as other communities enjoy.

The difficulty, as I already have said from this place, is that we have such a remarkably good judiciary, pure, upright, able and impartial. We have no guarantee that that condition will endure forever, and I submit that the people of the Commonwealth have a right to a greater degree of definition of judicial power. Here is the opportunity: A

great Convention, a great body of distinguished members of the bar! From whom might so appropriately come suggestions for alterations and improvements of the Constitution? Yet apparently we shall adjourn without making any systematic alterations because no systematic propositions are presented to our attention.

The truth is this Constitutional Convention seems to me to be eaten up by its own committee system. We are dealing with the whole subject, and all our deliberations are founded upon the idea that you must have a committee report before you, and the committees can make no reports unless they are based on individual suggestions. In the great Constitutional Convention of 1787 and in many others the procedure was quite different. Propositions were made in Committee of the Whole or otherwise upon questions of general principle, sent to committees with instructions, and those propositions then came back, and were debated in detail. Out of that came an articulated Constitution. And there is no other proper or effective way.

How is it with regard to amendments affecting the Legislature? The same thing; although everybody in Massachusetts knows, by contact with the General Court or by common report, that there are many difficulties, some of which have been mentioned to-day, in the workings of the Legislature. The committee on that subject sees none. The only proposition which will come before the Convention, apparently, upon which we can have a square opinion as to whether the General Court is doing its duty, whether it is the kind of Legislature to which this State is entitled, is the proposition of the gentleman from Waltham (Mr. Luce), which is now pending and upon which I therefore am speaking.

Go a little further. Take the State Executive. There is the Council, which is an excrescence which never ought to have been perpetuated. It was carried over from the old Colonial system. It never has fitted into a system of democratic government. It destroys to a large degree, or at least it impairs, the efficiency of the executive. I have searched in vain through the documents to ascertain what has become of the three propositions to abolish the Council. It is possible that in due time they will reach us, and that there will be an opportunity at least to pay our respects to the Council. You know the custom in some countries is as you go along to lay a stone upon every grave. I hope at least I may have the opportunity to deposit a sizable pebble upon the tomb of the Governor's Council of Massachusetts.

A few days ago an eminent member of this body (Mr. McAnarney) plunged an imaginary professor of Harvard College into a very serious difficulty. The gentleman was so eloquent, and spoke with such force and energy, that even a professor of Harvard College could enjoy the humor. But did any of you remark, gentlemen, that the gentleman from Quincy wilfully and inexcusably confused the powers of government of Massachusetts? He first constituted himself both Houses of the Massachusetts Legislature, and passed an impossible statute. He then transformed himself into the Governor and signed the statute, which as Governor he had the power to veto. He next constituted himself a court of first instance in Massachusetts, and condemned the professor to an unheard-of penalty. He then, as executive, as sheriff of the county, confined him in jail for ten months. In all that process he seemed to forget there were such things as newspapers, as public

meetings, or that the Supreme Judicial Court has any authority whatever to reach down and rescue a humble and suffering professor of Harvard College.

I was greatly indebted to that gentleman also for his allusion to a very distinguished citizen of Massachusetts, unhappily not a member of this Convention, namely, James Otis. That is a splendid name! It is always in order, my friends, to refer in a Massachusetts Convention to James Otis, and to Sam Adams, and to John Adams, and those other great patriots, — but it is not fashionable to follow their example. How does James Otis come into the question of the General Court of Massachusetts, and the way of improving its discussions and decisions? I will tell you. The truth is that James Otis was a firebrand. He came into the community of his period exactly as some gentlemen have come into this Convention, with blood in his eye. James Otis put forward a famous proposition with regard to the writs of assistance, namely, that they were not constitutional; but he was a century ahead of his time. He was trying to develop a principle that there was a Constitution of the British Empire which could be contravened, statutes contrary to which, though passed by Parliament, were unconstitutional. It was a great idea, but it is not yet adopted by the British nation, although within a few weeks an imperial conference in London has been looking in that direction.

James Otis founded a new political school. But gentlemen forget that James Otis was turned down by the court before which he made that argument, as was Patrick Henry in his similar argument on the same point a few years later. James Otis and Patrick Henry and those people were looked upon with affright and distrust. Why, no supporter of the initiative and referendum can be held by any respectable member of this Convention in greater terror and apprehension than was James Otis by the good people of Massachusetts. I thank the gentleman, I thank any gentleman, for calling our attention to James Otis and Sam Adams as persons who ought to be respected and followed by the present Constitutional Convention of Massachusetts. What they were doing was to try to break up an old political order which had become crystallized, effete, out of date. The provincial government of Massachusetts suited most of the good, wealthy, well-to-do people in Massachusetts, exactly as well as the present Constitution seems to suit a considerable number of the members of this Convention. They wanted no change. They asked for no change. James Otis was a firebrand who came to compel people to make changes in the direction of democratic government which were excessively distasteful to them. Why, the Constitutional Convention of 1780 was made up of a set of radicals and firebrands, a set of people who could not be satisfied with the respectable government that they had. Some of those people lived out in Berkshire County, where the Reverend Mr. Adams of Pittsfield for five years was their leader. Five years the courts of Massachusetts never sat in Berkshire County.

A point of order was raised that Mr. Hart was not talking to the subject-matter under consideration. The Chair ruled that the point of order was not well taken. Mr. Hart continued:

James Otis could not have been ruled out on a point of order when he once got his blood up, and lesser men may follow his example. My

point of order is, — or point of disorder, if you like, — that the Constitutional Convention of 1780 was made up of men to a considerable degree looked upon as reactionaries in their time. Why, do you think that everybody in Massachusetts thought as Sam Adams did, that everybody wanted a Constitution? Up there in Berkshire County there was one little town which passed a solemn resolution to the effect that "We want no jug but the jug of the universe." Those people demanded a Constitution. They would not obey the government until they got it. Then came in John Hancock. John Hancock, a well-to-do merchant, a wealthy man, wanted to be Governor of Massachusetts, and he could not unless there was a Governor; so he and Sam Adams came to an agreement that Sam Adams would favor a Constitution and John Hancock somehow became the first Governor. It was a good Constitution. Nevertheless there are plenty of members sitting here in this Constitutional Convention who could not conscientiously have sat in the Convention of 1780, because it was trying to upset the previous government and to submit a more democratic system for popular consideration and vote.

Furthermore, the people in 1780 never looked upon the Constitution that they were making as a kind of God-given instrument. To say nothing of that famous clause asserting the right of the people of the Commonwealth to change their form of government, they provided for a Constitutional Convention in 1795; and they expected there would be one. Other States in the Union, like Pennsylvania, had had several Constitutional Conventions. It was a mere accident that there was none in 1795, a majority of the voters having voted for it but not the special majority required. And that is the reason why Massachusetts was left without an adequate machinery for altering the Constitution.

Now, gentlemen, let us face the issue. Here we are, appointed by our constituents to do what? To sit here and sweat and finally produce two or three amendments? What is the use of it? Amendments might somehow have been forced from the Legislature. No, we were sent here if possible to make a better instrument of government, at least, in the district from which I was elected in Cambridge that seemed to be the principle. That is what I came here for, and I find myself hedged in by the declination, the refusal of the committees to report measures through which we can debate, discuss and come to some decision as to the actual improvement of the Constitution. The result will be unless this Convention has a change of mind, that in the end we shall retire to our humble abodes, our partial and incomplete work will be voted upon, and we shall be duly forgotten. I confess I looked forward with a hope that my children and grandchildren and great grandchildren might make it a point of pride that their ancestor had been in this Convention, as I make it a point of pride that my ancestor, Stephen Hart, was a member of the first Constitutional Convention in America, which framed the famous constitutional orders of Connecticut in 1639. I tell you I shall not be very proud, nor will any of us be very proud, of the result of this Convention, if we finally go home to our constituents having done nothing to furnish them a Constitution. Sixty-odd years since the last Convention, the first opportunity, and we are not taking advantage of it! After all, doubtless it will not make so much difference; for I prophesy that if this Convention sits, adjourns and goes home without meeting the demands of the

people of Massachusetts, demands accumulating for many years, that within three or five years there will be a genuine Constitutional Convention, which will be sent to this hall and which will do the work which we degenerate sons have refused to do.

Mr. Balch of Boston: I speak as one of the members of the committee that heard this matter. I had intended to speak on the merits of this measure, but in my opinion the temper of the committee is not such that it desires at this time to hear further argument on the merits. I wish, therefore, to confine my remarks exclusively to the narrow question before the committee, namely, shall this document be recommitted to the committee which first heard it, namely, the committee on State Administration.

I am one of the fifteen men who voted unanimously against this measure. If it comes before us once more in the same dress I shall vote against it again. But I am impressed with the possibility that the language might be so reformed and the thought expressed in this language so modified as to meet some of the objections so ably set forth by the member from Winchester (Mr. Dutch) and the member from Fitchburg (Mr. Walsh) and still remain of use. If our friend the member from Waltham (Mr. Luce) believes that that can be done, and I judge he does, then I for one am very ready to undertake the extra labor of rehearing the matter with an open mind. I should not be so willing but for one thing. I point out to the Convention the dangerous nature of Mr. Luce's motion as a precedent. I believe, I have every reason to believe and do believe, that the member from Waltham intended his motion in no wise hostilely to the committee on State Administration, and with no thought of using improper means to defeat an unfavorable committee report, but I do think that if the same thing that the member from Waltham (Mr. Luce) has done should be done hereafter, on the basis of his motion as a precedent, it would provide the Convention with endless fighting over the getting around of unfavorable committee reports, because it would leave it open to any member who found himself faced by an unfavorable committee report to move to recommit to the original committee, plus any committee he might pick out that he thought might give him a vote.

I therefore will ask the member from Waltham (Mr. Luce) if he will submit to an amendment of his motion in such a sense as to make it read to recommit to the committee on State Administration, with power to invite the committee on Executive to sit with it. If the member from Waltham (Mr. Luce) accepts that amendment, then I hope the motion so amended will prevail with this Convention in the interest of fair play, and in order to allow a still further hearing of a matter which evidently has many sides and is of more general interest than perhaps was realized before the session of to-day.

Mr. Luce: I have not the slightest personal pride in the wording of this resolution. I have not the slightest desire to win a victory over any committee. I have a very deep desire that this Convention shall not dissolve without facing the problem of special legislation, and whatever course will secure the solution of that problem will be perfectly satisfactory to me. If the Convention desires to consider further this matter, for which the only legislative basis that I know of is the resolution now before us, it is quite immaterial to me how it is done.

The suggestion was made by the gentleman from Winchester (Mr.

Dutch), with force, that the remedy is already in the hands of the Legislature; but, Mr. Chairman, my feeling that the Legislature would not let go of power voluntarily, would not voluntarily reform itself, was the chief motive that led me to speak and ask for the holding of this Convention. I felt that the existing methods of amendment might in time produce such reforms in the executive department as were imperative, might secure such reforms in the judicial department as were imperative, but in all probability would not secure reforms in the legislative department. Three years ago a joint special committee on legislative procedure sat during the summer. Its Senate chairman was Henry G. Wells of Haverhill, one of the most conservative men in the State, and I say it with due respect. Its House chairman was Henry E. Bothfeld of Newton, another man of moderation, temperate in speech and thought. The committee headed by these gentlemen reported in a document of 107 pages a programme of legislative reform, backed up with figures, part of which I have quoted this morning, and with arguments that seemed to me irrefutable, and the Legislature threw the whole thing right out of the window. So far as I know, the Legislature, perhaps with some trivial exceptions, would not adopt a single proposition that looked to the shortening of its sessions or looked to getting rid of part of this mass of special legislation. Now, because the Legislature, in three years of delay and inaction, has proved that it will not face the problem, I for one am convinced that the only hope is in this Convention.

I do not urge my resolution; I do not urge any resolution. My prayer is simply this, — that whatever committees of this Convention you may designate will consider what seems to me the gravest problem now confronting this Commonwealth.

I have in one hand the volume of laws passed in one year by the Massachusetts General Court for a population of two million and a half. In the other hand I have the laws passed by the Parliament of Great Britain for a population of between five hundred and eight hundred million people. That was all the legislation necessary for the greatest empire on the face of the globe.

Mr. McCaffrey of Boston: I should like to ask the gentleman from Waltham whether or not there are two large volumes of provisional laws and statutory orders which had the effect of law passed by authority of the Parliament of Great Britain every year?

Mr. Luce: That is perfectly true. These were the general laws. Upon this book was concentrated the wisdom, the study and the debate of Parliament. But the wisdom, study and debate of our Legislature was scattered and diffused over all those eight hundred and more propositions. Now the wisdom of the world says that is the right way to do and this is the wrong way to do. And because all mankind agree this is wrong, therefore I am still in the hope that by whatever process it thinks best the Convention may be willing further to consider this need.

Mr. Douglass of Boston: I should like to ask the gentleman from Waltham what he believes would be the volume of the laws that would be passed by these commissions or agencies under his proposed resolution.

Mr. Luce: My expectation, sir, is that many propositions which get a hearing from the Legislature will not be submitted for a hearing by the experts whom the State employs to consider these matters.

Mr. Douglass: I should like to ask the gentleman from Waltham how he expects to get in the Commonwealth of Massachusetts better experts in a board of six or three or seven men than he does from 240 men chosen from the body of the Commonwealth.

Mr. Luce: I have had the pleasure of serving on a considerable number of legislative committees. It is not my opinion that I personally ever brought to any legislative committee service in coping with these matters of administrative detail, that judgment, that training, that experience, which are to be found in the experts appointed by the Governor, who devote their lives to these propositions.

Mr. Douglass: I should like to ask the gentleman from Waltham if he ever intends to run for the Legislature again after the experience he has given us.

Mr. Luce: If I ever should find opportunity to serve this State again in the General Court, I should look forward to it as an opportunity to repeat the happiest years of my life, the most profitable years of my life, and yet years filled with the consciousness that I was part and parcel of a system capable of improvement. [Prolonged applause.]

Mr. Douglass: I should like to ask the gentleman from Waltham if he believes that the commissions of this Commonwealth are capable of any improvement, or are they more susceptible of improvement than the members of the Massachusetts Legislature.

Mr. Luce: I thank God that all men are capable of improvement. [Applause.] Sir, if I had not believed that all men are capable of improvement, never for one moment would I have consented to be a delegate to this Convention. [Applause.]

Mr. Chairman, I have said all that I may say. I have laid before the Convention a great evil, a crying evil, so recognized in every legislative hall in this country, so recognized in every Convention that has been held in this country for seventy-five years; in the minds of many the greatest evil needing our attention. I pray you, sir, and through you this committee, to grant me simply this modest prayer, — that you will not go to your homes, abandoning almost on the threshold of our deliberations the attempt to meet this evil. I ask simply that in whatever method you may think wisest you may further see if we in our turn may not be as hopeful, as constructive, as patriotic as were the men who framed this Constitution. [Applause.]

Mr. Waterman of Williamstown: I am here because I was elected a member here and I have taken the oath to do my duty here as a member of this Convention, and I shall not take it from anybody that I am here to put a mass of stuff before the people which I do not support, and I doubt if there are many men in this hall who will take any such position, — that they were sent here to send a mass of stuff to the people for their consideration. They sent us here as men, to deliberate, to consider the Constitution and the questions brought to us, and not to stir up a muss. I think any reasonable man will subscribe to those sentiments.

Now, Mr. Chairman, I think we are getting wide of the mark in stating this question, that because of special legislation the whole of our law-making system should be changed. Can you imagine what it would be if you allowed one hundred commissions and boards to go forth and do as they pleased? Where is your help, where is your pro-

tection? Will you let everybody go forth, men who have sought these positions in the Legislature, men who have pulled one way and another to hold them, and then let them go with a free hand and create laws to satisfy their own whims? The Legislature was created by the people as their representative body, to be a delegated representation of them. I submit, Mr. Chairman, that the fact of the number of years that this Constitution has held forth without much change is a pretty good testimony that it was a pretty good Constitution. And I believe that the people are very loath to drop these articles of agreement that we have lived under so many years for something that we know very little about. Because a few people bring forward certain notions and work them and talk them till finally somebody thinks there is something in them is no reason for us to submit to that call. I believe we should act as men and do our duty to-day, deciding every question as its merits dictate.

Mr. Brown of Brockton: Mr. Chairman, because of what the last speaker said I say a word. Yes, it is true, we are here in our individual capacity to represent the people of the Commonwealth. It is true that we have taken an oath. It is true also that all Constitutions and all governments are to a certain extent the expression of the will of the people as near as they are capable of expressing it. Therefore, it follows that whatever is going to come out of this Convention is going to be an expression of each individual from his standpoint. Each one will pass judgment on them from his own standpoint, from his condition, as he has developed it. It naturally follows, then, this, — that a man whom the world has used well, a man who to-day finds himself surrounded by all that he cares to have, is satisfied; he is *laissez faire*. He lets everything pass.

There is a consensus of opinion that something is wrong in this Commonwealth; that the many of the people are not prosperous, that the many of the people are not enjoying their lives and have not the liberties as it was intended. If you say that this Constitution was intended to enable them to enjoy life, then you admit that the several departments have not accomplished it. It necessarily must follow that you have got to change in some way some form of this government in order to change these conditions. Continually we have heard it from the beginning of this Convention that we are going to let the Constitution alone because it is old. Well, if conditions as they are are perfectly satisfactory let us adjourn and go home; we do not belong here. Certain things are going to be said in this Convention and they may as well be said at one time as another. The gentleman from Waltham (Mr. Luce) asks that this resolution be sent to a committee, not necessarily to report back just what there is in that resolution, but perchance that it may give us something we may need by and by.

Now what next do we discover? As was pointed out by the gentleman on the other side, we have got along fairly well; we have got through with one department and there is nothing the matter with that department. That department says so. It was made up of honest representatives of it; they viewed it from their standpoint. They saw the judiciary as they have seen it and understood it and they were honest, — of course they were, — because they saw their side of it. This Convention, if it keeps on the way it is going, is going to be much

in the position of the two honest knights. They rode from opposite quarters and as they approached one said: "By my faith, that shield is silver." "No," said the other, "that shield is gold." And thereupon they fell upon each other and fought a bloody combat which ended in throwing them and reversing their positions, so that one saw that the other was right and the other saw that the first was right, — they were both right, only they spoke from different viewpoints.

Our preacher the other day pleaded fervently that we might have light. Gentlemen of the Convention, there are two kinds of light; there is the light that comes into the individual when he thinks and by thinking tries to understand his duty, when he tries as best he can to represent the truth which he thus obtains. And then there is another kind of light; it is a reflection from a looking-glass. Does the Convention divide itself into those who have got the light and those who are nothing but looking-glasses? I am led to this thought by a gentleman who spoke to me during the recess. He had very well defined views on a certain question, but somebody had spoken and he was a little tin God for him, and because that man said so he was going that way regardless of his own views on the merits of the question. He is a looking-glass. That is all there is to it. If we are going to degenerate in that way we are not going to do much.

There are conditions in this Commonwealth that need to be remedied and you might as well attack them on one measure as the other. Let us come to government. All down through the line you will find in spite of all obstacles there has been human progress, and you may find it on either side of the line of governments. So long as they served their purposes they stood; when they did not and became merely obstacles they were thrown to one side. There have been good governments, republics, and monarchies; but all were thrown to one side when they stopped human progress. You may do nothing, if you please, but you will not stop human progress. Men are coming to discover that they must either control government as an instrument or come into opposition to it as an obstacle. We are drifting there. What are you going to do in Massachusetts? When Massachusetts government commenced on the Mayflower it was a compact, the only one of its kind; the signers agreed to do certain things endorsed by the majority. It was a perfect democracy. It was carried into the town-meetings and men spoke their opinions; then came a vote; the majority ruled and the minority opposed it no longer. That was a pure democracy. The communities grew; they commenced to delegate their powers; this developed representative government, the first of its kind. When that was formed certain problems confronted it. The problems that we have got to solve did not confront our forefathers! For the problems that confronted them, the Constitution was sufficient. Now new problems are coming forward and demanding to be solved.

Returning to this particular point that we have under consideration: Representative government develops a system of administration, because administration is merely running the machinery. The Constitution is the machinery with its limitations and its powers, and it must delegate power. When power that is delegated is wisely used it serves a good purpose; all power improperly used is evil. An administrative

board has certain powers that are mandatory and it has certain powers that are discretionary. Within the limits of that discretion the administrative may use its discretionary powers. In what other way may it be done except to promulgate its decisions? At the present moment there are many rules, some almost with the force of law. An administrative officer is a Governor within his limited sphere.

The reference of this particular subject of administration to the committee is not for the purpose of reflecting on the first report of the committee. It is not, as the gentleman from Waltham has said, to get the better of the committee. There is something in this resolution that we may want to use as we go through the Convention docket. We may find that the very thing that you have rejected has become the headstone of the corner. I do not say that it will. I do not favor all that is in the resolution. But at the same time I shall vote to give it a chance. I hope the motion made by the gentleman from Waltham (Mr. Luce) will be adopted, that the resolution will be sent to the committee, which need not necessarily report that resolution but may report something that is needed a little while later. [Applause.]

Mr. Curtis of Revere: I have listened with much interest to the able debate of this morning upon the main question and this proposition. I was particularly interested in the splendid arguments made by the gentleman from Waltham (Mr. Luce) and the gentleman from Winchester (Mr. Dutch). But it appears to me that as the chairman has called the attention of the Committee of the Whole to the fact that we have departed widely from the question at issue, I should like at this time, if the gentleman from Waltham is agreeable, to have him answer one or two questions. The motion is to commit to practically a new committee. I would ask the gentleman from Waltham who makes that motion if he has any new light upon the question to put before that committee and if he believes that the committee will bring in a report different from the unanimous report against these resolutions that has been laid before us.

Mr. Luce: A specific answer to the question will be this: The debate this morning has added to previous comments upon this proposition so that it has now presented itself to its author with new angles, new difficulties and new possibilities. I am of the belief that if this committee should take a receptive attitude toward the end to be accomplished it may be able to work out a method of accomplishing the end which will be satisfactory to the Convention, and to that end I would very gladly contribute what little I could in the way of conference, discussion and consultation. Whether the committee would make a different report or not it is beyond my power even to conjecture. Unless working together we can meet some or most of the objections that have been raised this morning, I should presume that we could not, but I am still of the hope that this all-important question may yet receive a solution commonly acceptable.

It has been called to my attention that in my previous remarks I did not directly answer the gentleman from Boston now sitting at my right (Mr. Balch) who asked if I would accept the suggestion that this matter be referred to the committee on State Administration, which originally considered it, with power to invite the presence of another committee. I am quite willing to accept that suggestion if thereby the committee on State Administration and myself can reconcile differences

that are on the surface rather than go below the surface, and if we can confront this question again with new interest and fresh opportunity. If, however, his committee should not agree that that is a wise course, I suggest the committees on Executive and State Administration, for the reason that these committees are now at work on a comprehensive and thorough reorganization of the executive, to which some proposition of this nature would be a useful adjunct. That was my sole reason for suggesting it go to those two committees, but personally I have not the slightest desire to upset the opinions and wishes of the committee on State Administration in the matter of the reference.

Mr. Curtis of Revere: With those answers to the questions before the Committee of the Whole it seems to me that it is only fair play, — because there is a principle involved here that may be of benefit to the Commonwealth of Massachusetts, — it seems to me only fair play that this matter should go back again to the committee. Thus far on the main proposition from the arguments I have heard *pro* and *con*, I am against the main proposition as embodied in the gentleman's talk this morning. But he states now practically that he has great hopes, — without using those precise words, — that he may be able to put before this committee some new matters and that they may be able to get together and come in with a report that may be for the benefit of our Commonwealth. For those reasons I believe as a matter of fair play it should go back to the committee.

Mr. Douglass: It does not strike me as one member of this Convention as a matter of personality or fair play at all. I have the greatest respect for the gentleman from Waltham (Mr. Luce), with whom I served many years in the Legislature. Resolution No. 269 is as plain as words can make it. The proposition is thoroughly understood by every man in this Convention. It is merely a proposition to take away from the Massachusetts Legislature the practically sole right which it now has of making penal laws and to give that right to delegated commissions. That is the whole question before the committee, and the gentleman from Waltham in his last answer has not thrown any further light upon the question than he did in the debate this morning. There is no man in this Convention but what has his mind made up on that essential proposition. The question of commissions in this State is understood not only by us men here but by every man who follows politics in this State. We know the corruption of some of these commissions; we know that we are trying to keep away from them powers or take back from them powers that we have given in the past. It is not a question of special legislation, it is not a question of the executive; it is a question of taking away from the hands of the Massachusetts Legislature the scepter of Israel, the passage of penal laws, and in that Legislature of ours that subject belongs, because there is no higher power given to men than the power to make laws with punishment. The scepter of punishment, the scepter of Israel, belongs in the Massachusetts Legislature, and there, men, let it remain. [Applause.]

Mr. Bryant: There is only one thing that I want to add to what the last speaker has said. and that is this: He has said that this proposition is to take away from the Legislature certain of its powers to pass penal legislation. To whom is the power to be transferred? It is to be transferred to commissions. And by whom are those commis-

sions appointed? They are appointed by the executive. Are we going to have the executive pass our laws, or are we going to have the Legislature pass our laws? [Applause.]

Now, Mr. Chairman, we have all heard the extremely eloquent debate on this topic. We are all fully informed. There is nothing, I believe, that the gentleman from Waltham can add, as he himself says. We have spent one entire day on this important matter and if we refer it are we again going to be in the same advantageous position that we are in to act upon it? Are all these arguments to be repeated two or three weeks hence? Are we going to have them all fresh in our minds when we come to act upon it? This matter has been debated as well as any matter that has appeared before this Convention. I think the Convention is ready to act upon it, and I for one hope that they will act upon it.

[Cries of "Question."]

Mr. BALCH: I hear calls on all sides for the question and I believe myself that the time has come, and in fact came some time ago, when we should face this question. To my belief all the talk on the merits of this resolution was out of order at this time. As I understand it, the merits are not now before us. If I thought the merits were before us my vote would be the opposite of what it is going to be. On the merits I stand solidly with the fifteen members of my committee who voted unanimously against this resolution. Nevertheless, I repeat that I shall vote, and I hope the Convention will vote, in favor of the motion of the member from Waltham as amended by me and accepted by him.

The motion that the resolution be referred to the committee on State Administration and the committee on the Executive, sitting jointly, prevailed, by a vote of 131 to 101.

Those committees reported, Tuesday, July 30, 1918, the following new draft (No. 409) based in part on the resolution (No. 269) which had been referred to them:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The Council, with the approval of the Governor, may on petition and after advertised public hearing, pass statutory orders relating to local, special, or private matters, or to the carrying out of provisions of existing law: *provided*, that no such order shall involve an expenditure of money by the Commonwealth unless out of an appropriation already made, or shall impose a penalty exceeding one hundred dollars. Before a petition for the passage of such an order shall be considered by the Council, it shall be reported upon by that department or agency of the Commonwealth, if any, which in the opinion of the Governor exercises functions embracing in their scope the subject-matter of such petition. The form of an order shall be approved by the Attorney-General before its final passage, and after passage, it shall be engrossed and filed with the Secretary of the Commonwealth, and advertised and published in the same manner as laws enacted by the General Court. Unless otherwise defined by law, local matters shall be deemed to include any matter relating only to a particular political subdivision or district of the Commonwealth, and special or

private matters shall be deemed to include any matter relating to one or more particular individuals, associations, or private corporations.

A statutory order relating only to a particular city or town shall be designated as a municipal statutory order and shall take effect only upon acceptance by the city or town in such manner as may be prescribed by such order. Any order other than a municipal statutory order if passed by the unanimous vote of all the Councillors voting thereon, by yeas and nays, shall take effect upon its approval by the Governor, or at such later date as may be fixed therein; if not passed by a unanimous vote, it shall be transmitted to the General Court and shall take effect three months after the date of such transmittal, or at such later date as may be fixed therein: *provided*, that if it is transmitted within less than three months before the date when the General Court shall be prorogued or adjourned, it shall, unless specifically confirmed by the General Court, only take effect three months after the convening of the next session of the General Court; and *provided further*, that no such order shall take effect if within such period of three months either branch of the General Court shall pass an order annulling the same.

The General Court shall retain full power to pass or to repeal any law or statutory order relating to a local, special or private matter, or to the carrying out of provisions of existing law; and the General Court may authorize the Council, with the approval of the Governor, to pass statutory orders under other conditions or relating to other matters than those herein set forth.

The resolution (No. 409) was read a second time Tuesday, August 13.

Mr. Bosworth of Springfield: The story is told of the children who wrote and produced a play to which the fond parents of the neighborhood were invited. It told of the noble young man fleeing abroad to seek his fortune and returning after ten years, bearing to his deserted wife and child the fruits of long delayed success. It was very touching and very beautiful, but those young authors had imbibed also that spirit of service which to-day so actuates the gentler sex, and in the concluding scene the young wife proudly cried: "In your long absence I too have not been idle. See the children I have borne you!" and in trooped eight youngsters of assorted sizes. [Laughter.]

I am well aware that this Convention is looking with suspicion upon these belated reports of its two committees sitting jointly.

But one thing at least is sure. These two measures which I present are of no doubtful paternity. Their origin is in the Convention itself. More than a year ago, the committee on State Administration unanimously reported adversely against a resolution permitting various State agencies to enact statutory orders which should have the effect of laws as to certain local special and private matters.

Without minimizing the faults of the almost universal American practice we felt that to spread such authority broadcast would offer a cure far worse than the disease.

When that report was debated, the Convention by a large majority sent it back to the joint committees, mainly upon the argument that good government required that the size of the Blue Books should be reduced and the Legislature in some way relieved.

Is that contention sound? It certainly is, and it is ancient. I once read in a copy of the Springfield Republican printed in the '40s an edi-

torial complaining that the miserable Legislature was hanging on, dallying over worthless things, while its members should have been at home planning for the crops. That cry has been continuous for three generations.

Judge Lowell's statement, printed I believe in the Atlantic, that it would be for the eternal welfare of the Commonwealth if any Legislature would at once refer to the next General Court nine-tenths of the matters before it and proceed to *legislate* concerning the remainder, has been quoted often.

But sitting in this very seat more than 21 years ago I heard him make the rest of a very important statement, — that he "well knew that if such action were taken, a few, probably a very few, of the members would be again elected."

What would he say now when the annual business of the General Court has more than doubled since his time? When its work was less than one-third what it is to-day, a distinguished member told me that we ought to be astonished that so little poor work was done and so much good, because the Legislature always was overworked.

Upon such testimony, with the recent action of the Convention before us I cannot conceive it necessary to debate the wisdom and necessity of doing something. The legitimate demand for special, private and local legislation is urgent and compelling and must be satisfied. Struggling under the avalanche of petitions it is amazing that our legislators produce Blue Books so small and adjourn so early. The fault is with the system. They *must* do the job that is set before them. With honor or credit to themselves they can neither shift nor shirk the burden. To their glory be it said that they are too busy with the days' works to evolve any well-ordered scheme for bettering their own condition. If there is to be substantial improvement, it *must* come from some such body as this.

Therefore, our first question is, What is the trouble? Why do the States of America, alone in civilization, have such enormous Blue Books? Surely the answer is plain. Everything, big and little, is ground through one hopper. No matter what the material, no matter how great the haste, the same machinery and the same stones must do for all. Is not the resulting flour bound to be of only average quality? In no other business except legislation would we persist in using the same machinery and the same tools for everything.

If the Legislature is to be relieved of some of the detail work which can be done just as well elsewhere, is it not fair to assume that some subordinate tribunal must be established or certain duties shifted to some other already existing governmental agency? A year ago we refused to recommend any indiscriminate shifting; but we do believe that in the Governor's Council we already have a body which, sitting throughout the year, adequately and easily can relieve the General Court of much of the minor detail work which otherwise will come increasingly before it.

If you will examine document No. 265 you will realize how varied is the present work of the Council and that this addition should not embarrass it. Fifteen pages in that document recite only a part of the recent duties of the Council.

The Legislature is and forever should be the sole fundamental law-making instrument of our State. Even over detail work its negative

should be absolute, complete, sure and quick, and we have endeavored to so draft this resolution.

We regret that it is long, but it is probably necessary to have it precise. It does not deal with principles so much as with closely restricted methods.

Our objects are twofold: First, to dredge a channel down which minor, practically uncontested orders relating to private, local or special matters, or details of existing laws, may flow readily and unobstructedly in the hope and expectation that with the passage of the years it regularly will take care of the multitude of questions and details which are wholly unworthy of the annual consideration of the 280 members of the House and Senate; second, to provide a means by which, as surely and quickly, similar contested orders of which neither branch of the Legislature seasonably disapproves will float automatically down the same channel.

If the members will read the resolution they will observe that the first 26 lines carefully limit the extent and character of the absolute constitutional rights and duties conferred upon the Governor and Council. Full power to enlarge and broaden is granted the Legislature at the very end. Provision is made that the Council shall not act without public hearing, without the advice of some department, without the approval of the Attorney-General or without the proper formality and solemnity of law-enacting.

Then there is a provision relating to the acceptance of *municipal* statutory orders by a particular city or town affected, and all the rest, residue and remainder of the resolution is intended to state correctly and adequately the reasonable rights of such statutory orders and the complete sovereignty of the Legislature whenever a majority of either branch chooses to seasonably assert its prerogative.

The resolution as written is intended to give to statutory orders having unanimous approval of the Governor and Council an immediate life and authority; therefore it is conceivable that a measure unsatisfactory to one or even to both branches of the General Court *might* get a life of a few months before adverse action could be taken.

We regard the exact rights to be given such unanimous statutory orders as a mere question of detail; and while the risk seems to us small compared with the probable benefit, we do not expect to press our view if any substantial number of the Convention are disturbed by it. At this reading we, perhaps vainly, hope the merit of the proposition may be considered as a whole.

In view of the political whirlwind which enveloped us last Wednesday and Thursday you will bear with me a moment while I state the attitude that I and some other members of our committee hold upon the underlying political question involved.

When they asked Abraham Lincoln how long a man's legs ought to be, he said: "Long enough for his feet to reach the ground."

The poet says: "Hitch your wagon to a star;" but sitting here these long months, I have thought that some men whose sincerity and ability I very greatly admire have got hold of the tails of some great ideas which are yanking them through space in a mighty parabola and they never in this life may touch really solid earth again. On the problem of adding authority to the Governor and yet preserving every right of the Legislature I am trying to keep both feet on the ground

and in the middle of the road. The ancient maxim was that there lay the safest place. To-day it is the most uncomfortable; the rushing automobiles come from *both* directions.

The cry is: "Give the Governor authority and hold him responsible." So far as that applies to purely executive duties, I agree, but that is not the real purpose of the cry. The real desire is to make him a power in pure *legislation*. When a President, a Governor or a mayor goes into office for four years I can see how he may make personal appointments which will be both political and efficient. When he takes office but for one year his personal representatives will average to be solely political.

The sole fountain of *legislation* should be the General Court. We are old-fashioned enough to believe that, and that is the reason why we are urging this resolution here. It is a middle-of-the-road position, and the riot of misunderstanding hits us from both ways. We wish the Constitution to relieve the General Court, purely for its own benefit, of any work that can be properly shifted. The mere fact that the Governor's Council happens to be the suggested instrument is of no importance.

Perhaps we do not realize what the Legislature already has done in the way of delegating its authority. The ordinances of every city and town are a delegation of this authority, and I defy any man here autoing through my own city to know his rights upon the public streets with less than 30 minutes' special study of our ordinances and then a visit to his lawyer. Delegated power to legislate is found in almost every State department. At present it is chaotic in its exercise. Last year I wished to see the auto headlight rules, and they told me downstairs they hoped to have copies for distribution in two or three weeks. And people were being fined for not obeying them!

Not long since the Legislature delegated the power of making rules for storage of explosives to the chief of the State Police, and he soon issued pages about the construction of garages. They overlapped the building ordinances of every city. One of my clients got whatever benefit there was in an entirely unnecessary expenditure of five or ten thousand dollars extra of the other fellow's money to obey *both* State and city requirements. These are but three samples affecting only a single interest.

Is it unreasonable to suggest that if the carefully guarded provisions of the proposed amendment become usual practice, there will be much more care and wide-visioned scrutiny of the provisions of all these minor rules and ordinances which afflict our daily lives?

It is not for me to assert that this resolution is either a cure or a panacea for all the evils that center around our ridiculous output of laws, orders and ordinances. My opinion is not very valuable, but nevertheless I personally believe this resolution to be a proper palliative and I hope it may develop into a cure. It would be folly for this Convention, having so clearly recognized a progressive disease (the work of the Legislature apparently is more than doubling every twenty years), to suggest and attempt no remedy. Some believe that a small charge as an entry fee for petitioners would reduce their number. Personally I should think it fair to try it, but from previous debates it is apparent that the Convention would not approve. In fact the trouble is not wholly with the *number* of petitions. The basic charge

is against the size and scope and *nature* of the Blue Book. That is true throughout America.

We rapidly are nearing the point when something in our time-honored Massachusetts system *must* be abandoned. We have a Massachusetts theory that the Legislature must deliberate and act in both branches upon *every* matter brought to its attention and adjourn by June. That meant in 1917, with five sessions a week, a continuous average output of between 20 and 30 final decisions per day.

Can any sane person believe that really good legislation will continue to come when congestion already has reached this point and rapidly is growing greater?

Personally I should hate greatly to see any lessening of the determination of the Legislature to *fully* finish its work before it asks to be prorogued.

Some may fear the Council will be burdened unduly. It is not necessary that a majority should sit. One member could attend to the formalities and the rest act upon reported arguments and briefs. In any event there will be no burden except as the Legislature gets compensating relief. Are we to strike down the recess committees through which the Legislature has sought its own relief and propose no other?

A word as to the short and broad substitute amendment of the gentleman from Lexington:

Firstly, of course, it is better to conserve words in the Constitution, to enunciate merely principles and not to prescribe methods, when that is possible. But this resolution which we are considering is intended to define and limit certain rights. It is within the frame of government and any words necessary should not be spared.

Secondly, his amendment has no teeth in it; it is purely permissive; or to use the simile of the stream, our proposition digs a channel and keeps it open by sending something down it. His does not.

One of Bairnsfather's cartoons shows the war-swept plain of Flanders, bleak, dismal, horrible. Star shells are climbing, death and destruction wait upon the slightest movement. Mighty explosions dazzle the eye. The only sign of human life is in the foreground. The heads of two British Tommies, up to the ears in mud, project above the edge of a great shell crater, and a voice says: "Well, if yer *says* yer knows of a better 'ole, go to it."

It seems a long, long time since I was privileged to serve under you in this room, Mr. President. I am oppressed with the feeling that I have not such recent experience as to present adequately the compelling need of this resolution; but something must be done, and these are the reports of your committees upon the problem the Convention put before them.

If yer knows of a better 'ole, go to it.

Mr. TATMAN of Worcester: The present Constitution gives to the Governor's Council both executive and judicial powers. For example (chapter II, section III, paragraph VI), in case the offices of Governor and Lieutenant-Governor shall both be vacant, the Council succeeds to the full powers of the Governor. And it has several executive and administrative powers which it exercises together with the Governor, the most important of which is the appointment of judges. The Coun-

cil has various judicial powers which the Constitution provides. According to the Constitution, it has complete jurisdiction of all matters of marriage and divorce. It is also the supreme court of probate, to consider all appeals from the Probate Court. Both of these provisions are subject, however, to the action of the Legislature, and of course the Legislature has provided otherwise; but if the present statutes in regard to those matters should be repealed, the Governor's Council would sit as a court in divorce matters and as the supreme court of probate. The authority of the Council as to pardons would seem to be a judicial power.

And now the proposal is to give it also legislative powers, so that it may include in its august dignity the complete combination of executive, legislative and judicial functions. According to this resolution, the Council not only would rival but might far outstrip in this respect that most versatile of bodies alluded to by the gentleman from Springfield (Mr. Bosworth), to wit, the Massachusetts Highway Commission. That body, as every one knows, makes the laws, tries the criminals, and hangs them.

This resolution would introduce in this Commonwealth the celebrated or notorious Orders in Council of England. The plain fact is that this scheme is patterned after that glorious old British plan, and if adopted we might find the Council aptly described by Lord Coke, who, writing several centuries ago (4 Coke's Institutes, 53), described the King's Council as follows:

> This is a most noble, honorable, and reverend assembly of the King, in the King's court or palace; within this Council the King himself doth sit at his pleasure. These Councillors are called *concilium regis privatum, concilium secretum, et continuum concilium regis.*

That is to say, the King's Privy Council, the secret council, and the permanent council of the King. Coke goes on:

> To these Councillors all due honor and reverence is to be given, for they are incorporated to the King himself, and bear part of his cares; they are his true treasures, and the profitable instruments of the State.

Such is the Privy Council of England to-day, as it was described by Lord Coke centuries ago. It has executive, legislative and judicial functions, just as now provided in this resolution and proposed for this Commonwealth. One especial charm, I think, of the English system is that after a case has been decided, "no publication is afterwards to be made by any man how the particular voices or opinions went." It is surprising that those who drafted this resolution did not include this admirable feature, but they probably rely upon the sound discretion of the Governor's Council to obey this as an unwritten law. For in the language of Coke, is it not to be a private and secret council?

Bear in mind that we are dealing with the Governor's Council, just as in England it is the King's Council. What an influence the Governor would have on legislation by the Council! An adroit politician in the Governor's chair would be able to get from the Council any legislation within its jurisdiction. In this way we virtually should accomplish the result which now obtains in England, where, as a prominent writer (Burgess, Political Science, vol. II, p. 199) says, through the Orders in Council the Crown still retains a fragment of

its ancient powers to legislate. The Governor of Massachusetts has no ancient or modern power to legislate, and I am democrat enough to hope he never will have such power, either direct or indirect, beyond the negative of the veto.

Now what is the specific measure before us as appears by document No. 409? The title is "A Resolution relative to the passing by the Council of statutory orders relative to local, special, or private matters." This is misleading. It is really a resolution to provide for the establishment of a third House or legislative body. The correct title would be "A Resolution authorizing the Legislature to delegate all its powers to the Governor's Council."

The first fifty lines of the resolution might just as well be omitted, for the last four lines are the ones that have the teeth. I am sure I could write in thirteen words all that needs to be put into the Constitution, if the Convention really means to do what this resolution intends. We have too much verbiage, too many statutory details woven into the Constitution. Let us boil down No. 409 to its true essence, and it will read as follows: "The Legislature may delegate any or all of its powers to the Council." Thirteen words, — an unlucky thirteen if ever adopted.

Do you want to abolish the Senate and House of Representatives? Do you want to encourage them to delegate their duties to another body with full authority to act? Do you want the Senators and Representatives to be able to shirk their duties, to dodge the issues, to pass over to the Council all troublesome or difficult matters? I do not believe it, and I feel sure that the people never would agree to such a proposal.

What is the theory of our government? It is that the deliberate will of the people shall be expressed through laws passed by two fairly numerous representative bodies in concurrence. Even the Senate has forty members, and the House has two hundred and forty. When a bill or a resolve has endured all the scrutiny it receives through committee hearings and the several readings in both branches, it is very much more likely to be sound than a measure passed by a star chamber of eight mutual back-scratchers.

Talk about log-rolling in the Legislature! It is not a patch on the log-rolling and wire-pulling that you would have in a select little coterie of eight men. You all are practical men of experience. You know, and I know how much easier it is to "put something across," as the boys say, in a small body than it is in a large one.

But they say the first part of this resolution relates only to local, special, or private matters. That is a small part of the effect of the proposal. But take that part alone. I answer that those are the very subjects that most need the light of day.

I am not criticizing the present Councillors. I believe they all are honorable men. I am acquainted with several of them and regard them most highly. But their successors will be human.

What is a "local" matter? It is a matter relating only to a particular district of the Commonwealth. That is, for example, the metropolitan district, or Hampden County, or that portion of the State east of the Connecticut River, or the city of Leominster, or the town of Brookline.

Take it home to your own community. You have your local prob-

lems which may or may not need special legislation. Do you want such matters dealt with by the Council, or would you rather take your chances in getting a square deal from the Legislature?

What is a "special or private" matter? It is a public matter relating to one or more individuals or corporations. All matters of legislation affect the public, — even special or private matters, so called; otherwise there would be no need for laws to be passed concerning them. For example, under this provision the Council would deal with a law affecting John Smith, or Patrick Connors, or the Boston Elevated Railway Company, or the Webster Gas and Electric Company, or the New York, New Haven and Hartford Railroad Company. Do you want such matters dealt with by a body of eight men, through "orders in council"?

General laws affecting everybody might much better be passed by the Council, for then the eyes of the people would be more directly upon them. But local laws and special laws would get attention only from those who were specially interested, and injustice, favoritism and dangerous precedents inevitably would result.

The resolution provides that "no such order shall involve an expenditure of money by the Commonwealth unless out of an appropriation already made," but no prohibition exists in relation to a city or town or other district, and it would be entirely possible for the Council to order the city of Boston to construct a boulevard at an expense to the municipality of a hundred thousand dollars.

Nor shall such an order "impose a penalty exceeding one hundred dollars." Nothing is said about other punishments for disobeying the mandates of that august tribunal. So it would be in order to impose a punishment of any length of time in jail, disfranchisement, or imprisonment in the State Prison for life.

And the dear old commissions are nicely taken care of, for it is provided that the Council shall not even consider any matter until it has been reported by some commission to be selected by the Governor. This, of course, gives the veto power to such commissions, for all they would have to do would be to pigeonhole the matter, and

> All the King's horses and all the King's men
> Could not get it back to the Council again.

Another interesting provision is that "the form of an order shall be approved by the Attorney-General before its final passage." The mandate to the law officer of the Commonwealth is to *approve*. Nothing is said about the possibility of his *disapproving*. But assuming that under this resolution the Attorney-General could disapprove it, why, again we have another officer with the veto power, which, after all, would not be such a bad idea if we have got to put up with the thing in any way. Bear in mind, however, that the present Constitution expressly disapproves of the Attorney-General meddling with legislation, by prohibiting him from membership in the Legislature while he is Attorney-General.

I believe that the second paragraph of the resolution, lines 27 to 46, means something definite. I have read it over a number of times and have had spells when I thought I understood it. I think it means that there is an open season and a close season on the game in the Council's preserve. At all events, it is too complicated to exist in

the Constitution, and if we are going to pass the last four lines of this resolution, the rest of it is wholly unnecessary.

I will not characterize this resolution as a crazy-quilt. I have too much respect for the multitude of hands which put it together. I dare to say, however, that it is a patchwork; it bristles all over with evidence to that effect. You all have noticed that all these complicated propositions usually have had very simple beginnings. Some man has an idea, either good or fanciful, and he tries to put it into language. Now it is a difficult thing to draft any provision for a Constitution, and it is much easier to criticize, I admit. But criticism is bound to come, and the Constitution-maker tries to meet this criticism with a sentence, and that one with a paragraph. He takes out a word and adds a dozen. He trims and prunes, he adds on and builds over, until at last he has something which looks about as much like his original proposition as document No. 409 looks like its original, No. 269.

Now document No. 269 was a very simple resolution of seven lines which anybody could understand at a single reading. It provided only that the Legislature could delegate its power to make laws to any one or all of the hundred and more commissions, departments, boards and bureaus.

In spite of the multiplicity of words employed, the only essential difference between these two resolutions is that the new one gives to the Council what the old one gave to the commissions, and that is the power to legislate, the power to make laws.

I listened to my friend from Springfield (Mr. Bosworth), who thought it was an evil that all these different commissions should be making now what are called administrative orders, which are more or less in the line of laws or ordinances, and he deprecated the fact that they were making so many. It makes me wonder why he wants to make another law-making body to add to the confusion. Nothing in this resolution takes away any power of the Highway Commission or any other commission to make the rules to carry out the law as given them by the Legislature.

The more law-making bodies we have, the more laws we shall have. We have altogether too many laws now. It has got so that you scarcely can carry on any kind of business without having a license from some board or other. And if you have the license you are so surrounded with rules and regulations that with the best of intentions you are certain to violate some law. The fact is, there are so many laws that nobody knows what the law is, and it is pretty hard to find out. What we need is a rest from legislation rather than an addition of more law-making bodies.

The chief argument for this proposal as expressed by my friend from Springfield is to save the time of an overworked Legislature. I do not agree that the Legislature is overworked. The sessions are no longer than they were twenty years ago, and there always are plenty of men yearning for the opportunity to serve.

It is said that the time and attention of the Legislature ought not to be taken up with such trivial affairs as local and special bills and resolves. Again I insist that these are not trivial matters. If they need legislation at all, they are of importance to the whole people and to every section.

In this connection I call to your attention an anecdote of the great Chief Justice Shaw as narrated by Judge Chase in his recent biography:

> He was giving his decision in a small case involving the question of whether a calf was exempt from attachment. The contrast between the weighty words of the Chief Justice and the trivial question he was discussing seemed to provoke the mirth of some of the lawyers present. The old man paused and said with much emotion: "Gentlemen, this may seem to you a trifling case, but it is a very important question to a great many poor families."

And so I say that local, special, and private matters are not only important to those whom they may affect directly, but they are important to the whole State and especially so as precedents for future action in regard to others.

It is not a question if the Legislature sometimes has passed what now seem to be foolish laws. Surely a small body like the Governor's Council would be more likely to do the same and much worse.

It is not enough that the Legislature still has the right to repeal. Great and irreparable damage may be done between the time the order in council takes effect and the time when the Legislature can meet again and consider it.

I have great respect for the Massachusetts Legislature, and I trust that it may preserve its old-time authority and distinction.

What has been the policy of the American Commonwealths with reference to the delegation by the Legislatures of their power to make laws? That policy has been well expressed by Judge Cooley (Cooley's Constitutional Limitations, 7th Ed., p. 163) as follows:

> One of the settled maxims of constitutional law is, that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. . . . The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

Of course I realize that we are engaged in making over a Constitution, and it is within the province of this Convention to recommend to the people an abandonment of the principle which is recognized now in every State in the Union. I venture to predict that if so recommended, the people will reject this idea upon the reasoning so well laid down by Judge Cooley, and will not permit the Legislature to abrogate its own powers or dodge its own duties.

The principle laid down by Judge Cooley was founded upon a long line of decisions by our own and many other Supreme Courts, and was stated shortly by Chief Justice Knowlton in the Massachusetts case of Brodbine *v.* Revere (182 Mass. 598–600), as follows:

> It is well established in this Commonwealth and elsewhere, that the Legislature cannot delegate the general power to make laws, conferred upon it by a Constitution like that of Massachusetts.

If I may ask your patience for a minute or two longer, I want to call to your attention some specific instances which our court and some other courts have dealt with with reference to assumed delegation of legislative power.

Where our Legislature undertook to bestow upon a Board of Registration in Embalming authority to make rules and regulations govern-

ing the care and disposition of human dead bodies, and the board issued an order that no undertaker could carry on his business without an embalmer's license, issued by the board, the Supreme Judicial Court held that this action was wholly unconstitutional and void as an assumption to delegate general legislative authority. (Wyeth *v.* Cambridge Board of Health, 200 Mass. 474, 481.)

In the State of Maine it was held likewise that the Legislature could not delegate to the Governor the power to create the office of special attorney for the State to prosecute infringements of the liquor laws, because the creating of offices is a legislative function, while appointments to the same may be executive. (Young *v.* Butler, 105 Me. 91.)

So it has been held repeatedly that the Legislature cannot grant law-making powers to the courts, as in Nebraska, where the Legislature undertook to shirk its duties by delegating to the courts the power to regulate or prohibit the liquor traffic. (*Re* Phillips, 52 Neb. 45.)

In Wisconsin, the Legislature passed a dog law and attempted to give county commissioners authority to suspend the law or put it in force in their respective counties at their discretion. Held, that this was wholly void, and the court remarked that the Legislature "could no more confer such a power than to authorize the board of supervisors of a county to abolish in such county the days of grace on commercial paper, or to suspend the statute of limitations." (Slinger *v.* Henneman, 38 Wis. 504.)

There is one notable exception to the rule, which exception permits cities and towns to make ordinances and by-laws of a purely local nature in the way of police regulations, limiting personal rights and the rights of property in the interest of the public health, public morals, and public safety; also, strictly defined, for the general welfare. Such a delegation was made to the Commission on the Height of Buildings in the city of Boston, whose action in prescribing the lawful height to which buildings might be erected in districts delineated by them was held as a police regulation by duly constituted authority. (Welch *v.* Swasey, 193 Mass. 364.)

This exception, the courts say, is founded upon the immemorial practice of this country and of England. It also has constitutional authority in our own State, as construed by some. Upon this theory also rests a numerous line of instances of the delegation of similar regulating powers to such boards as park commissioners, as in Brodbine *v.* Revere (182 Mass. 598), where the board was held to have received a valid grant of authority to make rules and regulations for the government and use of the boulevards under its care; also to police boards, as in Commonwealth *v.* Plaisted (148 Mass. 375), where the board of police of the city of Boston was held to have been given valid authority to make rules and regulations concerning itinerant musicians.

There is also another line of cases which look very much like the delegation of power to legislate, where the courts hold that the powers given are only administrative in their nature, and not legislative. Such are the instances of State and local boards of health in making rules and regulations, for the disobedience of which the Legislature has prescribed penalties. Another instance is shown by the case of Codman *v.* Crocker (203 Mass. 146), where the Legislature had determined that a subway should be constructed by one of two routes, and

left to the Boston Transit Commission the decision as to which would be the better. The court held that this decision was administrative and not legislative, and that the power given to the commission was valid.

There are many cases of this sort which are very near the line, and the courts of the various States are not wholly in accord in deciding what is legislative and what is administrative.

It is fair to say that the tendency of the times is in the direction of a pretty liberal treatment of the subject in favor of upholding the Legislature in giving what are held generously to be administrative powers.

But no State yet has set up another little Legislature, such as this resolution proposes in behalf of the Governor's Council. Let us not do so here. Let us leave the Legislature with its ancient powers and duties, which it is bound to exercise, and for the proper and complete discharge of which its members are held responsible to the people. [Applause.]

Mr. Luce of Waltham: The delegates may recognize in this resolution the fruit of efforts in which I have shared, to meet conditions that have brought to all the other States of the Union the same perplexities and the same evils that they have brought to our own State. I recognize that in the closing hours of this Convention, — or at any rate when approaching the closing days, — I have the difficult task of getting the attention of men who, like myself, already are weary of these problems. I realize, sir, that I also have the difficult task of confronting that spirit of conservatism which my friend from Worcester (Mr. Tatman) has so admirably illustrated. I have listened with the utmost care to what he has said. I have hoped as he went on from sentence to sentence that I might see in his remarks some ray of hope, some suggestion of advance, at least some realization that there is any evil in the world with which to combat; and I have failed to hear from my friend a single constructive sentence, phrase or word. What help is there from destructive criticism of this sort? There has been no measure in this Convention that could not in the same way have been dissected, in the same way have been excoriated; and is it true that the sentiments he conveys shall deaden us to the point where we shall go forth and tell the people that we have no remedy to suggest for the ills under which they suffer?

He repeated the frequent declaration: "We pass too many laws." Sir, the laws that are passed are in response to the appeals of the people. The laws that are passed are to redress the grievances of between three and four million human beings who constitute the Commonwealth of Massachusetts. These petitions come from the great masses of humanity in this State. They are not, save in very small degree, instigated by members of the Legislature. The business is brought to the Legislature. There most of you have served, and there you have done what you conceived to be your duty in trying to redress grievances.

Let me ask the gentleman from Worcester (Mr. Tatman) if in his term of service in this State House or if since then he ever raised his voice in protest against these laws. Has he as a citizen come here and in any specific instance said: "This ought not to have been done"? Let him take the Blue Book. Let him run through it page

by page and point out a single law for which he will say there was no demand or that ought to be repealed. If he admits the facts, he will recognize that the Blue Book is made up of answers to the people which have been given by their representatives and approved for the most part by their Governor.

On previous occasions I have taxed the patience of the Convention by detailing the evils that are to be met, and at this time I will not weary you by undue repetition thereof, but simply summarize the situation. I will point out what gentlemen who have served in the Legislature years ago find it very hard to realize, — the enormous growth of business. Why, sir, a generation ago, in the year 1880, there were presented to this General Court but 648 measures; in 1914 there were presented 3,439. Think of that growth in one generation, from 648 measures to more than 3,400 measures, a fivefold growth of business in a third of a century! When my friend from Worcester (Mr. Tatman) and I were together in the General Court in the year 1899 there were 1688 bills; in 1914 there were 3,439, an increase of more than double since he and I here began to share the making of laws.

In the first place, sir, the volume of business is, — shall I say an evil? — not an evil, but a problem which we this morning are to face, if you choose, or to evade, if you prefer. The growth of this business, other gentlemen at previous sessions have pointed out, is due to the enormous growth in the activities of the State. There is no prospect of the stopping or even of the lessening of this growth. Year after year there will be more and more grievances of the people to be corrected. More and more will the problem burden, perplex and harass our representatives.

With that problem have come everywhere certain admitted evils, and they are due almost wholly to three classes or bills, those that are local, special or private. To them may be traced practically all the venality that curses American legislation, not our own to anything like the degree found elsewhere, yet everywhere local, special, private bills bring in their train the temptation to use money. To these bills may be traced practically all the work of the lobby, which we have attempted to combat. To them may be traced nearly all the log-rolling which every man who ever served in this chamber knows to be its greatest abuse. To them may be traced much of the burden that now is imposed upon the executive, who must pass judgment upon an enormously larger number of measures than ever before. To them may be traced the failure of the Legislature to accomplish its work adequately in the time at its command. Will any gentleman say that it can handle 3,400 measures in the same number of weeks that it formerly gave to 600 measures, and perform the task with equal efficiency? If you increase your work fivefold and do not increase the length of your sessions, — they are not now appreciably longer than they were a generation ago, — is it not manifest that each one of these measures can receive only one-fifth of the attention it would have received a generation ago? Is it not, as the first speaker said, astonishing that our Legislature under these conditions does such admirable work? Is it not marvelous that a system of government so strained at every turn can meet the demands of the people with as little criticism as this may justly receive?

Other States long ago began to attempt to meet these evils. Georgia started the struggle in 1789, with a constitutional provision prohibiting the passage of certain special laws. Louisiana in 1845 led in taking out of Legislatures the passage of special acts of incorporation. With these examples before them, other States have sought a remedy in specific prohibition and now have in some cases twenty-five or thirty classes of measures that are constitutionally forbidden. This remedy has proved worse than the disease. Everywhere it has produced a great volume of litigation. It has rendered the law uncertain. It has led to evasions which of themselves prove that the prohibitions are unwise. It has shown itself a completely inadequate remedy. The method of attack is based upon a wrong assumption. It is based upon the assumption that all special, local and private laws are bad, which is not true. These laws are but exceptions to general rules, and general rules must have exceptions. Go to your courts of equity. They exist for the purpose of making exceptions. Equity, sir, justice, the redress of grievances, demand these opportunities to meet evils resulting from the impossibility of forecasting all situations and adapting general laws to meet all needs. I should deprecate very much any proposal to imitate these other States in following that line of remedy.

What remedy may we seek? Shall we invent? Shall we try something new? Shall we sit down with a clean slate and attempt to create new methods, new policies, new devices? That is not the Massachusetts habit. That is nowhere the right course. All useful things in political science are growths. They are developments. They go from precedent to precedent, and thus broaden slowly down. And so here let us seek the remedy in building upon that which exists.

A hundred years ago our fathers found it was no longer possible for the General Court to make all the laws for the growing centers of population, and they said: "We will create cities and to them we will leave matters of local detail, transferring to them the ordinance-making power." So an amendment to the Constitution was adopted, authorizing the charter of cities, and thus relieving the General Court of a not inconsiderable burden of detail. Again, with the spread of the activities of the State the time came when it was apparent that their detail no longer could be handled wisely by the Legislature itself, and it began to create commissions and transfer to them the enactment of rules and regulations, what I may call "lawlets" for want of any better name, the minutiæ of government.

These matters are in the twilight zone between that which the Constitution permits and that which it refuses. My friend from Worcester (Mr. Tatman) has admirably set forth the doctrine of the delegation of powers and the attitude of the courts thereon. Every lawyer knows that delegated power cannot be delegated. The moment the General Court began delegation it invited danger. The courts began to pass judgment, and had my friend pursued his studies still further he would have found a multitude of cases throughout this country where the courts have been perplexed by the difficulty in discriminating between the delegations of power that may and those that may not be justified. However, we proceeded on the assumption that to a certain degree we might delegate to boards, commissions, and like agencies. Furthermore, we turned to another body that could relieve the Legislature in some measure. We began delegating to the

Governor's Council. Let me reiterate what the gentleman from Springfield (Mr. Bosworth) called to your attention. In document No. 365 you may find 15 pages of powers delegated to the Council in three years, — 15 pages, nearly 50 instances a year, of such delegation. Therefore in recognizing what already is and in building upon it there is nothing novel, nothing strange.

It must be manifest upon a moment's consideration that to impose on 280 men the necessity of passing judgment on all the minutiæ of governmental work could not long be endured. In the case of cities, commissions, the Council, we have transferred much of this minutiæ to small continuous bodies. Only in this direction could there be relief. We all know that such has been the conclusion of the business world. Every board of directors illustrates the thesis. Small bodies sitting at frequent intervals throughout the year are found wise to handle the details of commercial enterprises, yes, and fraternal, philanthropic and religious enterprises. All the social activities of mankind are handled now by small bodies in continuous session or sitting at frequent intervals throughout the year, except in this one respect where we still forget the world has moved. In this one matter of law-making we still refuse to accept the inevitable. We of Massachusetts still say that a body of 280 men should handle many little as well as big things.

Other bodies might have been created. I admit I came here with the hope that it might be possible to alter the Senate so that it should be transformed into a small body sitting continuously, but the suggestion met with slight approval. It was too novel. There might have been suggestion, also, as has been urged in many of the western and southern States, that the commission form of government be substituted. Several Governors already have committed themselves to that policy, and it may be that after the war you will see the commission idea extended to State government in many parts of the Union. This I confess is abhorrent to me, for the commission idea of government so intermingles the powers of government as to be fraught with danger. It might have been possible to direct that a small part of the Legislature itself, a subcommittee, be intrusted with handling the minutiæ, but this, too, is a novel thing that would have met with no acceptance. It might have been urged that a new body be created, a new outside body, and here too novelty stood in the way. But at hand was found the Council, which already was doing some of this very work, and which by its constitution meets all the requirements. It is small. It sits the year round. It is representative. It is elected by the people. It contains members of both political parties. It is composed of honorable, upright men, of high standing in the community. And I regret even the suggestion that the delegation of power to it would result in its deterioration, for I am of the conviction that at least during our time the Council will continue to be the type of body that may be intrusted with the little things in government.

I realized, sir, from the very moment this was suggested, that it would encounter a prejudice against the Council which has been fostered by nearly every man ambitious to be Governor of this Commonwealth for more than a generation. The favorite attack of many a candidate has been to assert that if he came into power he would

try to abolish the Council. But what has happened? Instead of abolition we find the Council given more and more power. Is not this a proof that the Council meets a want, that it fills a need, that your representatives, and your people, who control your representatives, recognize here an opportunity for much needed relief? The Council is not to be abolished. This Convention gave that program no attention whatever. You threw the proposal out of the window summarily, for it was evident that as conditions were, with the permanent tenure of office on the part of our judiciary, the Council would be preserved as a ratifying body. And so, sir, this Convention has decided that the Council shall live; and having decided that it shall live you are asked now to consider whether the duties intrusted to it by law by the Legislature shall be approved and the range of those duties shall be somewhat extended.

I realize another impediment in my path this morning, and that is in the length and the elaboration of the resolution before you. I fully agree with gentlemen whose views doubtless are expressed by my friend from Lexington who ordinarily sits on my right (Mr. Clapp), who will urge upon you a provision that shall simply authorize the Legislature to delegate power. I am as reluctant as any other man to put detail into the Constitution, and again and again have attempted to exercise what little influence I might have against that procedure. But, sir, here is a proposal dealing with the frame of government, of precisely the same nature as that which you may find now in the Constitution and its amendments, a proposal that carefully restricts in order to protect the rights of the people, a proposal that contains no superfluous words. It has received the earnest scrutiny and careful study of a large number of men experienced in public life; and their judgment, matured, ripened, well considered, may at least secure from this Convention, I am confident, that advantage which would put upon the somewhat unpremeditated and unconsidered amendments that may be urged the need of clearly proving their case. In the Legislature itself nothing is so dangerous as amendment. No harm ever is wrought comparing with that which is inflicted upon legislation by well-meant attempts, without due study and deliberation, to alter work that has received weeks and perhaps months of discussion and reflection from those intrusted with the duty. So, sir, I deprecate changes in this resolution, for the reason that it is the fruit of the best efforts that two of your committees have been able to command.

It has been urged by the previous speaker that we are giving dangerous powers. I wonder if he can have reflected upon the care with which this resolution has been guarded. Would he say that a measure which met the approval of the Governor, of the Lieutenant-Governor, and of every member of the Council who heard the case was a dangerous proposition, at least so dangerous that it ought not to have the force of law during the brief interval until the Legislature might repeal it? Let me point out to you the type of matters that we would want to handle in this manner.

Take the very first measure coming before each of several committees in the last Legislature.

Here [reading from the bulletin] is a petition of the selectmen of Wellesley that the town be authorized to increase the rate of interest

to be paid on a water loan. Do gentlemen suggest that there would be danger in permitting the Governor, the Lieutenant-Governor and every member of a majority of the Council in attendance to allow the rate of interest to be changed? And this is also an illustration of the need of sanctioning delegation of power, because no lawyer would pass bonds where the rate of interest had been changed by a body not authorized under the Constitution to make such a change.

Or take the first matter before the committee on Public Health, the petition of Edward Dahlborg that the time for registration of chiropodists be extended to March 1, 1918. Here was a measure that required the attention of 280 men in two branches, the advertising of a hearing, the attendance of the public at that hearing, the report of the committee, six readings, three in each house, finally the attention of the Governor. Do you mean to say that it is rash, dangerous, useless, to try to take such little things out of the Legislature?

Or here is the first measure before the committee on Counties, the petition of Charles L. Gifford and another that admission to the Barnstable County Infirmary be restricted to certain patients, and that certain improvements be made at the said infirmary. Or the one before Cities, a petition for a change in the charter of North Adams.

Or take an illustration from my own experience as a member of the Teachers' Retirement Board. When that board came into being I found, with my associates, probably the best law written on the subject. It seemed as if every contingency had been foreseen. There was in it a provision requiring that in case a teacher died before her retirement the money that she had paid toward her annuity should be refunded to her legal representatives. Does not that seem reasonable, natural, proper, right? Who could have expected trouble? Well, inside of three months a mother came to us. Her daughter had died, leaving $15 that she had paid into the annuity fund, and no other property. It would have cost $25 to $50 to take out administration. What were we to do about that $15? Finally we said to the secretary: "Go ahead and pay the $15, and if there is ever any question we will pay it out of our own pockets." That was not right, but the emergency, charity, sympathy, interest, whatever it may have been, prompted us to that promise. Inside of a year we found we had obligated ourselves for four or five hundred dollars, simply because the men who wrote the law did not foresee that in this one little detail trouble would come. There was nothing for us to do but to go to the Legislature for a bill. We had to take this ponderous machinery, we had to take all the methods that are used to alter the law, to secure the trivial change that would allow us to pay any sum under $100 to the person whom we might think entitled to it.

I pointed out to you that this measure simply proposes that if some trivial detail of the law, or indeed important detail if you wish, should receive the unanimous approval of the Council and the Lieutenant-Governor, who is *ex officio* a member, and the Governor, it may have the force of law until the Legislature sees fit to repeal it, provided, in case it is a local matter, that it is accepted by the municipality, which is the very acme of the principle of home rule. The resolution also declares that if any one man objects, — there is always a Democrat in the Council, and there is always some man who will render ready ears to any objector, — if any one man of the ten says this

thing ought to be held over, it cannot go into effect until the Legislature has had an opportunity to reject it, — either branch of the Legislature. The House may annul it. The Senate may annul it. Either branch separately may annul it, thus giving the amplest opportunity. Sir, this measure does not take away one atom of power from the Legislature. It merely permits the Legislature to be relieved if the Legislature chooses not to exercise its control.

The gentleman from Worcester (Mr. Tatman) likened this to the Orders in Council. It is true that the origin of this principle is English, but it is not to be found in the Orders in Council. His reading of history has gone far astray. This has nothing to do with the Orders in Council, either in historical or political relationship. The origin of this idea is to be found in the provisional order system, begun in 1845, a system which has proved so admirable and so successful in its working that it has practically the unanimous support of all the thinking men of England. And just see what it has done, what this system has accomplished there. Why, in 1916 the Acts of Parliament for more than 400,000,000 human beings numbered 142. In Massachusetts for less than 4,000,000 the acts numbered 846. Parliament has succeeded in confining its discussions and its considerations to those broad questions of public policy that affect the fate of peoples. It has abandoned the attempt to use the ponderous, clumsy machinery of law-making, in order to determine whether the man who has been the second assistant driver of the patrol wagon of Worcester shall be reinstated in the public employ. It has abandoned the foolish attempt to handle little things by the ordinary processes of a huge law-making body. And that is a thing for which I plead, sir. I do not plead alone for the relief of the Legislature. I appeal for the relief of the people, for I believe, sir, that the people of this State desire that the attention of their representatives shall be freed from petty distractions in order that it may be centered upon the great problems of legislation.

Once before I have expressed the belief that the revolt of 1912 was not due to such impressions as my friend from Worcester (Mr. Tatman) may entertain, that there are too many laws, but it was due to the fact that there are too few of the big laws. The little things so choke the channels of legislation that the current cannot flow. The little things so disturb and distract the attention of the Legislature, members are so engrossed in advancing the particular interests of their own constituencies, they so forget their duty is first to the State, that they find no time left in which to answer the great complaints of the people.

It is true that this is a new step, it is a step in advance; but that, sir, if I conceive right, was the purpose for which this Convention was called.

> New times demand new measures and new men;
> The world advances and in time outgrows
> The laws that in our fathers' day were best,
> And doubtless after us some better scheme
> Will be worked out by wiser men than we,
> Made wiser by the steady growth of truth.

We do not embody all wisdom, we are capable of error; but taking the line of normal progress moving in the natural direction, shall we

not advance safely, reasonably and wisely toward better things? And if in this particular matter we have taken but this one step forward, we may go home to our constituents with the satisfaction that we at least have tried to do our duty. [Applause.]

Mr. WELLMAN of Topsfield: I move the amendment printed under the name of the member from Lexington (Mr. Clapp). I do this at his request, as he is necessarily absent.

The amendment was to strike out lines 3 to 53, inclusive, and insert in place thereof the following: —

The General Court may delegate to the Council the power to pass, with the approval of the Governor, and under such rules and limitations as the General Court shall prescribe, acts and resolves of a local, special or private nature, and orders for the carrying out of provisions of existing law, but all such acts, resolves and orders shall be subject to alteration, amendment or repeal by the General Court.

Mr. GEORGE of Haverhill: I have been listening to the interesting address of my friend from Waltham (Mr. Luce). In fact, his addresses always are interesting. If my memory serves me right, this is the second edition; we heard the first edition at the last session, and now we have heard the second edition at this session, and it is equally interesting. He has called attention to various difficulties with regard to legislation. He has called your attention to certain special laws, and he has told you that it required so much time of the Legislature, it had to have six readings, etc. Now, I venture to say that if he would look those cases up he will find that a great many of them were passed under a suspension of the rules, and that it did not involve thirty minutes' discussion in both branches of the Legislature.

The object for this special legislation, or the object for coming to the Legislature, is perfectly plain and perfectly proper. Of course the General Court provides general laws wherever general laws are admissible, — general laws applying to all municipalities. Now, then, a municipality wants to do something beyond the scope of the general law, owing perhaps to local conditions. For illustration, some five or six years ago the authorities of my city went to the Legislature and asked for the right to borrow some $500,000 outside the debt limit to construct a whole litter of school-houses. That matter was presented to the Legislature and referred to the committee on Municipal Finance, if I remember correctly, and there was a public hearing and two people appeared before the committee to oppose it. They had the facts and figures, and they showed the committee that it was not necessary, that they did not need four or more school-houses, and that the city had plenty of resources to construct needed school-houses within the debt limit. That committee gave perhaps three hours' consideration to that proposition, and reported adversely, and the adverse report of the committee was accepted by both branches of the Legislature without debate. Since then the mayor and city government of Haverhill have found it was unnecessary to come to the Legislature to borrow money outside of the debt limit, for since that time they have constructed at least three school-houses and kept within the debt limit.

I remember some time in the early 90's that the town of Fairhaven wanted to put in a sewerage system. You know Fairhaven is opposite New Bedford, and whenever a town is near a city of course the town wants all the things that cities have. Well, they wanted a sewerage system. So they came to the Legislature and obtained the right to

issue notes, bonds or scrip to meet the expense. After they got under way a crisis came over the country, as you remember, between 1892 and 1896, — a financial crisis. Business people were borrowing money at the bank and paying 10 and 12 per cent interest. The sewer commissioners and the selectmen of the town of Fairhaven found that they could not issue their bonds for twenty or thirty years at less than 7 or 8 per cent, and they very wisely took the other course and issued notes at 7 per cent, thinking that when the conditions were right, they would convert those notes into bonds. They discovered that they could not do it, and they came to the Legislature. Now, that matter went before the committee on Towns, I think, or Public Health, — I think that was in 1895, — and the Legislature granted them the right to refund their debt. They could not do it without that permission, because the Attorney-General had ruled that they had to issue notes, rather than bonds or scrip, and that they could not carry on a banking business. This was a proper solution.

There is nothing wrong in a city or town coming to the Legislature for special legislation. When the selectmen of a town or the mayor and board of aldermen of a city come to a Legislature and ask for extraordinary powers it gives its citizens an opportunity to come in and explain the reasons why their request should or should not be granted. In almost every instance these special laws that my friend has spoken of use up very little time in the Legislature, never, — hardly ever, — use up half an hour.

Of course, he says that there is an evil, because so many matters get into the Legislature. Well, now, certainly those matters do not come from outside of the Legislature. If he will look up the records he will find that out of the 3,000 matters introduced in the Legislature in 1914 nearly 80 per cent came from members of the Legislature. The people are not asking for these laws. It is the members of the Legislature. A man goes to the Legislature, it may be his first year, and he may have some prospects before him if he is not in a district where there are ten to fifteen towns. If he is in such a district he has to postpone his prospects for ten or fifteen years; but if he is in a district where there is an immediate future, he feels he ought to do something, so he commences to introduce bills, and I think I have called your attention to the fact that there have been members of the Legislature within the last ten years who have introduced anywhere from 75 to 150 bills, all printed at the expense of the Commonwealth. Of course they are worthless bills, nobody knows that better than the man who introduces them, but his name gets into the home papers every time he introduces a bill. People never read bills, they read the titles. Now, what happens? This happens: The legislative wheels are clogged with a mass of this worthless stuff.

When there is a proposition put in here to have the Legislature meet once in two years and cut this legislative grist in halves, where is my friend from Waltham? "Oh," he says, "we must give the people an opportunity to be heard every year. It is much better to have them come here, because it is a great thing to have this legislative mill working six months a year." And yet how quiet it is after the Legislature adjourns. Why, we have a recess from the Legislature now. People are not excited about it. There is no movement on foot for convening the Legislature that I have heard. The people are not

up here demanding us to pass any of these proposals either; they are attending to their own business, and they want us to attend to ours, and they do not want us to trouble them with foolish and expensive propositions.

Permit me to call your attention to this provision: The Governor and Council are to pass a law when everybody seems to believe that it ought to be passed, that is, the petitioners, — mayors and selectmen, — and the Governor and the Executive Council all think that it is a wise and necessary thing to do, and after you provide for this you provide later that when the General Court come in they can repeal the statute that the Governor and Council and the petitioners agreed unanimously was right and proper. Yes, they can repeal it. If there are any people from that city or town who did not happen to get into the hearing before the Governor and Council, they can come to the Legislature and ask to have it repealed, and the Legislature can repeal it. I submit that there are a great many undertakings that mayors and selectmen might start, might get under way, and legislative interference of this sort might cause tremendous expense and a lot of inconvenience to cities and towns.

We are told that something must be done; we ought not to adjourn without doing something. Now, I do not think we ought to do something unless that something is worth while. What is the use of trying to do something that is worthless? Why, in 1902 we revised the statutes, and we had 226 chapters, two volumes of 1915 pages, with an index, with 570 more pages. Since then, and up to last year, we had passed 12,400 additional laws. And yet my friend from Waltham (Mr. Luce) has introduced a proposition that we not only should extend the legislative authority to the Governor and Council, but we should give the right to the numerous commissions to do their own legislating.

What a proposition! To my mind, the proper body to pass laws is the Legislature, and the Legislature will be made up of the kind of men that the people choose. Now, that may not suit me, it may not suit the gentleman from Waltham (Mr. Luce), but it will suit the respective districts that elect them.

I confess that there are difficulties. In the first place, we unfortunately have confined our efforts to get rid of a certain kind of quack doctors. I have observed during my lifetime that the quack doctors are not all limited to the medical profession, and yet the Legislature never has taken any interest in any other kind of quack doctors except the doctors of medicine. Quack doctors you find everywhere, — the A.B.'s, and the LL.D's, and the D.D.'s, and above all the Ph.D.'s, have their share, — and sometimes they get into the Legislature and they introduce all sorts of laws.

I do not want to cast any reflections upon my friend from Waltham (Mr. Luce), because I am very fond of him personally, and I have a very high regard for his ability, but I do not have that same regard for his judgment. The gentleman from Waltham (Mr. Luce) came into the Legislature I think in 1900. That year it cost $7,600,000 to run this State. He stayed in the Legislature nine years, and the year he left it cost $12,400,000 to run the State, and if I remember correctly he did his full share of introducing a lot of expensive things that helped increase the cost of government. His argument was just

the same then as now: "We want something new." He did not say then that we wanted new men; he was not then an aspirant for Congress, but: "We want new men now, and we must do something." Now, that has been the trouble with the Legislature for the last fifteen years; it has been after something new. They changed over all of our primary and election laws, and that added $1,000,000 a year to the current expenses of our State. I do not remember a single instance while my friend was in the Legislature in which he took any solid ground toward curtailing the expenses of the Commonwealth. I submit that men who have been in the Legislature a long series of years, and who have been doing what everybody else has been doing, spending money, trying new and expensive ventures, impracticable, many of them, ought not to come in here and set themselves up as leaders to those of us who come from the country. I think that a man ought to serve time somewhere, — I mean to good advantage. If, while in the Legislature, he has shown that he has helped produce something, that he has helped make this government efficient, that he has helped curtail the expenses of government, then I say that I extend to him the right hand of fellowship; but if he has been voting for all these notions, and has been responsible for all these laws, and has helped cause all these extra expenses, and then comes in here and asks us to let down the bars and to take on some other legislative body, like the Governor and Council, and then let all the departments legislate for themselves, why, I do not think that we ought to accept that sort of condition.

Mr. PILLSBURY of Wellesley: In this last week of the session [laughter], as I hope it is and shall contribute so far as I can to make it, I do not propose to discuss anything; but I feel bound to give the Convention in a word my view of this resolution, which in my opinion has already answered its only useful purpose in bringing my friend from Springfield in the fourth division (Mr. Bosworth), from whom the Convention ought to have heard a great deal more, out of his self-imposed obscurity, and in being the occasion, if not the cause, of another burst of the eloquence of my friend from Waltham (Mr. Luce) for which he is so remarkable, and which one of these days will contribute so much to illuminate the pages of that American classic the Congressional Record. [Laughter and applause.]

Let me say first, that I extremely dislike to criticize a measure in which intelligent men, men who are entitled to respect, appear to have faith, though I must say that their attitude reminds me of the Sunday-school boy's definition, that faith is "believing what we know ain't so." The situation out of which the resolution arises, familiar to everybody, agreed on by everybody, is the intolerable, insufferable nuisance of perpetual petty legislation, from which I believe the Commonwealth of Massachusetts probably suffers more than any other community on the face of the earth. There is no doubt about the evil. Now, what is proposed as the remedy? For the evil of too much legislation, it is proposed to create another Legislature, and have two whereas now we have but one, — to establish a little pocket Legislature, so to speak, a Legislature which can be and will be in perpetual session at all seasons of the year, and in session behind the door, for you can never concentrate public attention upon the proceedings of this pocket Legislature, this Governor and Council sitting to make little laws.

There is one thing, and there is but one, which possibly might make such a scheme of some practical consequence and effect to reduce the legislative nuisance and shorten the sessions of the Legislature, and that is to delegate, if you please, to the Governor and Council the sole and exclusive power of dealing with local or special legislation. If you do that, I agree that you will do something toward abridging the sessions of the Legislature. But nobody would think of that for a moment. Even my friend from Waltham (Mr. Luce) in his most exuberant moods would not propose that. And so long as you leave the door still open to the Legislature as a court of appeal for every one of these measures which it is proposed to send first to the Governor and Council, you have made the matter worse instead of better. Every interest that goes to the Governor and Council and gets what it wants will be appealed against to the Legislature by its opponents, and every interest that goes and does not get what it wants will then appeal for it to the Legislature. That is the way it is bound to work.

If I could select one thing to say here which I should like every one of the three hundred members of this Convention to remember and reflect upon it is this: Having had to watch the process of legislation in Massachusetts for many years, both from the inside and the outside, as closely perhaps as any man now living, I have come to the fixed conviction that there is but one way of abridging or reducing the legislative nuisance, as I may fairly call it, of which everybody admits that our long-suffering Commonwealth is a perpetual victim. You can cut it in half at one stroke by establishing biennial sessions of the Legislature, and you cannot materially reduce it by any other known device. Every Legislature of the last generation has been trying to invent schemes to curtail the volume of legislation and cut down the length of the legislative sessions. They have all failed, as they are bound to so long as the Legislature tries to hear everything and everybody, and the more of them attempted, the bigger the Blue Book grows year by year and the longer the legislative sessions. But the procession of the seasons has fixed a natural limit beyond which a session of the Legislature is not likely to extend. It will never run very far into the heat of the summer, and it will not run any farther into the summer in every other year than it now does in every year, as the biennial States have proved. The only remedy for the evil which this resolution cannot cure is to hasten the day of biennial sessions, and upon that remedy the Convention in its wisdom has already turned its back and thrown away the opportunity of doing one thing that would have gone far to justify its existence.

Mr. Dutch of Winchester: When the original proposition came before the committee on State Administration last fall that committee was unanimous, I think, against the proposal, and it happened that I was selected to be in charge of the adverse report. At that time the Convention saw fit not to accept the adverse report, but to recommit the matter ultimately to the two committees sitting jointly, in order to see if something might come out which would remedy the evils which have been admitted on all hands. When this final proposal came before those committees I found myself opposed to it in its present form. It did not seem to me, however, that the matter ought to be smothered in committee, and so I did not formally dissent, but did what I was told was the other course to pursue, and that was

reserve my rights. It seemed to me that a matter should be reported to this Convention that, as the previous speaker has demonstrated, has had very serious consideration by very many people and is carefully intended to cure an evil. As it lies in my mind now, I am opposed to the proposition. I think there is sufficient merit in the suggestion of the gentleman from Lexington (Mr. Clapp's amendment), so that the Convention, perhaps, may well pass on that amendment as a substitute, so that the subject can be considered further, because I think we should not lightly throw out on a second reading a serious proposal calculated to take care of a serious evil. It may well be that there is sufficient merit in the Clapp amendment, simply as it is, so that it will permit the Legislature to hand over purely administrative matters, not controversial matters of legislation in the ordinary sense, not matters of real legislation, but purely administrative matters. Now, as I take it, the Clapp amendment permits the Legislature to hand over simply that type of thing, and it may be that that will prove wise. I think we should be careful, therefore, not to throw this whole thing out of the window. And so, as I say, having reserved my rights against the main proposition, I shall vote for the Clapp amendment on this stage and see if we cannot get something out of it.

Mr. Hart of Cambridge moved to amend the amendment moved by Mr. Wellman (printed in the calendar under the name of Mr. Clapp) by striking out, in the second line, the word "special".

Mr. HART of Cambridge: I have only one word to say, namely, that "special" may be a legal term, understandable by all the members of the Convention. It certainly carries no particular meaning to my mind. I am not aware that we have a system of special legislation in this State. I speak under favor, subject to correction by a legal mind. The amendment of Mr. Clapp is an excellent amendment and a capital substitute for the long, involved and difficult main question. It seems to me it would simplify his amendment. If he were here I presume he would accept it.

Mr. BOSWORTH of Springfield: With a very large portion of everything that has been said this morning I entirely agree. To certain propositions I cannot assent. During the past twenty years everybody has been satisfied that the Legislature was overburdened, and during those years the Legislature has passed as many general laws as it has thought wise. How is it possible for the Legislature not to be overburdened now, when it must do twice the work in the same time, because, as has been suggested, the seasons determine the date of adjournment?

One of our most learned members seems to be scared for fear we are setting up here an English privy council. How can that be possible when any act passed even unanimously by a Governor, Lieutenant-Governor and Council, any minor statutory order, is to be subject to annulment at the next session of the Legislature by one mere vote in either branch? I frankly suggest that some members simply object to the length of this proposal, yet all that we intend, all that we hope, is to provide a channel down which it will be possible to pass many matters that take up much valuable time. Perhaps most of them need only a few minutes, — a few half hours. We know such periods add up here. They add up in the same way in the months from January to June. That is all that we intend to do, — merely provide another channel.

The gentleman from Worcester (Mr. Tatman) clearly showed us how serious is one feature of the problem. The Legislature cannot to-day delegate any of its legislative powers, as such, to anybody. We want it clearly permitted to delegate minor, immaterial, legislative powers, but not made to surrender any right that it chooses to keep for itself. That is all we recommend.

Now with regard to the amendment of the gentleman from Lexington (Mr. Clapp). It has no teeth in it. If there was a "shall" in it somewhere, I personally think, — I will not say the committee thinks, because I must speak solely for myself on this suggestion, — that something might be worked out of it that would be excellent; but as long as it reads merely "may" it cannot be made very valuable.

Now I do not speak solely for myself when I say one thing more. The committee has reported an amendment which gives immediate life to all matters that are voted *unanimously* by the Governor, the Lieutenant-Governor and the acting Councilors. But such life is purely temporary. It ceases instantly upon an adverse vote in either branch of the Legislature. Though this grant seems to us wise, we have no objection to its elision. The committee understands perfectly that I will not defend upon this floor any measure that to any substantial number of this body seems to lessen or take away from the Legislature any real right.

Mr. Luce of Waltham: The amendment offered by the gentleman from Cambridge (Mr. Hart) would modify a phraseology familiar in Constitutions and to lawyers, and therefore would expose whatever the Convention may decide upon, if anything, to unfortunate dangers. Retaining the customary phraseology, the amendment of the gentleman from Lexington (Mr. Clapp) gives permission, which may or may not be exercised. The Legislature of 1914, in an attempt to meet the situation, created a special committee headed by the President of the Senate, Mr. Henry G. Wells, known as one of the most conservative men in the State, and the House Chairman was Representative Bothfeld, equally a man of caution and prudence. It recommended thirty-eight moderate changes. About one-third of these proposals, — the trivial and unimportant ones, — have been accepted. No important change has been made. The Legislature will not loose its grasp on power. Such bodies always want to hold petty power more than they want to hold big power. The Legislature will not let go of petty power if it can be avoided, and therefore a merely permissive measure such as that of the gentleman from Lexington (Mr. Clapp) is a tolerably innocuous and harmless sop to Cerberus.

Mr friend from Wellesley (Mr. Pillsbury), for whose pleasant words I am ever grateful, has once more urged the Convention to consider matters that it already has rejected. Biennial sessions as a remedy seem to me as unreasonable a proposal as can be made, a proposal to meet a situation caused by pressure of work with a remedy that shall lessen the opportunity to do the work. As if the board of directors of the Boston Elevated Railway Company, when it began to find itself in straits, said: "We will meet this distressing situation by having our sessions only once in six months instead of every day," or whatever increase of interval might have been favored. The absurdity of that remedy, already proved in every State that has tried it, by the testimony of the most serious and thoughtful men, throws us back upon

this simple question: With a Legislature overburdened, shall relief be permitted?

My friend from Haverhill (Mr. George) has gone very far astray in his declaration that nearly eighty per cent of the measures before the Legislature come from the members themselves. Careful, scientific analysis shows precisely the contrary to be true. The great bulk of the petitions come from the people for the redress of grievances and for the granting of other perfectly legitimate demands. This increase in the volume of law-making simply attests the increase in the complexity of society. The great changes of the last generation are reflected in this desire for attention from the makers of law.

Sir, because the world has changed, because the demands of the community have changed, because the needs of the time have changed, your committees have urged upon you a remedy. This remedy is so carefully safeguarded, so completely restricted, that safety is spelled all through it. If there is danger in change in and of itself there is danger in this; but pray where can there be danger in taking a practice already established, in elaborating a practice to which the General Court now resorts on the average fifty times a year, in giving it the stamp of constitutional approval, and permitting its reasonable, moderate extension to meet the demands of the times?

The amendment moved by Mr. Hart was rejected.

The amendment moved by Mr. Wellman was rejected, by a vote of 30 to 103.

The resolution (No. 409) was rejected Tuesday, August 13, 1918, by a vote of 55 to 94.

The committees on State Administration and the Executive, sitting jointly, reported, Tuesday, July 30, 1918, the following new draft (No. 410), based in part on the resolution No. 269 which had been referred to them:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

All petitions for the passage of legislation relating to local, special or private matters shall be filed with the Secretary of the Commonwealth on or before December first or such other date or dates as the General Court may require, and the Secretary shall forthwith transmit a copy of the same to that department or agency of the Commonwealth which in his opinion exercises functions embracing the subject-matter thereof. In conformity to such rules and regulations as may be established by the General Court such department or agency shall make written report thereon, and until such report has been received the General Court shall not consider such petition unless admitted by not less than a two-thirds vote of the members of each branch present and voting thereon. The General Court shall have full power to determine what petitions relate to local, special or private matters.

The resolution was read a second time Tuesday, August 13; and it was rejected the same day, by a vote of 44 to 56.

Mr. ADAMS of Quincy: I have had the misfortune to address the Convention a number of times, and on this particular matter I feel moved to address it very shortly again on the phenomenon which the

Convention developed immediately before the recess. Here is a condition. It is admitted by everybody, as I understand it, that the present condition of things is intolerable, that it is impossible to maintain this present condition permanently, because the conditions are so bad and growing so much worse that the affairs of the State will stop unless we do something. There have been made various suggestions as to how these conditions can be remedied, and the Convention will have nothing to do with any of them.

That I take to be the position which the Convention has held ever since we met, practically on every subject excepting one, — except one subject, and that is the question of the handling by the State of our natural resources. That was a distinct step forward. It prepared the way for this step. To take a plunge forward. That is the condition that the State has got to face.

Mr. Edwin U. Curtis of Boston: Do not forget the I. and R.

Mr. Adams: I do not think anything ever will be done with the I. and R. I think that is a perfect negation.

Now, here we are. Ever since we have come into this Convention I have been intimating gently to the Convention that I thought that this war was bringing matters to a point where, not only to this State but to the world in general, a stimulant was about to be applied which it would find very difficult to resist. That is to say, — the world in general was going to be projected forward with a violence which would cause it to wake up. In other words, I always have believed that the condition has got to be met somehow. It is useless for us to hang back; we cannot do it.

This situation reminds me, if I may be permitted to refer to such a matter, — it is rather a light story, but it is a story of Mark Twain. Mark Twain related that in Michigan one day toward nightfall he stumbled upon a loggers' camp. The loggers were at their supper and he sat with them to take their supper, and the loggers' were talking about various things, but particularly they were boasting about their dogs. One logger absorbed attention as he explained what a remarkable dog he had, and how that dog one day in a field found an otter. A river ran through the middle of the field and the dog was close on the otter, and the otter jumped into the river and swam across the river, and the dog swam after him. When the otter got to the other side of the river the dog was close upon him and it opened its jaws to devour the otter, whereupon the otter climbed a tree. Some one of his hearers objected that an otter could not climb a tree. Said the logger: "By God, he had to." [Laughter.]

That is the position that you are in. By God, you have got to, — you have got to climb your tree. We all in this State have got to climb our trees. There is no get out, no escape; it is that or be devoured.

We sit here and debate as to whether or not we are going to have this thing or that thing or the other thing, whether we are going to take this mode of escape or that mode of escape or the other mode of escape. But we have got to come down in the end; we have got to get rid of all this old, elaborate, complicated theory of representative government with its dry-nurse of courts and lawyers which everybody knows is exploded. Everybody knows that the thing is dead; we cannot get along with it. It will not move, it cannot march. It is like the otter which declines to move. All the same, he must move,

he has got to move or he goes. You have got to get rid of your representative government. We are put in that position where we have got to have these measures passed and they have got to make law. And I ask you, Mr. President, and I ask this Convention, to watch how the world is doing it. What do we care for law? We do not care one button for law, not one straw for law. All the work that the world is doing is lawless. There is not any part of it but is lawless. Here in the United States we are doing a mass of legislation of all kinds and we are making a great revolution in the condition of property, and there is no law in it, none whatever, and there never will be. There is no law in it but force, — absolute brute force, and we have got to recognize it, and the sooner we recognize it the less we shall suffer in the end. Every nation about once in, — oh, well, a century or two, — all the nations of the world, come to a point where they have to recognize a great revolution in the condition of property and in the condition of classes. And if I may be permitted to indulge in reminiscence for a moment, I very well remember when that great truth was first brought home to me. It was, as well as I remember, about five-and-twenty years ago or more, when I happened to be in France, and I happened to be in Angers in France. Wandering about the city I walked up the central hill in Angers. A lane leads or led to the top of the hill, and at the top of the hill there was a very charming chapel which was dedicated to the Virgin, with a statue of the Virgin at the west door looking down the lane. On each side of the lane there flowed an open sewer, an open drain, and the weather was very hot and I sat down in the shadow of the Virgin and I looked at the Virgin and I looked at the drain. And gradually the idea dawned on me that in the beginning of the fourteenth century, when that chapel was built, pretty nearly all the liquid capital of France was invested in chapels to the Virgin, on the theory that the Virgin was going to protect them from disease. Well, it was about a century before that that in Jerusalem, or the kingdom of Jerusalem at least, the Crusaders had fought the battle of Tiberias and had been defeated, and the Virgin had not been able to protect them and had not been able to protect anybody else or herself, and the Saracens had captured the true cross and had taken Jerusalem and they had knocked on the head the whole theory of the miraculous power of the Virgin to intervene in behalf of mortals. All this vast investment of capital depreciated, exactly in the same way that now we are going through a process of depreciation.

Now no human being could stop the disaster to the Crusaders. It came. It was one of the things that were inevitable, and having come it had to be accepted; and we have got to accept the position that we are in, and we have got to accept the change in our property, and we have got to accept the change in the holding of our property, and we have got to accept the change, the manner in which those holdings are legalized. That is to say, we have got to accept the whole process of the revolution of law which underlies all revolutions in property.

My business in this Convention has been to try to point out that revolution in law, and how we have got to face that revolution. We cannot escape it. The courts must be gotten out of politics. They cannot be allowed any longer to obstruct the movement of the world. We were talking this morning of this very thing, how the courts were

sitting here, the courts were sitting there, and the courts were saying that the Legislature could not do this, and the Legislature could not do that, and the Legislature could not do the other thing. The Legislature has got to distribute its powers. It has got to distribute its powers as the necessity of the moment demands, and we have got to reconcile ourselves to it, let the courts say what they will.

Now, the common-sense thing for us to do, if we can reconcile ourselves to it, is to put the executive in such a position that it can do this legislation, and that we stop messing with all these questions about how we are going to help the Legislature do it. The Legislature is like a dying animal. Representative government with grandmother courts is like an agonizing animal, and it has got to be replaced by something with vitality in it.

Now I suppose it is perfectly absurd for me to say to you, put in a government like Wilson's government. It does not make any difference what you think about it. It does not make any difference whether the courts are going to stand up and tell you that you cannot do that thing. Throw the courts over, — you can! Do it without the courts. That is what Wilson has done. Go ahead without the courts and do it, — but do it, do it! Get an apparatus which will work, and it will cost you less in the end. [Applause.]

Mr. Bosworth of Springfield: So far as I am concerned but little time will be taken in discussion of resolution No. 410. It is offered as another aid to the overburdened General Court. Many members here should have opinions as to its probable practical workings which I should value much more highly than my own.

Among the 2,000 to 3,000-odd petitions that annually afflict the Legislature are very many relating to local, private and special matters which never should be filed. If the petitioners knew that they would undergo automatically the scrutiny of some department they would be less enthusiastic and their number would be reduced. On nearly all local, special and private matters some department already has at hand fairly full information.

Now the individual committee-man digs it out as he is able and the General Court listens while he imparts his version thereof.

This resolution contemplates two things: The giving of this information direct to every member and the probable reduction in the total number of petitions. It gives to all legislators directly and authoritatively any knowledge of the subject that may be in any department, and the only substantial requirements are that petitioners shall file their bills early and the General Court shall withhold action until the departments have had reasonable time to report thereon.

The Legislature has absolute control of the whole amendment, even to the right to suspend it by a two-thirds vote. It is planned for its convenience and not for its annoyance.

Some one may object that this getting of information from the executive branch tends to executive interference with purely legislative functions. This point is not well taken. We have learned from the professors who claim to be experts upon such things that some gentleman, presumably not a professor, preceding De Tocqueville, nearly wrecked American civilization by discovering and loudly proclaiming something that is not so, — namely: That the success of the

English government came from a complete separation of the executive, legislative and judicial functions.

That was believed fully in 1780, and we almost can recite the ringing admonition of the last sentence of the Bill of Rights. We ninety-nine per cent believe it to-day. Yet *all* that it says is that the *powers* of one branch *never* shall be *exercised* by another.

Truth, justice, human nature, and common sense change very little either through the ages or in 140 years. John Adams never intended to put a premium upon ignorance or to bar the General Court from *any* source of correct information.

It would be just as wise to urge that legislators should not read the opinions of the other coördinate branch, the Supreme Judicial Court, lest their minds be corrupted.

One point remains: Why should this be in the Constitution rather than in the joint rules of the two Houses?

Two controlling reasons occur to me. First, the resolution purposes a slight curtailment of our ancient traditional right of petition; second, it puts upon one branch, the executive, the duty of giving information and perhaps advice to another, the legislative branch, and I respectfully submit that in their essence both these propositions are for this Convention and for the people.

In this experienced gathering it surely is not necessary to plead either for the lightening of the work or for the enlightenment of the minds of the legislators. If the resolution seems to your experience likely upon the whole to produce either of these desired results, I assume that you will vote for it; otherwise the sooner it is forgotten the better.

XXXII.

REFERENDUM BY THE GENERAL COURT.

Mr. Horace I. Bartlett of Newburyport presented the following resolution (No. 88):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

The Forty-second Article of Amendment of the Constitution is hereby annulled.

The committee on Initiative and Referendum reported that the resolution ought NOT to be adopted. It was rejected without debate Thursday, June 13, 1918.

On the following day Mr. Bartlett moved that the vote by which the resolution had been rejected be reconsidered.

THE DEBATE.

Mr. BARTLETT of Newburyport: No. 107 on yesterday's calendar is a matter *providing* for the referendum by the General Court, but in fact *repealing* the 42d Amendment, which allows referendum by the General Court. Yesterday I was absent unavoidably at the first part of the call, and on account of the error in the title it was not recognized to be what it is. I move to reconsider the action of the Convention whereby the proposal contained in document No. 88, being the matter numbered 107 on the calendar of June 13, was rejected. I would say that if it is desired not to interrupt the debate that was going on last night I would agree that this motion of mine might lie on the table. I desire simply that it may hold a place to get that reconsidered. If it is in order I would move that that motion be laid on the table.

Mr. LUCE of Waltham: This proposal to amend the Constitution concerning which the motion was made provides that "the 42d Article of Amendment to the Constitution is hereby annulled." That provision is in the amendment for the initiative and referendum which the Convention already has voted to submit to the people next November. Under these circumstances I feel called upon at this time to question the policy of establishing a table. The Legislature some years ago reached the conclusion, — or rather the House of Representatives reached the conclusion, — that expedition ought to discourage laying matters on the table; and my impression is that since that time the table has not been used, at any rate to any considerable extent, in the House of Representatives, the whole purpose being the expedition of business. Once again taking my position in behalf of this cause, which I trust may not prove unwelcome, I will urge the gentleman from Newburyport to present reasons why we ought to revive and put on the table a proposal that already has passed in the amendment that we have voted to submit to the people.

Mr. Bartlett: One reason why I do not want to take up the discussion now is that Mr. Thompson of Attleboro, who was the originator of the amendment which was put in the initiative and referendum measure, is detained unavoidably in Providence. Another is that I do not want to stand in the way of going on with the discussion of the judiciary matter at this time.

Mr. George of Haverhill: As I understand it, the gentleman from Newburyport (Mr. Bartlett) was not here yesterday, and it was an unusual thing for this Convention to go through the calendar. In his absence we accepted the report of the committee. He asks practically to have it considered as passed. We can save time by reconsideration and restore it to the calendar. When we reach it we then can treat it on its merits. I think it ought to be done for a man who was absent. He was not aware that there was going to be any call of the calendar. We shall save time by doing as he suggests without debate at this time.

Mr. Bartlett: The reason why it was not passed yesterday morning was this: I was detained from being here at the early part of the call for a reason most imperative. I was here probably within ten minutes after it was acted upon, and I have been here as consistently and often as any other member of this Convention. The matter is this: It is a proposal to repeal the 42d Amendment, which allows the legislative referendum. It was passed by this Convention as an amendment to and is in the present initiative and referendum measure to be submitted to the people. It went into that measure after it had been voted upon three times, and there is no question but that it is the will of this body that that should be repealed. But it should go also as a separate proposition, and that is the reason why I wish to have this reconsidered and have a debate.

The motion to reconsider was negatived.

XXXIII.

TITLE OF THE LEGISLATURE.

Mr. Albert E. Pillsbury of Wellesley presented the following order July 10, 1917:

Ordered, That the committee on Form and Phraseology consider the expediency of substituting for the words "General Court", wherever they occur in the Constitution, the word "Legislature", and for the words "Supreme Judicial Court", wherever they occur therein, the words "Supreme Court".

The committee on Form and Phraseology reported that it is expedient to substitute for the words "General Court", wherever they occur in the Constitution, the word "Legislature", except where the context makes the word "General Court" necessary; and that it is inexpedient to substitute for the words "Supreme Judicial Court", wherever they occur therein, the words "Supreme Court".

The report was considered by the Convention Wednesday, July 24, 1918.

Mr. Pillsbury of Wellesley moved that the report be amended by the substitution of a "Resolution to make the designation of the Legislature uniform throughout the Constitution," as follows:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment:

Wherever the words "General Court" or "said court" are used in the Constitution or articles of amendment thereof as designating the Legislature of the Commonwealth, the word "Legislature" shall be substituted therefor.

This amendment was rejected.

The recommendation of the committee was rejected.

THE DEBATE.

Mr. Pillsbury of Wellesley: I move the resolution which appears in print at the middle of page 2 of to-day's calendar, according to notice previously given, and I will say a word in explanation after the reading of the amendment.

The Secretary read the amendment cited above.

Mr. Pillsbury: This is somewhat interesting though not a very important matter. The resolution which I move is in line with the report and recommendation of the committee and might very properly have been submitted by them, but they did me the honor of asking me to draw a resolution, and I have done so at their request.

The question is simply whether we shall discontinue the words "General Court" as the designation of the Legislature. At the time of the adoption of the Constitution the General Court was a court and these words were appropriate to describe it. It had some functions of a court as well as of a Legislature, and for that reason the old Colonial term was carried into the Constitution, although it is a curious thing that John Adams, who is supposed to have made the

draft, uses the word "Legislature" almost if not quite as often as the words "General Court" in the Constitution itself. But the Legislature is no longer a court in any proper sense of the word. It has ceased to have any general judicial powers or functions of a court. Indeed, since the adoption of the Constitution it has been nothing but a Legislature.

Mr. HERBERT A. KENNY of Boston: The gentleman from Wellesley says that the Legislature is not a court, that its functions as a court have ceased. I recall the instances where a man by the name of Swig and a man by the name of Foster were tried by the General Court and courts were practically abolished by the General Court in trying two members of its own body. Now, how does he reconcile that action of the Legislature and then at the same time say that the Legislature is not a General Court?

Mr. PILLSBURY: Unfortunately I was not able to hear all that the gentleman said, but it does not make the Legislature a court that it acts in a quasi-judicial capacity upon the right of members to their seats. I repeat what is common knowledge and what all the members of the Convention know as well as any of us, — that the Legislature has ceased to be a court in any proper sense of that term and is solely a law-making body, a Legislature, as John Adams called it about half the time. He appears to have used the word which was nearest the point of his pen at the time without attaching any importance to the distinction. "General Court" is two words instead of one and it does not accurately describe a Legislature. Indeed I remember once hearing a Justice of the Supreme Court at Washington inquire from the bench what a General Court was that was talked about in the briefs in this Massachusetts case, and he had to be told that it was our archaic description of the Legislature. There is no reason why we should not discontinue that obsolete term and make the designation of the Legislature uniform throughout the Constitution, by calling it in all cases what it is now called about half the time, and what it is all the time, — the Legislature. That is the only point involved in the resolution.

The question may suggest itself to members whether a formal amendment of the Constitution is necessary for the purpose. I am not absolutely clear that it is, as a practical matter. If the Legislature should enact at any session that in all future editions of the Constitution published by the Commonwealth the word "Legislature" should uniformly be used to designate the Legislature and the words "General Court" discontinued, — I think the executive officers of the Commonwealth might carry that into effect, so that the term "General Court" would disappear. But a Constitutional Convention may speak with somewhat more authority upon a question even of the form of the Constitution, or its phraseology, than the Legislature and the Legislature is not likely to assume the power. I think it quite possible that if this Convention should ordain, without submitting it to the people, that in all future editions of the Constitution the word "Legislature" shall be substituted for the words "General Court", that might be done, but the only certain way of effecting it seems to be by formal amendment. I have only to add that if the Convention favors the amendment on its merits, I should hope it would adopt the resolution, leaving to be considered hereafter, per-

haps by the committee on Amendment and Codification or some other appropriate committee, the question whether it needs to be submitted to the people.

Mr. PARKMAN of Boston: I am old-fashioned enough to hope that the words "General Court" may be retained. It is perfectly true, as the gentleman from Wellesley has said, that the Legislature or the two branches have no longer the functions of a true court. But just as to the courts of the Commonwealth the individual goes to redress any grievance which he may have against some person, so the people of Massachusetts go to the General Court to redress any grievances which they may think they have. We call ourselves the Commonwealth of Massachusetts. I believe there are only two or three other States of the Union which are called Commonwealths. I understand that we have the peculiarity of calling the Legislature the General Court. As I said, I am old-fashioned. I hope there may be others who like the term "General Court" where the people of the Commonwealth may go to redress their grievances. [Applause.]

Mr. PARKER of Lancaster: I am entirely in sympathy with the gentleman that we retain, especially in our Constitutional language, the phraseology of the past in which it had its origin. I am in doubt what in fact would be accomplished by the proposed change suggested by our honorable colleague from Wellesley. I understand that the most that could be attained by this improvement of phraseology, if it be such, would be to change the phrase of the Constitution itself. In other words, by this subsequent, *ex post facto* interpolation, we shall provide that wherever the term "General Court" appears in this ancient document of our faith it shall be read to mean and be the "Legislature." What avail is it for us by this retroactive process to change the phraseology of our original Constitution? If it were suggested that hereafter our legislative body, in all official documents and statements, should be referred to as the Legislature, so that we may have that definite and final terminology, something might be attained. But why should we attempt to better the phrases of the fathers of the Constitution, speaking only to an instrument of their creation? [Applause.]

Mr. PILLSBURY: I rose to ask my friend from Lancaster if he did not hear me say that the fathers of the Constitution themselves used the term "Legislature" in the Constitution itself about as often, perhaps quite as often, as they used the words "General Court". The proposition is not to make the designation of the Legislature different from theirs, but to make it uniform, and to make it that designation which is accurately descriptive, while the words "General Court" are not. And I greatly regret to see my friend from Boston (Mr. Parkman) and my friend from Lancaster (Mr. Parker) so unwilling to follow a progressive member of the Convention in truly progressive legislation. [Laughter.]

Mr. BROWN of Brockton: I want to echo the contention of the gentleman from Wellesley. The fathers knew why they used both terms, — Legislature and the General Court. They always could have said "Legislature" if they had desired. I am opposed to the resolution.

XXXIV.

FRANCHISES.

Mr. Louis F. Delaney of Holyoke presented the following resolution (No. 103):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Every grant or franchise, privilege or immunity, shall forever remain subject to revocation, alteration, or amendment.

The committee on Public Affairs reported that the resolution ought NOT to be adopted (Mr. George W. Anderson, dissenting).

It was considered by the Convention Wednesday, June 19, 1918.

Mr. Walter H. Creamer of Lynn moved that the resolution be amended by striking out lines 4, 5 and 6, and inserting in place thereof the following paragraph:

Every act of incorporation, charter or franchise shall forever remain subject to revocation and amendment.

Mr. Robert P. Clapp of Lexington moved that the amendment be amended by adding at the end thereof the words "by the General Court".

The amendment moved by Mr. Clapp was rejected, by a vote of 77 to 88; the amendment moved by Mr. Creamer was adopted.

The Convention refused to reject the resolution, as had been recommended by the committee on Public Affairs, and it was ordered to a second reading Wednesday, June 19, 1918.

Without further debate, the resolution was ordered to a third reading Friday, July 26, was passed to be engrossed Wednesday, August 7, and the Convention voted, Thursday, August 15, 1918, to submit the resolution to the people in the following form (No. 414):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Every charter, franchise or act of incorporation shall forever remain subject to revocation and amendment.

The amendment was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 161,833 to 79,787.

THE DEBATE.

Mr. BROWN of Brockton: My only reason for rising at the present moment, and I confess myself without any preparation, is the resolution recommended by Mr. Anderson of Brookline. It reads: "Every act of incorporation, charter or franchise shall forever remain subject to revocation and amendment." An attorney of the standing of Mr. Anderson would not have indorsed this resolution unless he thought there was some necessity for it.

It seems to me that the matter is an important one. There was a day in this Commonwealth when of course charters could be construed

as in perpetuity, and up to the time of the decision in the Dartmouth College case they were subject, I think, to that construction. After that time most of our charters and grants do contain the provision "subject to any laws now in force or that may be hereafter enacted in relation to the same."

It must be that this provision now is discretionary, that it may or may not be inserted by the Legislature; but the intention of Mr. Anderson may well be that it should be placed in our Constitution as a fundamental principle that no corporation, no individual, shall obtain from the people an act in perpetuity. I again assert it is an important provision. Are you going to leave with the Legislature the power to grant to a corporation some privilege in perpetuity? Are we to be confronted with vested rights against the people's rights? I want to be corrected if I am wrong, and I am quite likely to be, but it is for the attorneys to correct me. My assumption, you will see, is that as the Constitution now stands the Legislature, acting for the people, may enact a privilege in perpetuity, it may omit the customary phrase in Massachusetts acts, — "subject to all laws that are now in force or may hereafter be enacted in relation to such corporations." It may omit that. Then if that is omitted, so far as I can understand the law, by the decision in the Dartmouth College case, there is a consideration, you have entered into a contract, the people have entered into a contract, and those who possess the charter, the grant, or the privilege have got it in perpetuity; you cannot take it away from them.

If this be true, I assert that it is quite essential that all members of this Convention, labor men and others, who call themselves progressive, and who are trying in some way to provide conditions for the uplift of humanity, should vote for this resolution; charters carrying privileges never should be granted in perpetuity. If some one else had asked recognition to speak on this resolution I certainly would have remained to listen to it, but I cannot remain silent here and see these matters gone over so rapidly and acted upon, with merely a reading of the title. One naturally supposes, when he sees a resolution in the calendar with a delegate's name attached, that when it is reached he will at least rise and say why he took up our time and the time of this Convention at the State's expense to have the matter go into the calendar, and then permit it to be killed without a word of explanation. Lo and behold, we find matters here that have been coming down in printer's ink during all the months that we have been here, passed for debate by some one down to the present time, and now being rapidly buried without anybody saying a word of grace over them!

There are members of this Convention, including myself, who would allow some resolutions to go without question; but when you come to an important principle printed in the calendar, one that Mr. Anderson has felt important enough to submit favorably for the consideration of the Convention, a recommendation that a provision ought to go into the Constitution, I think some member of that committee ought at least to say why it should be killed, as, apparently, it was going to be when I asked for recognition. Is it true that if this provision is not enacted corporations may have privileges in perpetuity, including natural resources? We have said so much about the Legislature, and we have said so much about the power of the lobby, and so much about the ability of these corporations to get things when the people

are not looking, there is danger unless we now vote for this restriction. Now is the accepted hour. If you do not pass this restriction, then corporations may induce the Legislature to give them privileges in perpetuity. I do not know then where the people's rights would begin or end.

Mr. Hobbs of Worcester: On this matter the committee on Public Affairs was divided, as the Convention will note by the calendar, the division being in the proportion of one for the resolution and the rest against. The Dartmouth College case, to which the gentleman from Brockton (Mr. Brown) has alluded, established a rule with regard to corporate franchises which at the time threatened to place the creatures of the State above the State's power to change or alter. The Dartmouth College case was decided about the year 1819. In 1831, in Massachusetts, the following statute was passed, and it appears as section 3 of chapter 109 of the Revised Laws:

> Every act of incorporation passed since the 11th day of March in the year 1831 shall be subject to amendment, alteration or repeal by the General Court.

It is not necessary to read the rest of that section, but that principle was enacted into law at that time, in the year 1831, and has remained the law of the Commonwealth ever since. It has been adhered to consistently, except in a very few cases. At present I do not recall a single case, with the possible exception of the so-called contract between the State and the Boston Elevated Railway Company relative to location for tracks for the elevated structure in Boston, which I believe was for a definite time. Apart from that I do not know of a single case, and I have been referred to no case where a franchise perpetual in nature has been granted, and that franchise that I mention was not perpetual in its nature.

Mr. Brown: If I do not interrupt the gentleman, I should like to ask him if it is not now within the power of the Legislature to pass an act in perpetuity by placing in that act that it is not subject to the Act of 1831, which the gentleman has quoted. That is, is it within the power of the Legislature to pass an act in perpetuity notwithstanding the statute quoted?

Mr. Hobbs: It is possible for the Legislature to do so, but as a matter of fact it has not been done. The policy is one of so long standing, and has been maintained so consistently, that the danger would seem to be a very slight one and one which there is very little need for a constitutional proviso to guard against.

Mr. Creamer of Lynn: I should like to ask the gentleman from Worcester what his objection would be to putting this in the Constitution. If the Legislature has not used this power for eighty-odd years, and is not likely to use it, what is the harm of having a safeguard against some Legislature in the future trying to use it?

Mr. Hobbs: My objection is to the resolution before the Convention rather than against the principle to which the gentleman refers, of enacting into the Constitution the provisions that now appear in section 3 of chapter 109, which I have read. The resolution before us allows the General Court to grant only one form of franchise; that is to say, the indeterminate franchise, a franchise that can be wiped out at any moment by the order of the General Court. It debars the General Court from the possibility of granting a franchise for a definite

and limited time, which on occasion might be a valuable right for the Commonwealth to possess. As to whether in the future an occasion might rise which would call for the granting of a right *in perpetuo* I cannot tell. The likelihood that questions of a right to grant such a right would be abused seems to me so slight that it hardly is necessary to cumber the Constitution by an additional proviso.

Mr. CREAMER: I should like to move as a substitute the resolution which Mr. Anderson of Brookline is recorded in this calendar as recommending, namely, that "Every act of incorporation, charter or franchise shall forever remain subject to revocation and amendment."

Mr. WALKER of Brookline: I consider this a very important matter, and I do not think it ought to go by without a little further discussion. The point is this: If a corporation ever sees its chance to get one Legislature to give it rights which will bind future Legislatures, it may avail itself now of that chance. As the matter stands now, it is merely a statute that stands in the way of a perpetual franchise, or a franchise for a great many years. The mere fact that a later statute grants such perpetual franchise or a franchise for a great many years *pro tanto* repeals the earlier act. It has been the well-established policy of this State for a great many years to grant to all our public service corporations franchises that are changeable or revocable at any time. There was great fear that we could not get money for our public service corporations under those conditions, but experience has proved that public service corporations have a great deal more secure tenure in Massachusetts with the indeterminate franchise than they have in other States with a fixed time when they shall expire. There always is a great deal of uncertainty in investments in corporations when the time for the expiration of the franchise draws near. Every man who has invested in stocks of public service corporations knows that full well. It is the custom in many States to take advantage of the expiration of a franchise to put such conditions on the renewal of the corporate franchise as to make it very difficult for the corporation to go on and earn the money necessary to pay interest on bonds and dividends on stock. Any one who is familiar with investments in public franchise corporations knows that full well. The indeterminate franchise is therefore, in my judgment, not only the Massachusetts policy, but the wisest policy. I do not like to see the matter so left that a corporation, whenever it happens to have a majority in the Legislature, will be in a position to obtain in one way or another irrevocable rights which bind future General Courts. That is the situation to-day. I did not know that this statute, passed eighty or ninety years ago, had been changed only once or twice since it was passed. I am surprised if that is so. I take the gentleman's word for it. That is an argument certainly of the strongest kind that it is a proper thing to incorporate in our Constitution. Therefore it seems to me that the proposition printed under the name of Mr. Anderson is a reasonable, proper, conservative proposition. In the long run it leaves the corporations themselves in a much safer situation than they are in now.

Mr. HERBERT A. KENNY of Boston: I should like to ask the last speaker a question, not in any way opposing him. I should like to see this incorporated in the Constitution. But I should like to ask him how he can reconcile this resolution with that part of the United States Constitution which says that no State can abrogate a contract.

Mr. Walker: The purpose of this amendment is to provide that the Legislature of Massachusetts cannot make a contract. If the Legislature of Massachusetts does make a contract the United States Constitution protects that contract, and the next Legislature of Massachusetts, or the Legislature that meets twenty-five years later, cannot change that contract. It is binding, hard and fast. The Massachusetts Legislature and the Commonwealth of Massachusetts are tied for all time by a Legislature that granted a franchise perhaps fifty years ago. I do not like that situation. Now, if we make this amendment to our Constitution no such contract can be made, and therefore one Legislature cannot bind the State and all future Legislatures. I think it is a proper provision.

Mr. Richardson of Newton: Assuming that the language as recommended by Mr. Anderson had been a part of the Constitution at the time of the recent negotiations and the contract between the Commonwealth and the Boston Elevated Railway Company, I should like to inquire what the gentleman's opinion is of the effect of this language on that contract.

Mr. Walker: In my judgment it would be an immensely safe provision. The Governor of this Commonwealth objected to certain features of that contract. He objected to the State tying itself up, putting itself under the domination of the Elevated Railroad even for ten years, and very wisely, in my judgment. I do not believe that it is good for the State and I do not believe that it is good for the corporations or the investors in corporations to make a contract with a public service corporation. They are doing a public service business, and I do not believe in the State making contracts with them that cannot be changed by subsequent Legislatures. I do not believe it makes for greater stability in the corporation or for greater confidence in their securities. On the other hand, I believe they are less stable. As I say, any one who is familiar with investing in public service corporation securities knows that full well, and therefore I think that this resolution should pass.

Mr. Clapp of Lexington: I have at this moment the somewhat unique experience of finding myself to a considerable extent in accord with the views expressed by the last speaker and with the delegate from Lynn (Mr. Creamer) who preceded him. It is perfectly true, as the last speaker has said, that those who have devoted themselves to a consideration of the franchise situation, the franchise reformers if I may so call them, and the corporations themselves, have come to an agreement finally that the best and safest and wisest policy for any State to adopt with reference to franchises, — using now the term in the sense in which it so often is used on the street, *i.e.*, to mean the location of poles and wires and street railway tracks, — should be upon what is called the indeterminate basis. Wisconsin, as we all know, led off in a way in this matter, and established what is called the "indeterminate franchise," which allows a corporation to occupy the streets of a city during good behavior, you may say. That really was an outgrowth of what had been worked out by judicial decision here in Massachusetts.

I think I am in position to explain to the Convention just the attitude of the chairman (Mr. George W. Anderson) in this matter. He and I did not find ourselves in accord upon very many propositions,

but we were pretty nearly agreed in respect of this one. We were agreed that so far as "franchises" were concerned, — using the word now in its loose general sense, — the law leaves us in pretty good shape just as it is; and there really is no need of putting anything into the Constitution. I felt that myself, and Mr. Anderson at one time agreed with me; but finally he said: "I think we should put something in the Constitution as affecting charters, and while we are about it we might as well cover the other point too." And so while the committee as a whole reported against the resolution found in document No. 103, the chairman dissented and recommended that it be adopted in the form now moved by the delegate from Lynn (Mr. Creamer).

Now with regard to charters of corporations. As has been said, it has been provided by statute for many years that any corporation organized since March 11, 1831, should hold its charter always subject to alteration, amendment or repeal. That principle has become so ingrained in the mind and in the policy of the State that it really is unnecessary to touch it. The mind of man cannot conceive, it seems to me, that any Legislature of Massachusetts ever should grant an irrevocable charter. It is true, however, as the gentleman from Brockton (Mr. Brown) has pointed out, that it is possible theoretically for the Legislature at any time to repeal that statute, or possible, I think, when granting a charter to put in a special provision which shall have the effect of avoiding the statute in the particular case. While I personally would be satisfied to let the thing stand as it is, I say now, as I said on the floor here last year in answer to a question from the delegate from Lynn (Mr. Creamer), that I am willing to see this provision, now found in the Revised Laws, securing the right of the Legislature to alter, repeal or amend charters, — perfectly willing to see the provision transferred to the Constitution. But if you do it, gentlemen, there are three or four words that you want to add to the form of the resolution proposed by the delegate from Brookline (Mr. Anderson), and I feel authorized to say that here on his behalf. He said that what he meant by his language was, that charters always should remain subject to alteration, amendment or repeal *by the General Court*, and said that if he should be in the Convention when the matter was reached he would ask to have those words added. Therefore, I want to move an amendment.

Mr. Clapp moved that the proposition as submitted by Mr. Creamer be amended by adding at the end thereof the words: "by the General Court."

Mr. O'Connell of Boston: It seems to me that if this Convention, out of abundance of caution, thinks that this provision should be put in, there is no logical reason for not doing so. Some say: "Oh, it may never be invoked," but we all know that legislative machinery gets working pretty rapidly at times and the steam-roller process is not infrequently used. Just think of it! If in a Constitutional Convention such as this, the previous question is invoked for the purpose of choking off important debate, as has been done, and unanimous consent for making a brief statement in explanation of an undebated amendment is denied, it might be that in the closing days of a legislative session, when the heat is excessive, when men are anxious to get home, when the day of adjournment has been postponed and a lot of things have

come up, a little word in a bill, one word that might mean perpetuity, very easily could get by in the rush and in the confusion of those hours, and once in never could come out. I submit that, such being the case, — and we all are familiar with these facts, — all you gentlemen of legislative experience know that I am not exaggerating when I say that mistakes can be made honestly and those mistakes can confront us permanently in a measure that cannot be changed. I submit that in all fairness, in all wisdom, we ought to accept the substitute proposed by the gentleman from Lynn (Mr. Creamer) in order that error, chance, fraud or trickery may not foil the people. I hope that the experiences of the past, where errors have been made through inadvertence, through neglect, through artifice, may be stopped forever by this brief amendment which makes such a thing impossible.

Mr. Dresser of Worcester: With reference to the amendment proposed by the gentleman from Lexington (Mr. Clapp), this query arises: Whether the word "franchise" means a franchise granted by a Legislature or may mean a franchise granted by a municipality. There are many instances, — take the case of laying private tracks across a street, — where a franchise, a right to maintain those tracks, is given not by the Legislature but by the municipality and is subject to revocation and amendment at any time by the municipality. My query is whether putting in the words "by the General Court" does not throw that matter into the hands of the Legislature and prevent the municipality's acting. I have no opinion about it, but it seems to me that question may arise and ought to be considered.

Mr. Hobbs of Worcester: The point raised by the gentleman from Worcester (Mr. Dresser) I think is out of place, for the reason that our courts in at least two well-established cases have held those rights granted by municipalities to lay tracks in the street, or to lay water pipes or gas pipes in the street, to be licenses and not franchises; that is to say, mere revocable rights which could be taken away at any time and which of course the General Court has always a superior right to take away at any time. I do not think the amendment as drafted would affect those so-called franchises in the least.

Mr. Loring of Beverly: It seems to me that it would be a wise thing to incorporate this provision in the Constitution. It already has become a part of the Constitution by the enactment of the Legislature. It was the establishment of the principle which was to be regarded by all subsequent Legislatures and has been so regarded. To enact it into the Constitution seems to be perfectly proper. We all know there are a great many customs that have the effect of law, and that it is a wise provision when those customs do have the effect of law to enact them into law and declare them to be the law. Now, here we have a provision which is substantially a constitutional provision, and which has been regarded so for eighty years. I think it would be wise to enact it into the Constitution.

Mr. Jones of Melrose: While we all may agree as to a certain definite line of policy, a certain general principle, being enacted into the Constitution, and while I agree perfectly with what has just been said by the delegate from Beverly (Mr. Loring), it does seem to me as the result of my legislative experience that there are arising frequently special occasions where enterprises of great public moment could not be carried on unless there were a certain perpetuity of tenure. Take,

for instance, the development of the great Boston Elevated Railway system. We all realize what it has been for Boston and for the metropolitan district. As a member of the Legislature during the time when the Boston Elevated Railway bills were enacted into law, I remember it was conceded generally that the vast sums of money which were necessary for the building of the elevated railway structure, the assuming of the cost of the subway and the Washington Street tunnel and the East Boston tunnel, to carry them on as the enterprise is to-day, would not be forthcoming unless there were a certain perpetuity of tenure accorded, and the only question before the Legislature at the time was as to what the length of that tenure should be. In the great enterprises in New York city the franchises granted were practically perpetual franchises, — for ninety-nine years. That was impossible in Massachusetts and the tenure which was given was a limited tenure; but with the tenure that was given it was possible for the Boston Elevated Railway Company to secure the vast sums of money which were necessary for the development of that great system. Now, that may be a special, an isolated case; but while I agree in general with the principle that has been stated by the delegate from Beverly (Mr. Loring) I think we ought to have here an opinion from him and from other members of the Convention who are more in touch with the great financial interests as to whether or not, if we proceed to enact this constitutional provision, it might stifle in time a development which was of the greatest moment to the community, such as the Boston Elevated Railway system has been to Boston and the metropolitan district and to other communities, possibly different sections of the State where great enterprises are in process of construction. There may have been a change in the feeling of the financial world in that respect. If there has been, I think we ought to be informed regarding it.

Mr. Dutch of Winchester: I should like to ask the delegate who is speaking if he conceives that the Elevated Railway Act to which he refers and the recent Elevated Railway Act constituted exceptions to the Act of 1831, so that in those two instances at least he would say that the Legislature has gone back on the Act of 1831.

Mr. Jones: It seems to me it was an exception. Of course in return for the franchise and privileges that the Boston Elevated Railway Company received they in turn agreed that only a five cent fare should be charged for a continuous ride, — one ride in a continuous direction. That made a certain contract in connection with that franchise. The only difficulty has been that the Elevated Railway management have been obliged to assume too much and practically have been crowded out in that.

Mr. Reidy of Boston: I am familiar with the five cent fare guarantee to the Boston Elevated Railway Company. I do not remember that it was a guarantee to the people. On the contrary it was a guarantee to the Elevated Railway Company, which did everything possible to secure the guarantee for a period of fifty years. At that time, in 1896, an active member of the Legislature, who since has occupied the Governor's chair, and myself joined hands in shortening the period of the guarantee.

Money was growing in value in those days. The advocates of a single gold standard felt sure that money was destined to grow progressively more valuable, and the Elevated Railroad financiers wanted

to be guaranteed against a possible demand for three cent fares or a week's tickets at a much reduced price.

New gold discoveries, the McCleary banking bill, asset currency and other reasons conspired to make money less valuable, and now the Boston Elevated Railway Company wants the State to relieve it from the performance of a contract that the corporation insisted should be a condition precedent to the leasing of the subways built in this city to facilitate rapid transit.

Of course had money increased in value so that five cents appeared an excessive street car fare, and the people of the metropolitan district made a demand for a decrease, the Boston Elevated Railway people would have stood behind their contract, or would have demanded millions in compensation for agreeing to abrogate the contract or agreement.

I think the gentleman from Brookline (Mr. Walker) is right when he says the indeterminate form of franchise is the best. It will not do us any harm to put the indeterminate form in our Constitution. During one of my years in the House Worcester became indignant over inadequate street railway service and all her Representatives fought for the 20-year franchise. Then the whole matter was discussed thoroughly by able lawyers and first-class financiers of National reputation, and all agreed that the indeterminate form of franchise was better for the public, the investor and the corporation. I trust we shall propose to the people this provision as now amended by the delegate from Lexington (Mr. Clapp).

Mr. Lomasney of Boston: The gentleman from Worcester (Mr. Hobbs) says that an exception was made in the Elevated Railroad charter. If that is so the condition of that road and its property to-day should cause us to take favorable action on this measure. The Elevated Railroad practically has ruined property in many sections of this city, and, worse than that, it has controlled sources of legislation. It has raided one of the most important trusts of all, — the savings banks of the Commonwealth. It secured the legislation that permitted the savings banks of the Commonwealth to invest in its securities, and the bank officials invested the money of the poor in their securities; and what is their market value to-day? I do not say any of those gentlemen did it wrongfully, but that it was done, no one will deny. What individual could come up here and get the State's credit and money on the junk that the Elevated Railroad now has on hand? Not one, sir, could do it. Talk about their being benefactors! Why, in the first charter secured, it provided distinctly that the Manhattan system never should be constructed in our streets, and, with that proviso in, Boston's business men laid down; but when the speculators who purchased the charter from those who put it through the Legislature secured it, they came before that honorable body and had the provision that was to keep the Manhattan system off our streets taken out of the bill. They never submitted that important amendment to the people of Boston. Of course not. And what is the consequence? Look at the property in the south end. Look at it in Charlestown. Look at it in the north and the west end. Ruined! And who has benefited? The bankers who promoted the enterprise and unloaded the stock on the people, and now, after milking and operating it for twenty years, they come in on their bended knees and say: "Break this present contract." It has only four or five years to run, but still

they said: "Break it. Save us from ruin." And who backed them up? The savings banks officials. They called on the men whose money was invested by permission of the Legislature to back them up, so as to save the savings banks from ruin in these war times. It seems to me it is a good thing to put this resolution into the Constitution now.

The Boston Elevated Railroad has hurt the city of Boston. No doubt it has operated well for the suburban districts. We do not want to stop the people of the outlying districts from getting their ride, but we ought to have some regard for the people in the city of Boston who have property, because all the wealth many of them have is in that property. And, sir, in no case did the Legislature force the Boston Elevated Railway Company to build these important additions. Its promoters forced through the Legislature the Cambridge tunnel; they forced through the Legislature the elevated structure in the west end that ruined the property there. The property there had increased in value from $2 and $3 a foot to be worth $15 and $20. You could not get any one who would sell it for less in certain parts of it then. You could not give it away to-day. There are foreclosures all around. And then they come up and break all their promises and secure permission to violate the contracts themselves, and they get the Legislature to give them more money in a so-called public control bill.

I submit that this resolution is a good protection for property; it is a good protection for the people, because the railroad deliberately repudiated its contract. It said: "If you will give us a chance to operate our road, if you will give us a chance to go to savings banks and get their money, if you will give us all these different privileges, we will guarantee to carry for twenty-five years to and fro for five cents per ride the persons who go to the suburban districts and purchase homes." Now it breaks that contract itself. What would happen if you were to say to the Elevated Railroad Company: "Give us something not in the contract"? Why, it would protest, and talk about the sacredness of a contract, and about the justice of its claims, — but no justice for the people who bought their little homes in the suburban districts on a five cent fare basis and who now will have to pay the increased fare. What has caused it all? It has been bad management. You know it. Fifty thousand dollars a year salary for one individual who now is walking around the streets without anybody asking for his services. Thirty or forty thousand dollars for a private car to carry these great magnates and their friends around, so as to exhibit them to the people. Extravagant salaries to favorites. And whose money was it? Why, the money of the people, who put it in there upon guarantees.

I suggest, sir, that the amendment is a good one, and I hope it will pass.

Mr. Dutch of Winchester: I do not agree with all that has been stated by the two previous speakers, but I do believe that they have demonstrated that a contract between the Commonwealth and a traction company is apt to be about as profitable to the Commonwealth as your bet with your wife is to you. The Commonwealth has maintained as its policy, apart from these two exceptions, apparently, that franchises and incorporations shall be under the control of the Commonwealth whence they came; and it would seem that it is a

proper thing to put into an organic law, the Constitution, a declaration of policy the wisdom of which has been so long demonstrated. Therefore I trust that the proposition as amended by the delegate from Lexington (Mr. Clapp) will be adopted.

Mr. HART of Cambridge: The Convention might notice that it already has taken some ground upon this general question in the 46th amendment to the Constitution of this Commonwealth, adopted last November, in which occurs the phrase: "And to carry out legal obligations, if any, already entered into." We cannot forget that one of the difficulties in passing the constitutional amendment with reference to grants of public money to institutions of learning and benevolent institutions was that the Commonwealth appeared to have made a contract under which it was bound to pay certain sums of money to the Massachusetts Institute of Technology and to the Worcester Polytechnic Institute. We were confronted by the fact that the Commonwealth somehow had incurred an obligation which must be provided for in equity by the form of the amendment; and under the suggestion of one of the most respected members of this Convention this clause was adopted in order to make it clear that the amendment, which otherwise might have wiped out a contract, should be expounded in future by the courts, presumably in such a way as to save any moral obligation into which the State had entered. That is to say, we recognized the right and the desirability in the constitutional amendment of making a clear statement as to the relations of that amendment to previous legislation.

I have been informed for the first time to-day that the Commonwealth of Massachusetts is protected in such a matter as this by statute. We all know the history of the legislation upon this subject, the Fletcher *vs.* Peck decision of 1810, in which the Supreme Court of the United States ruled that a grant of property made by a State was a contract and could not be repealed, the subsequent Dartmouth College decision of 1819, in which it was held that a grant to a corporation to exercise educational or other functions was a contract. What was the result? A considerable number of the States thereupon put into their Constitutions provisions prohibiting any permanent grants of that nature, and that has protected those States. That Massachusetts should not have followed in that trend is astonishing. The need of some such action was felt by the Act of 1831, with the text of which I am not familiar. We have been told upon the floor of this Convention, however, that that act protects us against later action by the Constitution because it was an act of a peculiar nature and the Legislature never would think of going contrary to it! Let me ask my legal friends and colleagues upon this floor whether the courts of this Commonwealth ever have set aside any act of the Legislature upon the ground that it was in conflict with the Act of 1831.

The whole matter comes down to two propositions: (1) The Act of 1831 is a proper act, expressing a policy which the Commonwealth ought to follow. We are so assured by those who are opposed to the pending amendment. They say we have got all we want. If that is the proper policy, then why not put it where there can be no question that it is the policy of the Commonwealth? If we believe in the Act of 1831 we ought to believe in this amendment. (2) If the amendment is not sufficient to protect us, then we ought to raise that issue right

here. If this motion never had been made, if no amendment ever had been proposed to this Convention, this is the time to act affirmatively, because the experience of our sister Commonwealths, the experience of a century throughout the United States, shows that it is not safe upon such a subject to trust simply to the discretion and the good-will and the good sense of the Legislature.

We listened yesterday to a very eloquent and in many ways a very convincing speech upon this floor to the effect that this was a constitutional government, that it is a constitutional government. Personally perhaps I could get along with less Constitution than we have. If it is a constitutional government, and it is, if we are going to improve this Constitution, and we are, let us make the Constitution as safe as it may be on this highly important subject.

Mr. Cox of Boston: Without wishing to engage in the debate or to express any opinion upon the advisability of adopting this amendment, I should like to ask the preceding speaker, who so violently and vehemently declaimed that the experience of the United States and its several Commonwealths indicated that this amendment was necessary, to give one specific instance where a State has been ruined by the failure to have this clause in its Constitution. I know of no suffering which has come to this Commonwealth or to any other Commonwealth because of the fact that such a provision is not in the Constitution of such Commonwealth.

Mr. Hart: The illustration that instantly occurs is that of franchise grants to surface corporations, traction corporations, which have been granted in many States, commonly by the municipal authorities under State authority, grants without termination, perpetual grants. Everybody who is familiar with the business of street cars throughout the Union is aware that in a number of cities those grants have proved exceedingly difficult to deal with. They have given privileges which turned out to be contrary to the public interest. They have allowed terms which could not be safely continued. And in some cases the only way that relief could be had was to hold a club over the companies; that is, to refuse the renewal of grants which had expired unless the companies would give up their hold upon grants in which they had a perpetual right, and that of course is not a legal method nor a safe method.

Mr. Collins of Amesbury: I will admit without argument that it may not be good form for any delegate in this Convention who has possessed neither a corporate interest nor a legal training to inject himself into the discussion of a matter which is so fundamental as this may be. I have listened in vain, sir, for any delegate to state here why the people of Massachusetts should not be given an opportunity to decide whether or no they believe that it should be right that any man or any set of men, any corporation or any individual, should acquire forever in perpetuity the easement upon the privileges of this Commonwealth. If this thing is right, if there has been any well-defined, concrete proposition affecting the fundamental law of Massachusetts, to my mind it is this; and the least that we can do, whether the thing has or has not happened, whether it is or is not for the best interests of the Commonwealth of Massachusetts that it should grant to any man privileges which are of inestimable value and which reach to eternity, is to give the people an opportunity to pass upon this proposition. I

have been a member of this Legislature for quite a few years. My experience goes back to the time when this railroad proposition was brought up, like that of my friend in the third division (Mr. Jones of Melrose) and my friend to the immediate right (Mr. Lomasney of Boston); and I know and every man knows who has had any legislative experience that in the closing hours, with two thousand matters or more before any Legislature which has sat here for the last dozen years, it is mathematically impossible to give to these questions the time that they should have. Very often matters have gone through here half-baked, if you please to allow the slang, sometimes under the pressure of the executive in the other end, who wishes matters to be closed up, that he may take a vacation, or for some other reason. But in any event, sometimes things have gone through here which are far-reaching. With this amendment through, no corporations, however much they may choose to enhance their capital, however much they may choose to approach a few men here, can acquire in perpetuity the privileges of the Commonwealth. The people should say whether any man or any set of men should have an opportunity to get a life grip upon these privileges, which are the people's. I hope that the amendment offered by the gentleman from Brookline (Mr. Anderson) and taken by the gentleman in my immediate front (Mr. Creamer of Lynn) will be passed.

Mr. CHANDLER of Somerville: The debate on this resolution has been very thorough. It seemed to be all on one side and I believe that everybody here now is ready to vote and wants to. I therefore move the previous question. [Laughter and applause.]

Mr. BROWN of Brockton: I am taking the floor just for a moment because I am glad that I was moved to get up at a time when this thing seemed to be going on the toboggan to be lost; and thus to start this very interesting discussion. I would have kept my seat if it had not been for the challenge of the young man over in the third division: "Can any one cite any reason why the people of Massachusetts should not be given an opportunity to have something in perpetuity?" I am surprised, sir. For when I was a young man, a boy, I paid toll at the toll-gate for crossing Charlestown bridge. If that franchise had been in perpetuity that highway and every highway held by charter, including a most important highway into Essex County, the one going down to Lynn, could be traveled by no one to-day unless he paid that toll to somebody who had obtained the right by charter to charge toll. I am surprised that a gentleman who is in the Legislature should defend charters and grants in perpetuity. The gentleman from Melrose (Mr. Jones) asks how the financial interests would feel if this resolution is adopted. Well, let us hear from the people's rights first. How would the people feel? The great mistake in Massachusetts, to my mind, was made when there was a failure to discover that a railway track in our highways is a highway, a hardened highway; therefore no charter for a railway should be in perpetuity; control never should be alienated from the people. Therefore we should not consider the possibility of moneyed men investing capital in such utilities because the tendency now is to place great developments in the hands of the people.

Mr. BOSWORTH of Springfield: I also was a member of the Legislature of 1898. At that time one of our chief troubles was transportation in Boston. I remember the facts somewhat differently from the gentleman in the first division (Mr. Reidy). As I recall it, we voted,

by roll-call, only as to whether the term of the Elevated Railroad fare privilege should be thirty years or twenty. With him I was one of those who voted for twenty years, and we prevailed. Shortly after, by general consent of the members, it was determined that, on the whole, twenty-five years probably would be fair to both State and investors. That time nearly has expired and we know what has happened. There is no use discussing it here. I do not wish to oppose this amendment. But, gentlemen, you should consider this: You are completely tying the hands of the Legislature. You are preventing any authority in Massachusetts from making any agreement whatsoever of the nature of a franchise for two years, for three years, for five years, for ten years or any time whatever, no matter if there is substantial agreement on the part of all that it should be done. Now we must not think of the Elevated Railway as it is to-day. We must put ourselves back in the position that we were in twenty years ago, when we were then all acting as best we might for the interests, as we thought, of the whole people. At that time we thought it was wise that the great principle of the Act of 1831 should be modified somewhat, and it seems to me that we now are proposing a dangerous thing. Are we to treat the Commonwealth as if it was a minor, as if it was not twenty-one, as if it does not even have a guardian fit to represent it, and say that no matter how wise the act may be, no matter how completely all may be agreed upon it, nevertheless the great fundamental law of the Commonwealth shall forbid it?

Mr. Lomasney: I think the fact that this condition exists should cause us to enact this proposal. When there was a proposition before the Legislature in 1900 for the lease of the Boston and Albany Railroad, Mr. Garfield of Brockton offered an amendment that it might be revoked at any time by the Legislature whenever the New York Central Railroad should discriminate against the interests of the port of Boston. It was rejected. We all recall how the service of that railroad fell off. It is doing better now, but the revocation clause would have been a good thing for the State. In my opinion you can depend upon the Legislature elected by the people to revoke something that they find is absolutely wrong. You never can revoke in the Legislature anything that is right, and you know it. I trust we shall adopt this amendment.

Mr. Walker of Brookline: I do not believe there is any necessity of arguing further the main question. I believe the Convention understands now that when we grant a franchise to a public service corporation we grant it as we appoint a Justice of the Supreme Judicial Court, during good behavior. I think it is perfectly obvious that this proposed constitutional amendment is intended to prevent one Legislature from tying the hands of the other Legislatures. One Legislature cannot look into the future and know what is wise or what is necessary; and therefore this is a very wise provision to insert in the Constitution, one, I believe, that will strengthen and not weaken our public service corporations. But I am sorry to say that I must inject another question into this matter. I should like to ask the gentleman from Lexington why he asks to have the words "by the General Court" added to the amendment as proposed by the gentleman from Brookline (Mr. Anderson).

Mr. Clapp of Lexington: To make it plain that no one ever can contend that a city or town, if it grants something that may be termed

a franchise, will be able to revoke it. I said when I was on my feet, — further answering his question, — that Mr. Anderson and myself were both in accord as to the advisability of adding those words.

Mr. Walker: If that were the only effect of those words I should not oppose them, of course. That they are wholly unnecessary, it seems to me, is clear. But unfortunately they do have another effect, as everybody in the Convention is aware. Moreover, the same question will occur in regard to other resolutions; it has occurred already in regard to a resolution before the committee on Form and Phraseology; it has occurred in another matter which will come up, I think, next or very soon on the calendar. There is an attempt made here to put in the words "by the General Court" for the purpose of shutting out any attempt to act under the initiative and referendum. I am sorry to introduce that question again, but it seems to me clear that we ought to leave the words out in this case and in the others use the words "by legislation." For we do not intend, I take it, to fight the initiative and referendum question on every resolution that is to be put before the people on the next ballot, and that will be the result if attempts are made here to restrict the action of the people under the initiative and referendum and to provide that nothing shall be done of this nature except by the General Court.

Now as it is utterly, — in my judgment at least, — utterly unnecessary to put it in for the reasons which the gentleman from Lexington suggested, it seems to me extremely wise to leave it out here and leave it out in the future and let this question *requiescat in pace.*

Mr. Clapp: I rise simply for the purpose of disclaiming any such intention as the gentleman from Brookline seems to attribute to me. It was not at all in my thought that by the use of that language it would prevent the operation of the initiative and referendum. My purpose simply was to make it clear that these franchises, if that term may be applied to street railway locations and the like, should not be subject to the control of the municipalities, but should reside where they belong, in the General Court or in the general source of legislation.

Mr. Creamer of Lynn: I should like to ask the delegate from Lexington if he will change his amendment from the phrase "by the General Court" to the phrase "by the law-making power of the Commonwealth."

Mr. Quincy of Boston: The gentleman from Lexington has explained that he does not desire, and did not intend, the effect which has been pointed out clearly by the gentleman from Brookline (Mr. Walker). Why, therefore, would it not be much better for him to withdraw the amendment at this stage, now that the effect has been pointed out to him, and propose it on the next stage in some form of language which will accomplish the object which he has in view without adding, in effect, to the list of measures excluded from the operation of the initiative and referendum. I entirely agree, after some little study of the matter and consultation with the gentleman from Brookline, that the effect of adding the words "by the General Court" probably would be to exclude the operation of the initiative and referendum in the case of an amendment adopted by this Convention subsequent to its adoption of the initiative and referendum amendment. Why, therefore, raise that question? Why not avoid it by proposing a form of words which will not raise this disputed question?

Mr. Clapp: I should like a little further time in which to consider that question before committing myself definitely. I repeat, as I said before in perfect good faith, that I had no purpose to imply by the use of the words "by the General Court" that if the initiative and referendum is adopted, it shall not be effective in this matter. It seems to me this is only one of several cases that have arisen or may arise raising precisely that question, and the proper way to deal with it ought to be worked out carefully at some subsequent stage. I think it is fair to ask that the language be adopted now, "by the General Court," and then have in mind the general question how those matters should be taken care of.

Mr. Walker: I trust the amendment will be killed on this stage. Probably the words "by law" would do. Some such words as those could be put in, but in the opinion of some the words "by the General Court" would exclude the initiative and referendum. There is no objection to putting in the words "by law" in this case. Most of these provisions have been drawn inadvertently where they say, such and such things may be done "by the General Court." Just say "by law," and there will be no trouble. Thus the question will be avoided. If this amendment is killed we can fix it up very easily on the next stage, but this amendment ought not to go in; that is obvious.

Mr. James H. Brennan of Boston: Coming from a district that has seen a great deal of destruction and ruin of property values by the presence of the elevated structure, I sincerely trust that this amendment will be adopted. I have had the experience of witnessing property values in Charlestown decrease almost 60 per cent during my career, and I am a young man. On Main Street alone in my district the presence of the elevated structure has caused a decrease of over one million and a half in property values in ten years. In 1911 and 1912 I was a member of the committee on Banks and Banking of the Legislature and at that time proposals of the Boston Elevated Railway Company, through their agents, to make their securities legal investments for savings banks were rejected by that committee because they considered the investment unstable and unsound for savings bank investments. But in the last few years those securities have been made a legal investment for savings banks of Massachusetts. When we came to the Legislature from Charlestown, asking relief from the presence of the elevated structure, the contract with the Commonwealth was held up as a stop-gap in order to prevent us from obtaining relief, and we were told that that sacred contract could not be revoked or abrogated. Yet we witnessed last year the Boston Elevated Railway Company coming to the Legislature and saying that the contract ought to be abrogated because they themselves wanted relief. The people of my district could not be afforded relief because of this contract, and yet the Elevated Company themselves offered that argument as their defence and as their plea for relief last year. Coming from a district which has suffered much from that structure and from the existence of a 25-year lease with a public service corporation, I sincerely trust that other districts may be protected from the ravages of greedy public service corporations and that this amendment will be adopted.

Mr. Hobbs of Worcester: This matter has been discussed at some length. It is very pleasing to me to hear the old elevated proposition discussed again in these halls and by the same lips from which I have

heard it on many previous occasions. The woes of the Boston Elevated Railway Company and the woes of the people of Boston from the Boston Elevated Railway Company have been rehearsed so frequently that perhaps it is hardly necessary to state that at the time when the elevated structure was authorized there was a definite issue made between elevated structure and subway, and the popular feeling at the time ran strong in favor of an elevated structure. The people of Boston wanted their elevated structure, they got it, and they have been kicking about it ever since. The question involved by this amendment I think has been summed up very well by the gentleman from Springfield (Mr. Bosworth), who gave a very definite argument as to the effect that this amendment would have upon debarring the Commonwealth from granting privileges for a limited term of years. Such privileges seldom are granted, as a matter of fact, but at any time may become highly advantageous.

With regard to the question of public service corporations it seems hardly possible that at present it would be easy to tempt private capital into the financing of large public service enterprises. A time may come when the conditions will have changed; and at such a time, being mindful among other things of what the Boston Elevated Railway Company has met with in the city of Boston, leaving out of consideration what the city of Boston has met with from the Boston Elevated Railway Company, private capital well might pause at putting money into a public service corporation without some guarantee as to the future. And if this resolution goes into effect, why, that guarantee could not be given. It would become a question at that time as to whether you wanted your public service enterprise constructed by private capital or by public capital. Of course public capital, I presume, might be available if private capital was not; but in the absence of a power to give a definite guarantee for the future such as was given in the Boston Elevated Railway case, it might be practically impossible to finance those enterprises with private capital. Apart from that I do not know that there is any objection to the proposition.

XXXV.

HOMES FOR CITIZENS.

Article XLIII of the Amendments of the Constitution is as follows:

ART. XLIII. The General Court shall have power to authorize the Commonwealth to take land and to hold, improve, subdivide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: *provided, however,* that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

Messrs. Arthur N. Harriman of New Bedford, John A. Donoghue of Boston and Dennis D. Driscoll of Boston presented resolutions numbered, respectively, 100, 236 and 237, which were referred to the committee on Public Affairs. That committee reported the following resolution (No. 320):

Resolved, That it is expedient to amend the Constitution by striking out the forty-third amendment and substituting the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to authorize the Commonwealth and the cities and towns thereof to take land and to hold, improve, subdivide, build upon, lease and sell the same for the purpose of relieving congestion of population and providing homes for citizens.

Consideration of the resolution was begun Wednesday, June 19, 1918.

Mr. Josiah Quincy of Boston moved that the resolution be amended by striking out, in line 4, the words "General Court shall have power to authorize the"; and by inserting after the word "thereof", in line 5, the words "may be authorized by law".

These amendments were rejected, by a call of the yeas and nays, by a vote of 85 to 108.

Mr. James R. Ferry of Northbridge moved that the resolution be amended by striking out, in line 6, the word ", lease".

This amendment was rejected.

Mr. John L. Kilbon of Springfield moved that the resolution be amended by the substitution of the following new draft (No. 324):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to authorize cities and towns to take land and to hold, improve, subdivide, build upon and sell, and, under such provisions and regulations as the General Court may establish or approve, to lease or rent the same, for the purpose of relieving congestion of population and providing homes for citizens.

This amendment was adopted, by a vote of 52 to 48, and, accordingly, it was substituted for No. 320. By a vote of 60 to 51, it was ordered to a third reading Thursday, June 20.

The resolution was read a third time Friday, July 26, as changed by the committee on Form and Phraseology as follows (see No. 391, page 3):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

For the purpose of relieving congestion of population and providing homes for citizens, the Commonwealth and the cities and towns therein shall have power to take land, and, under such regulations as the General Court may adopt, to hold, improve, subdivide, build upon, lease, rent or sell the same.

Mr. Augustus P. Loring of Beverly moved that the resolution be amended by substituting the following new draft (see No. 391, page 5):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

SECTION 1. For the purpose of relieving congestion of population and providing homes for citizens, the Commonwealth and the cities and towns therein shall have power, upon payment of just compensation, to take land, and, under such regulations as the General Court may adopt, to hold, improve, subdivide, build upon, lease, rent or sell the same.

SECTION 2. Article forty-three of the Amendments to the Constitution is hereby annulled.

Mr. Lincoln Bryant of Milton moved that the amendment moved by Mr. Loring be amended by inserting before the word "the", in line 6, the words ", when authorized by the General Court,".

This amendment was adopted.

Mr. Francis J. Horgan of Boston moved that the amendment moved by Mr. Loring be amended by striking out, in lines 9 and 10, the words ", lease, rent":

This amendment was adopted, by a vote of 78 to 41.

Mr. Robert Walcott of Cambridge moved that the amendment moved by Mr. Loring be amended by striking out the words proposed to be inserted, and inserting in place thereof the following:

Article XLIII of the amendments of the Constitution is hereby amended by inserting after the word "Commonwealth", in the second line thereof, the words "or the cities and towns therein", — so as to read as follows: —

Article XLIII. The General Court shall have power to authorize the Commonwealth or the cities and towns therein to take land and to hold, improve, subdivide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: *provided, however*, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

This amendment was adopted, by a vote of 88 to 32.

The amendment moved by Mr. Loring, as thus amended, was adopted and was passed to be engrossed Friday, July 26, by a vote of 89 to 56, as follows (No. 406):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

Article XLIII of the amendments of the Constitution is hereby amended by inserting after the word "Commonwealth", in the second line thereof, the words "or

the cities and towns therein", — so as to read as follows: —

Article XLIII. The General Court shall have power to authorize the Commonwealth or the cities and towns therein to take land and to hold, improve, subdivide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: *provided, however,* that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

The resolution (No. 406) was placed in the Orders of the Day Tuesday, August 6, and on the following day it was reported by the committee on Form and Phraseology in the following form (No. 417):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

Article XLIII of the amendments of the Constitution is hereby amended by substituting the following: Article XLIII. The General Court shall have power to make laws whereby the Commonwealth or the cities and towns therein, for the purpose of relieving congestion of population and providing homes for citizens, may take land and hold, improve, subdivide, build upon and sell the same; but such land or buildings shall not be sold for less than the cost thereof.

The resolution was rejected Wednesday, August 7, by a call of the yeas and nays, by a vote of 90 to 94.

THE DEBATE.

Mr. QUINCY of Boston: The wording of this resolution raises the same question which we have just discussed in regard to the amendment offered by the gentleman from Lexington, through the use of the term "the General Court". This resolution doubtless was formulated before the Convention had acted upon the initiative and referendum resolution. But I think that the lawyers in the Convention will agree that the passage subsequent to the initiative and referendum resolution of an amendment using the express term "the General Court" may be held to exclude the operation of the initiative and referendum in that particular case. That is not the intention, presumably, and in order to remove the doubt, I desire to move to strike out in document No. 320, in line 4, the words "The General Court shall have power to authorize", and insert in line 2, after the word "thereof", the words "may be authorized by law". If we use the term "law", as the gentleman from Brookline has suggested, everywhere in this and other amendments in place of the term "the General Court", it simply avoids the raising of this question and leaves the operation of the initiative and referendum exactly as it is in the amendment as adopted, instead of adding to the list of excluded matters.

Mr. CLAPP of Lexington: It seems to me, gentlemen, that the phrase which the gentleman from Boston in the second division (Mr. Quincy) suggested a few moments ago is much more apt than the words which he now proposes. The words "by law" obviously are too narrow and might mean something which you do not intend them to mean. Every by-law passed by a town or an ordinance passed by a city government is a law. I think, therefore, we had better say "by the law-making power of the Commonwealth." As I understood him, that

was the phrase which he suggested before. I should like to ask him if he would not accept that phrase in place of the more narrow expression "by law."

Mr. QUINCY: My only object, of course, is to arrive at the best terms to use in these various amendments. I do not see any objection to the suggestion of the gentleman from Lexington, "the law-making power of the Commonwealth," because I think it is perfectly clear that the law-making power of the Commonwealth under the initiative and referendum amendment resides to the extent there set forth in the people as well as in the Legislature. It seems to me that the term "by law" answers the purpose and I do not feel offhand like accepting the suggested change, but I would be entirely satisfied with whatever form of words the committee on Form and Phraseology may decide finally to be desirable.

Mr. HARRIMAN of New Bedford: I am convinced that this should be in its broadest sense, for there is no more important question before this Convention in preparation for after the war, no more serious phase than that of providing land for the citizens and particularly for those who return from the front. The English Government, the French Government and, so far as we have been able to learn, the German Government, are laying plans along this line. This is vital and it should be left to the law-making power, so that if cities and towns want to provide for those of their own who return to them and send them back to the soil and give them all the opportunity, they should have it and it should not be construed in a narrow way. If you do not do this these men will become paupers, for there is absolutely no way to keep a man from pauperism if you keep him from the soil.

Mr. UNDERHILL of Somerville: The last statement of the gentleman is more or less ridiculous. To think that Massachusetts or any city or town or the great United States Government is going to allow its brave defenders to become pauperized because you do not allow the people of the various communities to vote on such a question as this is positively preposterous. Now if there is one place where the words "General Court" are necessary, it is in this resolution. There is not a man who has an equity in a home, there is not a man who has a share in a coöperative bank, there is not a man who has a deposit in a savings bank, but who ought to vote that this matter should be in some responsible hands, even as bad as some of our members would make out the Legislature to be. If you do not do that, you do not know how far the Bolsheviki of the Commonwealth of Massachusetts or any of the municipalities may carry this thing. You do not know where you are going to get off. Some restraint is necessary on this proposition. I did not object to "the law-making power" on the previous proposition because I thought if there was possibly a field for the initiative and referendum it might be in that. But this is another proposition; it should be safeguarded, and I believe the author and the man in charge, Mr. George W. Anderson, who was a strong initiative and referendum man, intended that this resolution should carry the words "the General Court".

Mr. MCLAUD of Greenfield: I discussed this very question with Mr. Anderson last summer before his appointment to the Interstate Commerce Commission, and if my recollection serves me correctly it was the consensus of opinion and unanimous vote of the committee on

Public Affairs that the chairman, Mr. Anderson, should revise every resolution submitted by the committee on Public Affairs to this Convention, so that it would be possible for the initiative and referendum to apply to all those resolutions. Why that was not done I do not know.

Mr. UNDERHILL: I may be unduly alarmed. The initiative and referendum are not in operation in Massachusetts as yet, and possibly the recent publicity given to the chief backer of the initiative and referendum, Mr. Hearst, and his newspapers, may cause the people of Massachusetts to pause and consider whether anything advocated by that gentleman or his newspapers is for the best interest of the community, and it will be defeated. But, sir, if it should be adopted, I should like to remind you that since the Convention passed the initiative and referendum, we have had an illustration of the will and rule of the majority, in Russia. We have had an example of popular government without restraint and without restrictions, which could occur in Massachusetts as well as in Russia. And, sir, it seems to me that if we are going to open the doors wide, we are going to have every demagogue from Cape Cod to the Berkshire Hills telling the people: "All you have got to do now is to vote for a homestead, and the Government, the State or the municipality, is going to give it to you." That is a plausible argument to put up to the voter and he is going to vote for the proposition. It ought to have some discussion. They ought to know where the money is coming from, they ought to know how far they should go on this matter, and it cannot be done through popular legislation, because, of course, if somebody is going to get something for nothing, or thinks he is, he is going to vote for it. The advocates of the initiative and referendum said they did not wish to supersede the Legislature, — what they wanted to get at was the corporations, the evil influences that were surrounding the Legislature. What evil influence, what corporation, is going to object to a decent proposition of providing homesteads? You may find the coöperative banks objecting, you may find the savings banks, trustees of the people's money, objecting.

Mr. MANCOVITZ of Boston: I desire to ask the gentleman if he recalls the restriction in the resolution that we passed last fall prohibiting the application of the I. and R. to legislation by which appropriations are made, and if he can conceive of any building operation which would not carry an appropriation?

Mr. UNDERHILL: It has been some time since we passed some of those amendments and rejected others. I am not positive that the gentleman is right in his assertion that we excluded all appropriations from the operation of the initiative and referendum. But even if we did it is only a matter of two years before that can be knocked out by the I. and R. and we can have appropriations under it. The Legislature established a budget system last year and it worked well, — it worked beautifully. We kept the expenditures down so that the tax levy of the State this year is the same as last year, notwithstanding the millions of dollars we have spent in war work. You cannot do that under the initiative and referendum, particularly if you are going to build homes or if the people think you are going to build homes for them.

Now, sir, if we have one thing that should go as it is reported, —

referring these matters to the General Court, — if there is one thing that we can trust the General Court with, if you are not going to abolish and abandon it entirely, it certainly would be this measure, which is a pretty good political proposition for any man who may be a member of the General Court. But he has some responsibility; he has an opportunity to listen to the arguments; he hears both sides of the question, and then if he wants to go wrong, all well and good, — it is up to him. I hope the amendment of the gentleman from Boston will not be adopted.

Mr. Luce of Waltham: An inquiry. Somehow this topic seems to have got before two committees and I find on page 5 of the calendar a resolution of the same purport reported by the committee on Social Welfare. There are slight differences between the two resolutions and I make this inquiry not with the desire that it shall be answered on the spot but that gentlemen of the two committees may inform us after the recess, if a vote should not be taken before the recess, as to these variations and as to which form the friends of the measure prefer. I would call their attention to the somewhat unusual phraseology in the resolution under discussion: "The General Court shall have power to *authorize the Commonwealth*". Offhand it seems to me singular that we should say: "The General Court shall have power to authorize the Commonwealth" to do anything. Possibly the phraseology carries out the intent of the friends of the resolution, but an explanation on that score might be illuminating. But particularly I would be glad to be informed whether these two committees are in accord in preferring this wording to one that has been recommended by the committee on Social Welfare and is found on page 5 of the calendar.

Mr. Hobbs of Worcester: The language to which the gentleman from Waltham refers is the language that is found in the forty-third article of amendment, which this resolution is supposed to replace. The forty-third article of amendment contains that same language, — "the General Court shall have power to authorize the Commonwealth", — and if we have committed a fault it is in adhering to the language of the present Constitution. The difference between this article of amendment and the forty-third article of amendment is twofold. In the first place, it gives the General Court power to authorize not only the Commonwealth but the cities and towns to take land and to hold, improve, subdivide, build upon, lease and sell the same, for the purposes designated in this resolution. The second difference is that it strikes out the proviso contained in the forty-third article of amendment that the amendment should not be deemed to authorize the sale of such land and buildings at less than the cost thereof. The first amendment, I think, needs no explanation. We already have adopted a provision which has gone to the people relative to the advisability of cities and towns providing shelter for their inhabitants. As to the other part of it, the striking out of the proviso, it seemed to the committee that the language of the forty-third article of amendment might very possibly result, in case the Commonwealth had dealt unwisely in its real estate operations, in leaving the Commonwealth with property on its hands that it could not sell at cost and not being able to sell at cost would not be able to get rid of it at all, which was a decidedly unpleasant prospect to contemplate.

It was for that reason that the committee suggested striking out that proviso and adopting the resolution in the form in which it now is.

Mr. KILBON of Springfield: I simply want to call attention to one other difference. As a member of the committee on Social Welfare, though not in charge of the measure, I have some acquaintance with the situation. The two committees have acted entirely independently. There is another difference to which the gentleman from Worcester (Mr. Hobbs) has not referred. This proposed article both in the form in which it comes from the committee on Public Affairs and is now before us, and in the form in which it comes from the committee on Social Welfare, authorizes the leasing of such real estate as the Commonwealth or cities and towns might take under this authority. There is no such provision for leasing in the forty-third amendment, and the difference, the chief difference to my mind at least, between the two forms in which it is coming now to the Convention is in the provision regarding the leasing, which the committee on Social Welfare desired to guard somewhat more carefully than simply by authorizing the leasing.

The debate was continued after the recess.

Mr. QUINCY of Boston: On account of the remarks of the gentleman from Somerville (Mr. Underhill), it may be worth while to take a moment to refresh the recollection of the Convention as to the action which it already has taken in regard to the exclusion of certain matters from the initiative and referendum, — particularly as the memory of the gentleman from Somerville himself this morning seemed to be somewhat uncertain.

We had a long debate, as the Convention will remember, as to what ought to be excluded and what ought not to be excluded. The result was compromise action, as it may be called, in which a list of the excluded matters was drawn up. It was too long for many members and too short for some other members, but that stands as the action of the Convention. Now, among the classes of laws which are excluded are these: "Measures the operation of which is restricted to a particular town, city or other political division, or particular districts or localities of the Commonwealth." In other words, you cannot have special local legislation under the initiative and referendum as it stands. Also, a measure that makes a specific appropriation of money from the treasury of the Commonwealth by initiative petition is excluded. Now, I think that those two exclusions should remove largely, or partly at least, the apprehensions of the gentleman from Somerville.

Mr. UNDERHILL: Will the gentleman please read the balance, the rest of that paragraph of exclusion?

Mr. QUINCY: I am glad to do so. The rest of the paragraph reads:

> 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.

But note that the General Court has the power to repeal that law in spite of the fact that the people have passed it. If the General Court thinks it is a bad law and the appropriation ought not to be made it can repeal the law; it would be a law and not a constitutional amendment.

Mr. McLaud of Greenfield: I have forgotten the number of the initiative and referendum resolution. If there is an exclusion, that the initiative and referendum shall not apply to local measures, and then this measure is passed giving authority for the Legislature, as it is proposed, to pass a bill for cities and towns to buy, sell, subdivide, rent and lease land, then there is right off a conflict. I should like to ask the gentleman how, in his opinion, that would be construed? Would the initiative and referendum govern or would this one govern?

Mr. Quincy: I am glad to answer that question as far as I am able to do so. I suppose that legislation passed under the proposed article of amendment contained in document No. 320 restricted to a particular city or a particular town would not be subject to the initiative and referendum; but I am certain also that legislation, general in form, and giving all cities and all towns in the Commonwealth the proposed authority, namely, "to hold, improve, subdivide, build upon, lease and sell the same for the purpose of relieving congestion," etc., would be subject to the initiative and referendum as it now stands. I am sure also that the authority of the Commonwealth itself, meaning the executive government of the Commonwealth, to do these things named in this amendment, would be subject also to the initiative and referendum.

So that there is a real and a substantial difference, and the use of the words "General Court" may operate to effect a real and substantial restriction upon the scope of the amendment in relation to the initiative and referendum amendment as it stands.

Now, I merely want to suggest, in conclusion, that the Convention will save a great deal of time by standing to our decision in respect to the matters excluded from the operation of the initiative and referendum. Whether we have acted rightly or wrongly, let us stand by our decision and not have the question reopened as to what ought to be excluded and what ought not to be when we come to the specific amendments which we now have under consideration. The course suggested by the gentleman from Somerville, if I understand him correctly, certainly would tend to reopen the question of what ought to be so excluded and what ought not to be so excluded in connection with the further specific amendments which we now are considering and are to consider.

Mr. Underhill: In addition to the subject-matter contained in No. 142 on page 3 of the calendar, by the vote of the Convention this morning, we are discussing also No. 157 on page 5 of the calendar, a resolution empowering the General Court to authorize cities and towns to take land for providing homes for citizens.

Now, in discussing both of those questions, I suppose the amendment of the gentleman from Boston would be applied, if the Convention saw fit to apply it, to the second proposition, on page 5. It does not require a vivid imagination, nor extend it to a breaking point, to conjure up such a proposition as the city of Brockton buying land down on Cape Cod and providing summer homes, or Pittsfield buying up a tract in the Berkshires and providing autumn homes for their people, under the provisions of that resolution. I do not want to bring into the Convention or reopen the discussion of the I. and R.; but the whole tenor of the argument during the debate of that question was that the proponents did not wish the corporations, or indi-

viduals or companies, to misuse the people by influencing legislation in the House or in the Senate, and that there was no intention on the part of those who believed in the I. and R. to interfere unnecessarily with the prerogatives, activities or privileges of the Legislature; that that was not their intent or purpose.

Now, this is a legislative function. It can be left safely with the General Court, and I do not believe, with all deference to the various cities and towns of the Commonwealth, that you safely can leave such a proposition as the one on page 5, wide open. I do not mean to discriminate or to cast any aspersions upon Lawrence, but just to take it for an illustration. Lawrence, under a general proposition, such as is contained in this resolution, practically could bankrupt its treasury, and could do it through the votes of the people of that city under a general law. I do not mean to scoff at Lawrence, for I could mention a dozen cities or towns which I have in mind that might take such action as practically would drive from their borders every industrious, every provident and thrifty citizen, because the taxes would be so great that they would not be able to stand it, and, although their property were to be sacrificed, it would be better than, besides sacrificing their property, to go into debt in addition.

I hardly know how to get over this problem, except that we leave to the General Court such matters as this. The previous matter had to do with franchises, and I think the gentleman in this division who led the fight stated that perhaps it was necessary to adopt the amendment offered, and supported by him, in order that the people's rights under the initiative and referendum, if it is adopted, might be protected, in order that those who have large combinations of capital and were seeking franchises could not debauch, — if that is the right word, — or influence the Legislature.

But here is another proposition, and I say that in many cities or towns, and I do not know but that in the State as a whole, a demagogue of sufficient force and magnetism could influence the majority of the voters who would vote on the question, to place the Commonwealth in a very embarrassing financial position.

I referred this morning to the budget system. It was adopted and put into operation last year for the first time. There has been no better work done by the Legislature in the history of Massachusetts than the establishment of that budget system. It has saved the people of the Commonwealth a great deal of money, directly and indirectly, and should be extended to include the executive. I think it is recognized generally that if there was any waste or mis-expenditure of money this last year, it has been in another branch of the government rather than the Legislative, and if we can extend the budget system to the executive department, we are making another forward step. Then if we can establish a State wide budget system for municipalities we are making another step forward. But we cannot do it if you are going to leave such popular propositions as this might prove to be, to the votes of an irresponsible majority of the voters, and so I claim that there must be some distinction. This question necessarily must come up in some of the matters we are to consider later on, whether you are going to leave them wide open to the uninformed electorate, or whether you are going to safeguard them so that the rights of the people themselves may be conserved by a deliberative and responsible body.

Mr. WATERMAN of Williamstown: I trust that we will consider these two propositions very seriously, because I believe they are against the public welfare and against the individual welfare. If you remember, last summer we adopted or recommended to the people the Amendment XLVII, to provide in cases of emergency the right for the cities and towns and the State to act in those emergencies. Under that provision the Legislature during the winter enacted a law, Chapter 205, to carry out the provisions of the amendment that we submitted to the people and which the people accepted; and the Legislature was very careful and particular to see that the law that they should pass should be in harmony with and not exceed that designed by the Constitutional Convention, and they passed it and safeguarded it in the first section. I am sorry that this is not in print so that you could all get it, but I did secure this copy:

> Cities and towns acting under the provisions of Article XLVII of the amendments to the Constitution of the Commonwealth for the purpose of maintaining, distributing and providing at reasonable rates, during time of war, public exigency, emergency or distress a sufficient supply of food, other common necessaries of life and temporary shelter for their inhabitants, shall proceed according to the provisions of this act.

They provided also, in section 2, that the purchases should be made and paid for in cash. They established also, in section 3, a form of accounting that should be satisfactory to the Bureau of Statistics, and that these accounts should be kept separate. They gave them also the extraordinary power of borrowing money to carry out these purposes beyond the debt limit or any obligation which they had for other purposes.

So that it seems to me as though the Legislature was conservative and met the question carefully and to the people's interests. Now we come down to these two amendments and we have a far different proposition. Under the amendment that was accepted in 1915, Amendment XLIII, they allowed the State to go into this business, but all their costs of buildings and of the enterprise, when sold, should not be sold for less than the cost thereof. The amendment suggested today cuts that out entirely. You can go as far as you have a mind to. It allows not only the Commonwealth, but the cities and towns, to go ahead and do all these matters. It leaves it open for a nice real estate scheme all over the Commonwealth, and you know how easy it is to say to somebody: "Why, I will help you get a home if you will vote for me for so-and-so." It is easy for some people to fall for that sort of thing and vote themselves into trouble.

Now, the history of this municipal ownership is that government supervision has been to its loss. It has thrown people out of homes rather than given them homes. The very people you want to give homes are deprived of it because of the exceeding great cost when the municipality or the State goes to work to try to provide homes for them. That has been the history of several countries which have gone into public ownership, to furnish homes for their citizens. Not only that, but it immediately segregated a section of the public in such way that they say: "There, that man is living in a place that is furnished by the Commonwealth," contrary to all our principles of pride and thrift encouraging people to strive for themselves. So that when you stop to think how serious this proposition is I think you will kill both measures.

Mr. Harriman of New Bedford: I listened this morning with attention to the remarks of the gentleman from Somerville (Mr. Underhill), when he assured us that there was no agency in the Commonwealth that would do anything that opposed what I conceive to be one of the most feasible ways to provide land for the people.

I hold in my hand a copy of a paper called "Industry." It is a bulletin issued by the Associated Industries of Massachusetts for the information of its members. I want to call it to the attention of this Convention, in view of the fact of the words of the gentleman that there is no organization that would oppose any remedial measures such as are proposed. I want to call attention to its heading, and it is very peculiar, because we sat here last year and heard considerable said about pressure on the Legislature. This is what the heading says, — it is not a long document and I am only going to read a few lines:

Legislative Lobby. No laws hurtful to industry passed by this year's General Court. Personal attention by manufacturers to legislative matters proves effective.

Listen to this:

Facts presented by direct method make strong impression on committees.

Now, what were some of the things that they were opposing? We are assured that there was no one who opposed these things by the people. Here was the most powerful organization of industry in Massachusetts, representing practically all kinds of industry, and millions upon millions of dollars. What did they oppose? They opposed the fifty-hour bill, the "three-tour" bill for workers, the weavers' bill, and they opposed the petition of the American Federation of Labor that cities and towns might be permitted to provide homes for their citizens.

What was submitted last year by this Convention was adopted by the people along this line. Into the Legislature came a measure providing for homes for its citizens in line with that amendment, putting it squarely up to the Legislature of Massachusetts. That bill was passed in the Senate and came into the House, and was killed in the last days of the session of the Legislature through the efforts of some of the men who have spoken on this floor, who assured us that there was no influence or no force that would deprive the people of this State of an equal chance and an equal opportunity. The labor organizations, and others who ask for this, ask not charity. They simply ask that land be put where it can be made available and useful to the citizens of this Commonwealth.

I cannot conceive how any city or town could wreck its finances by buying homes for its citizens, if they shall not go beyond the debt limit. I do not think the argument is good. It will be necessary to do this to get homes particularly for those who return from the war. Those men come from the different cities, and it may be possible that the men in each city do not want to be separated from the ties that always have bound them, and they do not want the State to provide homes for them away from the homes of their families. It should be right and proper for the city that takes a landed interest to take it with due process of law.

I trust this measure goes to the people, and there will be no hobble or any strings upon it, as has been attempted with other measures

which already have been adopted. There is no man in this Convention, and no man in the Legislature, who understands the conditions that surround it, but will say that the measure providing for fuel is better than what we have had. The people voted for the right to use their own money to keep them warm and take the industry of furnishing fuel out of the hands of private speculators, where it has been and still continues to be, even under the present law which has been passed by the Legislature, and which goes where all remedial legislation goes, — to the mercy of the judges of the Supreme Judicial Court of this Commonwealth.

Mr. Flaherty of Boston: I think it is only fair to say, for the committee on Social Welfare, on behalf of Resolution No. 157, that there was a long hearing, in which many persons appeared before the committee in favor of this measure, particularly the chairman of the Homestead Commission, who explained at great length to the committee how the Homestead Commission is constituted at the present time, and under its powers and duties was hampered somewhat in carrying out the spirit and purpose of the homestead law; and, for that reason the provision that appears in Amendment 43 of the Constitution, requiring that the sale of land or buildings shall be for not less than the cost thereof, was struck out, because of the fact that many persons who desired to take advantage of the homestead law of this Commonwealth were unable to pay at once the amount of money required.

It was for that reason the proposal was incorporated in No. 157 that the land might be leased, or that it might be subdivided, in order that all persons desiring to do so might take advantage of the homestead provision. There were a large number of public-spirited, philanthropic citizens, who came in and represented the conditions that existed in the various cities and towns, and, after a careful investigation, represented that this was a necessary measure. It was so safeguarded by our committee that I may say to the gentleman in this division from Somerville (Mr. Underhill) that he need not have any apprehension of financial ruin to the cities or towns; that the city or town judges for itself whether it shall take advantage of the act, — there is nothing obligatory upon them; so that it hardly makes any difference whether this law is one which is enacted by the Legislature or whether it is enacted by the operation of the initiative and referendum.

It is a good law, it is along lines of progress, along lines of real helpfulness, — a method adopted by the State or by the municipality to assist its citizens. Call it paternalism if you wish to, but it is a good thing. It is a good thing for this State, and we ought to adopt it.

Mr. Brown of Brockton: I have favored the initiative and referendum and objected to any limitations being placed upon that measure, but I voted with Mr. Clapp of Lexington to amend with "the General Court." I favor the same with this matter.

Why? Because two distinctly different matters are mixed up in this resolution. One is fundamental, — a principle; that is, shall the Commonwealth and its towns and cities be permitted to engage in furnishing homes for the people? Now, that issue being put directly to the people, easily may be comprehended by them, and they may vote Yes or No on that. One step beyond that and you go into the legislative details, a deliberative field, and those who believe in homes

may be led very easily to vote against it, if they listen to the Virginian-Massachusetts voice of the gentleman from Somerville (Mr. Underhill) shouting "Bolsheviki". But his voice would be silenced if it could be said: "The one thing we want to determine at the polls is: Shall this great principle of the people owning homes by the aid of the Commonwealth be established as constitutional by legislation?"

Now, we ought not to be disturbed by the suggestions of the gentleman just behind me (Mr. Waterman) as to what is going to be the effect of such a principle. That great State that was founded by the exponent of brotherly love, William Penn, was built upon this self-same principle of furnishing homes to those who came to settle. It not only invited and welcomed the persons but it loaned the credit of the State, so that they might own a home, pay for it in instalments and thus build up the State; and it was built up along that principle.

Benjamin Franklin, standing before the British Government before the time of the Revolution, was asked about the currency which the Colonies were floating at that time. When asked if the Colonies were using British gold, he told them No, that the Colonies were using bills of credit issued by the people. The currency emitted by the Commonwealth of Pennsylvania was founded upon land, founded upon the homes; and he, in common with Jefferson and others, believed and declared that there could be no better currency, no better exchange medium, than that founded upon the homes of the people and finding redemption in the credit of the people who issued it.

Well, this new coming democracy will be founded on a system that will give homes to the people. In our little city of Brockton, which we hope at some time to rival that of Brookline, we have schools which teach citizenship to the "Bolsheviki," or what apparently would pass as such to the eye of the gentleman from Somerville, — at least some of them come from Russia and some from every other country you can speak of. They know little of our language; sometimes we have to give them numbers in our factories when they first come because we cannot pronounce their names, for fear sometimes we might be charged with circulating improper literature. But these people come readily to learn and Brockton citizens lend effort so far as they can to instruct those people in citizenship. We graduated 192 last year out of the Young Men's Christian Association's efforts, fitted for citizenship. The Chamber of Commerce furnished a part of the money to carry on that school of citizenship.

When they talk to Brockton about sabotage, about Americanization, we answer them in this way: The city of Brockton pays the best wage of any city in this Commonwealth; we have the best organized, — not "Unionized"; I did not say that, I said organized, — city in the United States. We have not got any of these unpatriotic outbreaks because we are paying the men a living wage. What has that got to do with it? Why, the foundation of all Americanization, the way to humanize America, to Americanize America, — because the terms are synonymous, — is to pay a man a wage that represents the product of his toil. It gives him an American living. With that wage we want a man to have a home. Away with these sugar box tenements, these three, five or six-deckers, with everybody's children quarreling, with the families quarreling over the children's quarrels. That is un-American.

Was it Pitt or Burke who said at the time of our Revolution that we were unconquerable because the man took a musket in his hand, placed his feet on his own land, and defended his own home? That was true then; it is true now; it is working out that way in this great war. Where to-day is it that men have done and will do their best? Where does he say: "You shall not pass"? It is on the line where the French and Italian homes are being defended. There the enemy meets slaughter; it is where the homes are, where the men and the women are defending them; there they go down to death willingly because it is in defence of their homes.

A true democracy arises where men have an interest in the soil; and men cannot get an interest in the soil under present economic conditions. Men did not get an interest in the soil of Great Britain until it passed an act by which the great landed estates could be taken and subdivided; thus the people could get a foothold and become better citizens.

It must appeal to the friends of the initiative and referendum and to the labor men. This is to provide for the taking of land for homes for the people. The principle should be kept clear from the details which need deliberative legislation. You should want it so if you wish to carry it at the polls. If you want to kill it, all you have got to do is to send it out loaded with details; then it is subject to attack through the details.

You ought not to be so particular, you friends of the initiative and referendum, in limiting legislation by the General Court. Deliberation on details should be by the General Court; fundamental principles, a change in the Constitution that they can comprehend, by the people.

It should not be a proposition for taking land in one city by one way, and in another city by another way. The general proposition for the ownership of land, for the purpose of giving the people homes, is a distinct proposition and will be adopted.

Who rides through this Commonwealth, in any part of it, who cannot see places where he might say: "I wish I owned a home here?" There are beautiful places, overlooking streams, overlooking valleys. Suppose we carry out the principle of operating street railways to connect these lands with our factories. Suppose we renew the natural initiative in a man by putting him back on the farm for a part of his time instead of stifling his initiative by putting him up against a factory machine, making him a cog-wheel, so to speak, and destroying the true American spirit of leadership and self-confidence. Suppose we could connect these factories with farm homes in the country lands. Are you not going to raise better children out under the shadows of the trees on the hills bordering the streams than you are under the cursed darkening of the influence of the factory and the squabbling of the tenement-houses? For a new democracy people must be raised who are worthy to propagate it. You cannot raise them until you place the family in its own home, the American home, the home that has land about it, in which one can quarrel without letting the whole neighborhood know that one had a quarrel. Home quarrels once in a while may be necessary to show who is boss; and it develops some good principles on which the home ought to be run.

Let us, in all these matters that are coming before us, try to distinguish between the fundamental principle which can be made clear,

and which can thus be passed upon "Yes" or "No" by the people; and leave the details to our deliberative bodies because they belong to a representative democracy.

An expression of the people on this great question: "Shall the Commonwealth by itself or through its subdivisions take over land and provide for the building of homes?" is what we want. That would include the very laudable suggestion of the gentleman from Somerville (Mr. Underhill). I disagree with his suggestion that it is ludicrous to suppose the city of Brockton might provide for summer homes. We who can have it get it; and we who have it, are we so narrow in our conception of the brotherhood or the fatherhood that we would not to God that it could be so ordered that everybody could enjoy just what we are enjoying? [Applause.] Are any of us so deaf to the vibrations of suffering that surround us that we have enjoyed something without having our enjoyment greatly nullified by the remembrance that arises in our own mind that there is suffering somewhere? It is the duty of society to relieve that suffering. It is just as feasible to take fathers and mothers out on a summer outing as it is to take the children, and God knows the fathers and mothers need to commune with nature occasionally quite as much as the children.

I thank the Convention for its attention. [Applause.]

Mr. James R. Ferry of Northbridge moved that the resolution be amended by striking out, in line 6, the word "lease".

Mr. Ferry of Northbridge: The subject of State homesteads has been given serious consideration for the last two years by the Legislature, and especially the Social Welfare Committee, of which I have been a member, and in drawing up the first bill the committee, with the Homestead Commission, thought that it would be unwise to lease or to rent any of the property so purchased or built by the State. Our bill therefore prohibited this leasing and renting.

It seems to me that the members of the Convention do not realize that we have a homestead proposition now. We have something like nine buildings built by the State, nearly finished at this time I presume, and I am somewhat surprised at the statement of the member in this division (Mr. Flaherty) stating that the commission wished to have the law changed so that they could sell them for less than cost. Now, it seems to me that this would be a very unwise proposition. It does not seem to me that any commissioner or any official should be allowed to dispose of property that the State owned for less than cost or at whatever price they might see fit to charge. This would be the same with renting or leasing. This commission or a commission in the cities and towns might be influenced, — and a great many of them are influenced more or less politically, — thinking it would improve their position with the people if they sold or rented the property of the State, city or town for less than what the city or town could afford to rent or sell for.

This is a large question, and should be gone over very thoroughly. It seems to me that this whole housing problem, both of the United States, and of the State and the individuals carrying it on today, is all wrong. The houses they are building are not large enough. We say that we want to have houses that will house our foreign population, and most of them that are married have large families, three or

four, five or six, and how in the world are you going to put a man and his wife and five or six children into one of these small coops with four small rooms and a bath? Now, this is the proposition. The men who are back of this housing problem do not realize what the people need, and it is up to us here in Massachusetts and our State commission to build something that is appropriate, something that is going to do some good, that is going to relieve the congestion that we are talking about; but you never will relieve it by building a small shack, at the cost of $3,000, that the poor people cannot afford to purchase because they cannot get their family into it.

I know what I am talking about. I have studied this subject for three years. I have charge of over 700 tenements, with some three or four thousand people living in them, and I know what it means. I know that if you are going to please the people, if you are going to have them live right, if you are going to bring them up to our standard of living you must have homes for them, and they must be decent homes, and large enough to accommodate the whole family, so when the children grow up they will be glad to invite their friends and neighbors to come in and visit them. But you never will do it on the lines on which this housing problem is being conducted today. I hope my amendment will be accepted.

Mr. Mahoney of Boston: I should like to ask the gentleman if No. 157 does not cover that. It says: "The General Court shall have the power to authorize cities and towns to take land and to hold, improve, subdivide, build upon and sell, and under the provision of such regulations as the General Court may establish or approve, to lease or rent the same for the purpose of relieving congestion of population and providing homes for citizens." Excuse me just a moment. I merely will ask: Would the provision for regulation by the General Court cover that?

Mr. Ferry: I understand the scheme is now that the Legislature shall not have the privilege of regulating. That is what I object to. I object to giving the people the right to legislate on this matter. It is all right to say we trust the people, — I trust them, — but when we come to a matter like this, where someone, some commission or committee must study this thing out, decide what is the best to do, how much it ought to cost, how much of the taxes of the State or city or town should be expended for that purpose, the people do not get together; it is impossible for them to get together. Somebody has got to make these regulations, and I think it would be a very unwise policy if we do not allow the Legislature to regulate the building of homesteads.

Mr. Mahoney of Boston: I hope the amendment will not pass, and my reason is that it is covered fully in document No. 324. The gentleman from Somerville in this division (Mr. Underhill) said that the coöperative banks of this State would be opposed to this measure. Why, this is a line in the way of coöperative banks. The coöperative bank was formed for the purpose of giving to the laboring people a home, and this is merely in the same line. In Lowell they have started to build a few homes and to sell them to the people of Lowell. Well, no doubt but what they have made a mistake in the building of them. There is no question but if the Commonwealth take this matter up they will build homes large enough for any family, that is, a home with

about six rooms and a bath. It would cost only the difference of about $100 more for the addition of the two or three rooms. So I say that this matter should be passed. Either one of these measures is all right. I do not care which one of them is accepted, but I myself think the one that was reported here by the chairman, the ex-Governor, Mr. Brackett, who was the originator of, and introduced the first bill in the Legislature of Massachusetts for, the coöperative banks, is the better one. I do not think there was a better authority on co-operative banks in this State than ex-Governor Brackett and I am satisfied that he would not have had his name attached to anything that would not be right. If any resolution is to be passed I should like to see the one with the name of ex-Governor Brackett passed by this Convention.

Mr. Flaherty of Boston: I rise in order to correct any misapprehension that might be in the mind of the delegate on my right (Mr. Ferry) as to what I said concerning the incorporation of that portion of our resolution relating to leasing property. He quoted me as saying that the members of the Homestead Commission said to our committee that it wanted an opportunity to give land or homes to persons for less than cost, in other words, at the expense of the Commonwealth. I did not intend to be understood as saying that. If my language is susceptible of that interpretation I wish to withdraw it. What was said by the member of the Homestead Commission, Mr. Sterling, who appeared before our committee, was this: That under the present rules or under their present authority and power they were rather restricted, first, because of the fact that they were required to get the full price from a person whom they desired to aid; and that the Legislature and the Attorney-General rather felt that they needed more power, more authority. The purpose and design of this amendment is to relieve the Homestead Commission of any restriction that might now exist, in order that they might have full power and authority to relieve admittedly bad conditions existing in the State, not, however, for the purpose of making a gift to any person, not for the purpose of gratuity, but rather along the lines of aiding persons who desire homes and to give them an opportunity to acquire them.

Mr. Kelley of Rockland: It seems clear to me that a further word of explanation will be very apt at this point. We must start with the fact that the people already have passed upon this question fundamentally, as suggested by the gentleman from Brockton (Mr. Brown). We have the 43d amendment now; the first resolution under consideration here repeals the 43d amendment and makes what change? It simply inserts the word "lease", which is not in the 43d amendment, and strikes out the provision against selling property for less than cost. If you adopt the first resolution here you change the 43d amendment simply by inserting the word "lease" and striking out the provision relating to the sale below cost.

Now the resolution next in order considered with this is No. 324, reported by the committee on Social Welfare. And by the way, my name is mentioned there as in charge of the measure only because Governor Brackett has passed from us. That committee gave careful consideration, and the whole matter turned upon the additional power of leasing. The committee, as you will see, in No. 324 care-

fully provides that cities and towns under regulations and provisions of the General Court, may lease, and there it stops, so that No. 324 does not repeal the article which the people already have accepted and made a part of the Constitution; it is supplemental to it. Now, then, I submit to the Convention that if the Convention wishes to repeal the 43d amendment, which the people already have adopted, they will pass the first resolve. It adds simply the power of leasing and strikes out the provision the people adopted, — that no sales can be made for less than cost.

If you adopt the second resolution you give the added power to lease, but that power is given under such regulations and provisions as the General Court may establish. And that need not be, as you will perceive, a general regulation and provision. The city of Pittsfield may have conditions unlike the city of Lynn. My town may have conditions unlike the conditions in other towns. If my town or the city of Lynn see a way in which they may establish homes and establish them right, I assume that the General Court some time, if ever, acting upon this, will see that the work is done right. Now, the power given to the city of Lynn to do this work and to lease may require different provisions and regulations than would be imposed upon the town in which I live, and so the committee on Social Welfare believed in starting with the present amendment, which the people have adopted, and then adding power to lease, subject to the provisions and regulations imposed by the General Court.

Mr. Waterman of Williamstown: I just want to say that last winter, upon the application of the Homestead Commission, these extra powers that they desire in order to carry out their scheme were adopted and given them. They had an appropriation of $50,000, and they bought a tract of land in Lowell, and they have spent $43,000 for twelve tenements. You can figure up and see how much each of those cost and how much rent you ought to get for each tenement. Now they are paying in, those that are sold or arranged for, certain sums of money, and that money, with the balance left in the treasury, can be used for the furthering of the scheme. Also they can insure the building, which they could not do before, because it was State property. So that those matters were taken care of by the Legislature this winter.

Mr. Brown: I should like to have it made plain how much of that available money that Homestead Commission felt called upon to invest in land before they commenced building homes.

Mr. Waterman: I think they paid $8,000 for it.

Mr. Brown: Was it not $10,000?

Mr. Waterman: Whatever the sum was. Of course I suppose that is taken into account with the $43,000, but that will be proportioned according to the number of tenements that are put on the land. At any rate, it is a costly experiment for a small house. As I am credibly informed, in order to turn round in the kitchen they hang the hot water boiler on the ceiling.

Mr. Underhill: The gentleman from Brockton (Mr. Brown) has given you this afternoon an illustration of the dangers which I tried to point out, for the members of this Convention listened to his fervid oratory and at his conclusion gave him a round of applause. But sir, just let us analyze a few of his most rounded periods, which the

crowd, or the voter, if you please, the all powerful, would not stop to analyze. He says: "Where are the words emblazoned, 'They shall not pass'? At the doors of the homes of the French and the Italian." But he does not say that the French and the Italian built their *own* homes; they did not ask the government to do it for them, or the State or municipality. Nor did he say that what is worth having is worth working for and earning yourself, and that if you are going to get it through political pull, as most of these people would get the homes that were built by the municipality, it would not be worth staying in or worth fighting for.

Mr. DONOVAN of Springfield: I should like to inquire from the gentleman from Somerville (Mr. Underhill) if he contends that a man without a home has nothing worth fighting for.

Mr. UNDERHILL: I hardly catch the drift of the gentleman's question. If he will put it again I will try to answer it. To continue, the gentleman also said that in Brockton they paid a living wage, and that is what made the Bolsheviki of his own city so happy, contented and satisfied. Now, if they pay them a living wage, — and, sir, I have a deposit and a life insurance policy in one of the Brockton banks, and know there are coöperative banks there, — why, if they are paying them a living wage, cannot they go to their coöperative bank, and why cannot they build their *own* homes and save their self-respect, and not have to get into a political mix-up in order to get a home? They would have to be heelers, they would have to be political workers, in order that they might get the first chance at the first home or the hundredth chance at the hundredth home. His argument was all along that line of fervid oratory, to use a kindlier expression than I did this morning, that is going to affect the mass of the people. Does any one in this Convention believe that if that gentleman went before the voters of the city in which he is so popular and gave voice to the expressions which he has given this afternoon that they would consider for one moment the cost to that municipality? No, they would vote unanimously, practically, for the expenditure of any amount of money for the buying of summer or winter homes. And who would have to pay for it? Why, the very people who are provident, the people who have saved and who have money in the coöperative banks against the day that they may start their own home. The man who already has saved and has started his little home, and as his home is taxed by the municipality, would have to pay for the establishment of a home for somebody who spends his time between Brockton and Boston, having a good time, going to the theatres, spending, spending rather than saving, *saving*.

Now, sir, I know what I am talking about. My first efforts at saving were through the medium of a coöperative bank. I have been a depositor in the coöperative bank ever since I was fifteen years old. I paid off the mortgage on my first shop, where I learned my trade as a blacksmith, through the coöperative bank. I paid off the mortgage on my first home through the coöperative bank. I paid off the mortgage on my summer home, a modest little place down on the Cape, through the coöperative bank. I had no better opportunities, I had no more favoritism shown me than any other individual in this Commonwealth, and my wage when I started to save in the coöperative bank did not begin to compare with the wage they pay in Brockton.

What I object to, sir, is this giving power to the people and not giving with it responsibility. It is giving to the people who come to our shores the idea that they need not conform to the laws and the rules and the regulations and the living of the majority of our people, but they can have special laws passed for their special benefit, and that we must make the country fit them under special law. That is not the right way to bring up good citizens. For years we have had the Irish, the French and other immigrants coming to our shores, who have had the greatest incentive to progress, — that of ambition, — and they have proved themselves worthy of that incentive and that ambition. From being the ditch diggers, the hewers of wood and the drawers of water, today the descendants of those nationalities fill our highest positions of trust and responsibility. They are lawyers, teachers, doctors, the professional and the business men of this Commonwealth, and they have well repaid the Commonwealth for the opportunity which the Commonwealth gave them. Are you going to treat another race of people who come here differently from those races that already have come here and made good? I say there is no reason for it. It is educating them along the line of poverty or pauperism, to do everybody rather than to do for themselves and for the government.

I am at the head of an organization which for 25 years struggled for existence. Why? Because, in the generosity of its heart, it was giving daily, weekly, monthly and yearly to applicants that aid which they thought they needed. It was a failure. It was down and out. I established a different policy, not the policy of financially aiding those people continuously when they came for relief, but of finding what they could do, what best they were fitted to do, and helping them to help themselves, — reëstablishing, maintaining and developing their self-respect. That, sir, prevented them from becoming paupers, from becoming public charges, and where we used to have man after man come to this organization and receive temporary aid, and then drift gradually from our aid to accepting aid from the State and the municipality, for the last two years there have been very few people who have come to us who have not been able to reëstablish themselves through our suggestion, through advice, and through making up a budget system for them to follow, — teaching them to save rather than waste.

What is the use of taking the money away from those who have been provident, those who have been thrifty, those who have been self-denying, those who have been careful, and spending it, as you are going to do under this proposition if you leave it in the hands of the people, for those who have been thriftless? That is what I am objecting to. I am not objecting to the fundamental principle of aid and assistance which this resolution may give, but I am objecting to giving the gentleman from Brockton (Mr. Brown) or any one who has the flow of language that he commands, the opportunity of fooling the people into the belief that they are to have anything they want by voting for it rather than by working for it.

Mr. Herbert A. Kenny of Boston: My friend from Somerville (Mr. Underhill), who we know is the watch-dog of the treasury, is always very much averse to spending any kind of money. He started very early in the life of this Convention to save all the money possible.

He did not want the speeches reported. And now I understand he is advertising coöperative banks. The trouble with the gentleman from Somerville is that he has not got away from the atmosphere of the Legislature, and he intends that every member of this Convention should be stretched on the Procrustean bed of that Legislature. Now, if he kindly will get away from the Legislature and get out into the broader fields, broader lines of political economy, he will find that this is a Convention and not a Legislature. His mind is so provincial that he cannot get away from Somerville. He forgets that the great city of Boston is still on the map.

Gentlemen, I want to read to you, if you will spare me just a moment, from Mr. Delos F. Wilcox's book entitled, "The American City, a problem in Democracy," and edited by Richard T. Ely, Director of the School of Economics and Political Science at the University of Wisconsin. I come from perhaps the greatest congested ward in the city of Boston. I know what this tenement-house district is. I know the sufferings of these poor children who are born of foreign parents, and who had no choice in coming to our shores. These children did not elect to come to America; they were brought here, and these children have got to be taken care of. If it was their father's or their mother's fault in leaving the other side, these little children ought not to be sentenced and punished because of the foolishness of their parents. This author says, — it may be illuminating to my friend from Somerville:

> Herein lies perhaps the deepest tragedy of civilization, namely, . . . that in the slums and among the poor we have swarms of children pinched and dwarfed by conditions that make home a nightmare; while all through the slums the multitudes of homeless men and women who fall a prey to vice and are dedicated to race degeneration, multiply. Some of the conditions leading to immorality are bound up with the housing problem. Thirty years ago Mr. Charles Loring Brace described evil conditions of life in the tenement-houses of New York city. These conditions have since borne an abundant harvest of vice. Said he: "If a female child be born and brought up in a room of one of those tenement-houses, she loses very early the modesty which is the great shield of purity. Personal delicacy becomes almost unknown to her. Living, sleeping, and doing her work in the same apartment with men and boys of various ages, it is well nigh impossible for her to retain any feminine reserve and she passes almost unconsciously the line of purity at a very early age."

And so all through the reports of the social welfare committees of the large cities. The attack which my brother has made on the gentleman from Brockton (Mr. Brown) is simply camouflage, talk that may go in the Legislature but not talk which should enter into a Constitution which is bound to last a century. Gentlemen, do not allow this man to put your minds on the Procrustean bed of the Legislature, but think as you should think in a Constitutional Convention. We have this great problem in the city of Boston. Thousands upon thousands of poor unfortunates are dwarfed in our tenement-house districts. What has London done? London has made great parks, called the lungs of London. What has Buenos Aires done? Spent thousands of dollars in making great avenues, boulevards and plazas. What have the cities in the west done? And Boston, through its narrowness, through following the leadership of men like the delegate from Somerville (Mr. Underhill) and his provincially minded place, through such cranks as he, is a dead city, the dead sea of Sargasso of our civilization.

Mr. Johnson of Worcester: We have two measures here which are much alike and yet somewhat different. We may not pass either, and yet the principle we may approve in both. I move that these two measures be recommitted to the committees on Social Welfare and Public Affairs, sitting jointly, with instructions to report one resolution.

Mr. Bullock of New Bedford: I cannot see that any good is going to be served by recommitting these measures. While it is a large question, it is a simple one and I believe that every man in this Convention is capable of understanding the principle involved. While the two are very similar, it is true also that every man in this Convention is capable of deciding which is the proper one to pass. Therefore I trust that recommittal will not occur on either of them.

And while I am on my feet I want to say that I also trust that the amendment striking out the word "lease" will not prevail. The committee on Social Welfare took particular pains to insert the word "lease" because the Legislature in its wisdom may see fit to make such provisions governing the regulation of this very thing that the money received from the lease can be applied to the extinguishment of the debt, the same as the coöperative banks now do. And while I do not quite agree with the first resolution, No. 320, for the simple reason that it repeals that entire article of the Constitution, yet I believe that this Convention will make no mistake if it kills No. 320 and adopts No. 324, which will establish all that is necessary and will safeguard the interests of the State and the municipality, because each city or town will be obliged to come to the Legislature and state its needs and state its financial condition and operate under such regulations as they may provide. Therefore I believe that with the discussion which we have had on this subject there is no necessity for a recommittal of either resolution, and I trust that such will not be the case.

Mr. Blackmur of Quincy: I desire to call the attention of the Convention to the last three lines contained in the proviso of the 43d amendment. The 43d amendment, as has been explained to you, provides that the Commonwealth may take land, hold, improve and subdivide the same, but the proviso states that "*this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.*" You will see readily that the effect of the proviso is to make the other provision practically nugatory. Take conditions as we find them today in cases of exigency, where we need to develop large tracts of land, and put buildings upon them perhaps in congested districts. In my own city, for instance, where the Fore River plant is located, we need hundreds of houses for homes for laborers, but at the same time we are faced with a tremendous increase in cost for labor and materials. Now, if we should start in under the 43d amendment as it now is to take the land and build the houses at a high cost, unless we were able to sell every one of them at once, we never might be able to sell the balance at all. If the war should stop tomorrow or next year it would be absolutely impossible to sell the remaining houses in competition with lower cost prices. What are you going to do with them if you have this proviso in here that you shall not sell any of those houses or any of that land for less than the cost thereof? The community might go bankrupt, as the gentleman from Somerville (Mr. Underhill) said, because it might have $100,000 worth of land

and buildings on its hands which it never could sell, in competition with other buildings, built two years or five years from now.

Mr. Ferry of Northbridge: I should like to ask the gentleman if, in case the commission built houses and afterwards the price fell, there is any objection to the commission going to the Legislature for further instructions as to what to do with those buildings, rather than sell one for $3,000, another for $2,500, another for $2,000, just as they saw fit.

Mr. Blackmur: If I understand the gentleman's question correctly, I am dealing with one matter and he is dealing with another matter. That is to say, I am dealing now with the constitutional amendment as it is. You could not go to the Legislature and get authority to sell the houses for less than cost in the face of this constitutional amendment, containing the proviso in the 43d Article of Amendment. But if the gentleman means if we left this whole question to the Legislature to determine without any proviso, why, I say yes, you could go to the Legislature and get a change of law from time to time. And so I say that this proviso in this 43d amendment as it is now makes this 43d amendment practically worthless. No city, or town, not even the Commonwealth, would be justified in going ahead to engage in any such proposition.

Mr. Charbonneau of Lowell: Those of us from Lowell who have seen the cottages built by the Homestead Commission are surprised to see that authority is demanded for more cottages. If I understand correctly, the cottages that have been built in Lowell are now called race suicide cottages. They are so small that a family cannot be lodged in them. And they happen to be in my district, so I have had occasion to look at them. Now, I know of one individual who builds cottages within 200 yards from these particular cottages. He builds a cottage of six and seven rooms of a better quality than the State cottages, and he sells it at a lower price and on better terms than the State cottages are sold. So it seems to me that the experiment so far has been a total failure, and that there is no demand, especially in Lowell, and no necessity for further amendments to the Constitution to give more power and authority to the Homestead Commission, and that these amendments, both of them, ought to be rejected.

Mr. Walker of Brookline: I just wish to say one word on the question of recommittal. I see the chairman of the committee on Rules is not here. Yes, he is here. Well, I am sure that what I say will have his approval, — I trust it will, — and that is that it is unnecessary to recommit. We have spent nearly all the afternoon here on this matter. If this resolution is passed it can be amended, and the members of these two committees can talk it over and decide on what amendment is desirable. If recommittal is refused this matter will come up again in due course, and amendments can be made. It seems to me we will have lost half a day or more if we recommit, and especially if we recommit to a joint committee, where they will have to get together and spend some time in threshing the matter out. So I trust recommittal will not prevail.

The motion to recommit was negatived.

Mr. Brown of Brockton: I would say to the gentleman from Somerville (Mr. Underhill) that I did not say that we had Bolsheviki in

Brockton; he used the word. Before I plead to his charge of Bolsheviki I should first wish to discover whether it was in the nature of a condemnation or something in the nature of a virtue. If it is a virtue, we have it in Brockton; if it is a vice, we have not got it. [Laughter.] So it all depends upon his definition of the Bolsheviki, because it was he who charged the Bolsheviki upon Brockton. Let me say, also, we have many nationalities in Brockton. We take into our labor-unions these men who cannot speak the English language; we teach them the elements of citizenship. We have the coöperation of our manufacturers and business men. We are trying there to build up a city. The gentleman asks: "Why don't they get homes, with their large wages?" I answer: For the same reason that men do not get homes in almost any village or city. It is because the far-sighted capitalists, large and small, capture all the land available and thereby force the man who builds a home to pay tribute to the foresight of such individual. It is a profit without rendering service. It is the use of a natural resource. I know of no other practical system by which land can be held than that in which society finally has settled upon. I am not a single-taxer, although I believe in the principle of taxing the value of unearned increment. I urge that the resources of the State be energized to provide homes for the homeless. The keynote of my address, if there was anything in it of oratory or worthy of the other commendations of the gentleman from Somerville, was because I pleaded for a Nation of home builders and home owners. I call his attention to the fact that a social democracy, in its broad term, in the United States lasted up to about 1845 or 1850. In the years previous in the great Commonwealth of Massachusetts land was divided fairly evenly. In the Convention of 1820 and also the Convention of 1853 you will find allusions to that condition. Daniel Webster held the idea that a man could acquire a home if he tried and that he should acquire it; and that he was not holding his place in society until he did acquire property. It was from this viewpoint that he claimed society was controlled by wealth.

I want a nation of home builders. These men cannot now get these homes because they have to pay too much for the land. The Homestead Commission, for a reform commission representing organized labor, perhaps paid too much for their land. Cheap land is essential to provide a home such as many wage-workers can afford to own. That is what I am urging. The gentleman from Somerville must have recognized that there was some foundation in the remark that I was making, and he was not justified, as I see it, in saying that I was misleading either this Convention or Brockton.

It is a vital subject. Did the French hold their territory? Yes. Did the Italians? Yes. Who broke in the recent Hun drive? The British. Who saved the day? The owners of the French territory, the French soldiers marching day and night to get there; and they did get there and joined the lines and saved democracy. What were they marching for, night and day? For their homes, — that their men and women and children should not be expatriated; they passed the old and the young, those who could escape, trudging along down through the lines where they could be free from the reach of the Huns. Who broke in our American Revolution? The Hessians, the Huns, the hired troops. They could not stand against the home owners. We

drove them to disastrous defeat. If the Nation is to live free it must be in homes. If there was no other thing in this Convention, and you could provide a proper system to use the credit of this Commonwealth for building cheap homes for the people, it would be a monument to those who devised it. I ask the gentleman from Somerville, what difference does it make where "Home, Sweet Home," comes from, — whether it comes from our fathers by descent, although indeed that is more dear, or whether it comes from a coöperative bank or whether it comes through the State, or in any other way; it is the home; that is what I advocate, — a system to facilitate the building and selling of homes.

It is very clear what we are trying to do and I hope the gentlemen of this Convention will amend this proposition if it is not in proper form, and finally adopt a proposition to go down to the people to provide homes for the homeless in this Commonwealth.

Mr. Sanford Bates of Boston: I would not take the floor at this time on this matter if I did not think I could be of a little assistance to the Convention in telling the circumstances under which the amendment under discussion came to be adopted. I happened to be House chairman of the committee which reported Article XLIII of the amendments to the present Constitution in its present form. The gentleman from Worcester in the second division (Mr. Hobbs) was Senate chairman of that committee and the matter under discussion with us today, as I conceive it, is whether Article XLIII, which we were pretty fairly proud of at the time we submitted it to the people, should be changed or should be supplanted by something else. The gentleman from Worcester and myself wrote the forty-third amendment in its present form advisedly and the three questions which the gentleman from Brockton has just raised were all debated seriously by our committee, and in the form that it takes at present, if my memory is correct, it passed the House of Representatives with not more than six or seven dissenting votes, practically the unanimous judgment of the House of Representatives, and, as you remember, passed the Senate and was adopted by the people.

Now let me briefly give you the reasons as they lay in our minds at that time as to why we reported the resolution in its present form. We did not authorize cities and towns and counties to have this power. We did advisedly retain that power in the Commonwealth solely, for this reason: That we thought it was a tremendous power to give to a small town or to a town of sparse population which had large areas within its jurisdiction; that it was safer on the whole to authorize the Homestead Commission to take by right of eminent domain whatever land the Homestead Commission or other State agency should deem was wise to be taken and wherever it might deem it wise to be taken, rather than vest the power in the 350 separate municipalities of the Commonwealth. Now if that appeals to you as a reasonable precaution, as a reasonable restriction of this tremendous power of eminent domain, I think we today shall vote to retain it.

Now on the question whether the Commonwealth itself or any other authority should have the right to lease land, we felt that that was too nearly a return to the old feudal system which held men in subjection and which led to so much abuse in the Middle Ages; that if the Commonwealth was to provide a home for its citizen let it give it

to him; let not the Commonwealth be in the position of landlord over any man; let not the Commonwealth, when once it has provided for a man an opportunity to own his own little home, hold any power over him in any way or shape whatever. Therefore we deliberately struck out the word "lease", because we felt it was a bad thing to establish, — the possibility of the Commonwealth or any municipality holding the position of landlord over any of its citizens. And to me that objection is as strong today as it was then.

Now those last three lines were put in there for a distinct purpose and I want to call to your attention, as probably it already had been made plain to you, that the principal purpose of this whole amendment is to prevent and circumvent the manipulations of real estate speculators. I think my labor friends and my capitalistic friends, if you want to put it that way, will agree that the greatest cause of trouble today and one of the great troubles of the body politic is the evils that are caused by holding land out of use, by the bringing about of a situation which the single-taxers seek to remedy, by raising the tax on land so that it will be unprofitable for any man to speculate in land and keep it out of use. Now this amendment was aimed to get around that very trouble so that the Commonwealth, in the exercise of a wise discretion, could take that land and pay for it. How? Pay for it not the exorbitant price that the land speculator wanted for it, but pay for that land only the exact value of it. Now if we proceed on that assumption, and if we say that the Commonwealth as it acts by means of this great power of eminent domain is to pay not the price which the owner thinks the land is worth but is to pay the price that a jury of our fellow-men say ought to be paid for it, then it follows that the Commonwealth should not turn around and make a present of that to any other citizen for a less amount than what a jury of the courts have said it is worth.

Therefore, following out to some extent the reasoning of the gentleman from Somerville, we have said that this amendment was not intended to pauperize people, it was not intended to make a present to a man of something he was getting for less than he ought to pay for it, but it was an amendment simply and solely to give a man an opportunity to buy land for what that land might fairly be said to be worth. That applies to the value of land. With regard to the cost of buildings a specious argument can be made today that the cost of building materials is very high; that if the Commonwealth goes into the business of building buildings it ought not to be held to a point where it would have to receive an amount equal to the amount it put into them. Our position on that is this, that the Commonwealth would not conceivably be in the position of selling hundreds of houses unless it knew that there was an immediate market for the sale of those houses; that the Commonwealth could buy the land and hold the land for the purpose of building homes and selling the property to the working-men, and in the ordinary case the Commonwealth would not build a house upon the land unless it knew that there was an immediate market for the sale of that house. And therefore we felt that the restriction holding the Commonwealth up to the point where it must secure on some terms or other from the prospective purchaser of the house the value which it paid for it was reasonable. That proposition, I submit, is a fair proposition. A person buying a house or land

pays only what it is worth. On the other hand, he does pay what it is worth and he does not get something for nothing. The real estate speculator's profit is taken out of the proposition. On the other hand, the man who has been depicted by the gentleman from Somerville, the thrifty man, the man who has saved, the man with whom we all sympathize, is not discriminated against in favor of the shiftless man by giving the latter something for nothing. I am not so bold as to stand here and say that these reasons which applied in 1914, when our committee considered this, apply necessarily today. But I do think it is fair and proper to submit to this Convention the reasons why Article XLIII was recommended in the form in which you now find it, having been adopted by the people of this Commonwealth.

Mr. KILBON of Springfield: The argument to which we have just listened is an argument which undoubtedly would have carried the assent of the Convention were it not for the fact that the matter has been tried out and that the representatives of the Homestead Commission who appeared before the committees succeeded in securing a unanimous report from each committee on the ground that the points that have been spoken of hampered the work of the Commission in actual practice. I make that remark simply as a preface to a motion which I wish to make, — that document No. 324 be substituted for document No. 320.

Mr. CUMMINGS of Fall River: I rise for the purpose of asking a question of the gentleman from Boston in the first division (Mr. Bates), who, as I understood, was House chairman of the committee that reported the resolution that now appears as Article XLIII of the amendments of the Constitution. I understood the gentleman to say that it was the intention of the committee to draft an amendment that would limit the authority to take land and construct or build homes to the Commonwealth itself and not to give the power to municipalities. May I ask first, if I understood him correctly?

Mr. BATES: That was my statement as I recall it.

Mr. CUMMINGS: Why should not Article XLIII be construed as Article X of the Declaration of Rights was construed, giving authority to take by right of eminent domain? Apparently the authority in Article X was the authority of the Commonwealth, but it has been held repeatedly that the Commonwealth could delegate its power to municipalities. Article X provides that the Commonwealth, by right of eminent domain, may take private property for public uses. But it has been held, in a long series of decisions, that that power may be delegated to cities and towns. I wish to ask the gentleman if his committee considered the fact that notwithstanding the apparent limitation in Article XLIII the actual fact is that the authority may be delegated to cities and towns?

Mr. BENTON of Belmont: As long as the Convention voted not to recommit, and we have given nearly a whole day to this subject, and have such a fine attendance and as the question has been argued so ably on all sides, I move the previous question.

Mr. FERRY of Northbridge: The question that I asked the gentleman in the second division (Mr. Blackmur) was to bring out the fact that in the amendment that we were discussing, No. 320, no provision was made for any arrangement or any restriction of any kind governing the sale of the land or the houses so built; and I wish to bring

out the fact that if we are to pass either one of these amendments we must arrange somehow to have the Legislature make these regulations. In Resolution No. 324 such arrangements were made, but if I understand the temper of the Convention correctly it seems to me the members wish to knock off all provisions whereby the Legislature shall make arrangements for the sale or leasing or renting of this property. Now it seems to me very fair to consider that if we are going to go into this proposition as a State wide proposition, allowing towns and cities to go into the furnishing of homes, we must have some central source of regulation, and if that is done, then it does not make so much difference whether the Constitution as it now reads should be amended or not, because we shall have some source where we can go to present our case and have it examined into and reported on.

I am very much surprised to learn that when our committee of the Legislature was considering the further regulating of the powers of the commission at the last session no mention was made of the fact that they wished further powers in the matter of the sale of the property the State owns. We did pass one bill giving them further powers as to regulating mortgages and other matters.

Mr. Blackmur of Quincy: I should like to answer just one phase of the argument of the gentleman in the first division (Mr. Bates of Boston) in reference to the sale of houses, one at a time, or only to meet the immediate demand. Now let us analyze his explanation from a practical point of view. What is the practical method of selling houses under conditions such as exist today? Take, for illustration, the situation at Fore River in Quincy. There would be immediately a demand for a thousand houses; there is today demand for a thousand houses. Would those houses be sold for cash? Of course they would not. The workers would not have the cash to pay for them. They would be sold on easy terms. The man who bought a house would give his note perhaps to the municipality or he would make some provision to pay the purchase price on easy terms. Now if the war should end tomorrow or next month or a year from now and the industries shut down or be curtailed, there would be thousands of men out of employment and hundreds of those men who purchased their houses, being without work, probably would default on their agreements. In such a situation the Commonwealth, if it was the Commonwealth, or the municipality that sold the houses, could not sell them again except at cost. If there was a falling market on houses and real estate in that vicinity, and there certainly would be a falling market on such real estate dependent entirely upon the success of one industry, how would the State or city ever get rid of its investment?

Mr. Bryant of Milton: I want to ask the previous speaker one question, and that is, assuming that there is a falling market and these houses are sold for less than was paid for them, who gets the benefit of the difference and who pays the loss?

Mr. Blackmur: I remind the gentleman that there is a provision in the Constitution at the present time that says you shall not sell them for less than cost, so it is futile to ask who will profit if you cannot sell them at all.

Mr. Bryant: My question has not been answered. If the gentleman kindly will assume that that is taken out of the Constitution, as

this amendment suggests it be taken out, who then would stand the loss and who would receive the benefit?

Mr. Blackmur: I do not think I understand the gentleman's question or its application to the subject-matter under debate. If the proviso is stricken out, why, then there is no further difficulty in this connection, and that is why I advocate striking out that proviso, because with that proviso the forty-third amendment was nothing more or less than a gold brick.

Mr. Bryant: I do not want to insist too much, but I have not yet received an answer to my question. Perhaps it was my fault for not making it clear enough. I understand the gentleman from Quincy to desire to have this proviso taken out of the amendment in order that, if necessary, land and houses may be sold at less than cost. Assume he is successful in getting that amendment made and that it becomes necessary to sell at less than cost and the sale is made at less than cost, who gets the benefit of the difference and who pays the loss? That is, if a municipality pays $5,000 for a house and land and sells it for $4,000, who pays the loss and who gets the benefit?

Mr. Blackmur: If the municipality sells the property for $4,000 and it otherwise could not sell it at all, it saves $4,000 by selling it. [Laughter.]

Mr. Bryant: In order not to lose $1,000, if I understand, — in order not to lose $5,000 they save $4,000. I do not know whether the gentleman from Quincy is purposely refraining from answering my question or not, but I think the answer to it really is perfectly obvious. The taxpayers of Quincy, of course, lose $1,000 and whether that is made by the man who buys it I do not know, but the taxpayers of Quincy lose $1,000 on that deal. Now there is one point that I should like to bring briefly to the attention of the Convention as to the difference between the present amendment, Article XLIII, and the suggested amendment, and that is this: Under the present amendment the power to control these activities of providing houses is given to the Legislature, the General Court. Under this amendment please notice that the power is given direct to the towns and that the General Court has no power of regulation over how the towns shall apply that power. If you will compare document No. 324, if that is the one, you will see it is even clearer in that document, because it says:

> The General Court shall have power to authorize cities and towns to take land, . . . and under such provisions and regulations as the General Court may establish or approve, to lease or rent the same.

In other words, the only case under No. 324 in which the Legislature has any power or any control after it once has granted the power to cities and towns, — the only case in which it has any power is the power to lease. That it can control after it is granted. But over the power to buy and sell, the Legislature will have no control, once the power is granted.

Mr. Stoeber of Adams: The gentleman who sits in this division from Lowell (Mr. Charbonneau) has told us that a contractor in his city is able to build cottages better and sell them for less money than the city of Lowell can do. It is not very hard to figure out the answer to that riddle, and the only answer that I can see is that some land

shark or contractor is getting a big rake-off in his dealing with the city. So it seems to me that the fear which apparently is lurking in the minds of those who are opposed to this resolution, — namely, the fear that some land shark or contractor will not be able to get the rake-off that he is getting at the present time under the present system, — will be done away with if the resolution under discussion becomes a law. It seems to be unfounded, at least as far as the city of Lowell is concerned.

The gentleman from Brockton in the second division (Mr. Brown) has told us about the small tenements of four or five rooms and a bath in which families in his city are compelled to live. That is nothing at all. I can tell you of tenements in my town, the town of Adams, that have not got four rooms, never mind speaking of a bath. There is a four-tenement house not two hundred yards away from my little cottage where I live, where one morning by actual count twenty-six people were seen to leave to go to their work out of that four-tenement house. That was not counting the women who stayed behind or the children that these families had. And as for these people having a bath, if they want a bath they have got to take it out in the river. That was two years ago and I have no reason to believe that conditions have changed to any great extent since then. In fact I know that at the present time it is not possible to get a tenement up that way for love or money under any condition. Therefore I hope that the matter under discussion will be passed favorably by this Convention.

Mr. Mahoney of Boston: I think it is wholly a matter of co-operative bank system, and no doubt when the State makes a contract it will make the contract with the individual who wants to buy a house and they draw up a contract and what they want, as you might say, is a lease that they will pay in a certain length of time. In this State there have been coöperative banks for the last thirty-eight years. The coöperative banks in this State have met with but two failures, and in those cases one bank paid 90 per cent. and the other paid 94 per cent. If the coöperative banks of this State can do that why cannot the State do it? It brings the matter before us clearly by calling Massachusetts a large coöperative bank willing to lend to the working-man a certain amount of money to build a house. Some people will tell you that it will cost the State a good deal more than it will the individual to build the building. No doubt about it, because the State will put in better work. I have been in the contracting business and I speak as an individual and I tell you that. I have been associated with coöperative banks and I tell you that the greatest blessing in the world for the poor people has been the co-operative bank. I tell you if you pass this Resolution No. 157 it will do away with the amendment of which there has been a good deal of argument made, Article XLIII, which says:

provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

Now you know as well as I do that when a workman makes a contract with the State he pays so much down and so much a month. He may buy a house for $4,000 and he has to pay off $15 a month, which would be $180 a year. He pays that $180 a year and

sometimes pays on the principal and in that way reduces it. If reverses come, then he will have to give up and then the State can sell that building and he really can get back what he put into it. In regard to that amendment to the Constitution that is put in, I really do not think it will affect this amendment at all and I think if we pass a measure of this kind it will be one of the best that we have passed in this Convention.

Mr. Loring of Beverly: The forty-third amendment obviously makes it impossible to improve slums, because so much of the old construction has to be removed before there can be new construction. This will make the new construction so expensive that you cannot sell them at cost.

Mr. Hart of Cambridge: I rise to ask a question which the chairman of the committee in charge doubtless can answer. Is it understood that if either one of these propositions is passed it supersedes Amendment XLIII? If that be the case why may it not be stated in the form of submission of the amendment, — the form which the amendment shall finally take? Otherwise the Constitution will have two rival provisions in part covering the same subject.

Mr. Walker of Brookline: I rise simply to say that I trust that the amendment suggested by Mr. Quincy will prevail in order that the I. and R. may not be injected into this debate and future debate that we shall have on amendments to the Constitution.

Mr. Hobbs of Worcester: In reply to what the gentleman from Cambridge asked I will say that the amendment as drafted by our committee did supersede the forty-third amendment. The amendment that is moved as a substitute does not.

I want to endorse what the gentleman from Beverly has said as to the value of the proviso contained in document No. 320, the report of the committee of which I am a member. The present provision of the Constitution, Article XLIII of the amendments, is of no value at all so far as relates to the eliminating of slums. Eliminating slums is a very costly proposition and when you have got your slums eliminated you cannot make that land available for homes for workingmen or frequently for any purpose at all except by writing off a staggering loss. The city of London has abolished some of its slums but the cost of doing so was enormous. Unless the proviso relative to cost is stricken out there is very little relief as far as the amendment goes, in regard to the slum problem. For that reason No. 320 is far preferable to No. 324, which is moved as a substitute.

Upon the question of the sacred I. and R. I do not desire to manifest any views except that I think the General Court is a good tribunal to take these matters to.

The amendments moved by Mr. Quincy were rejected, by a call of the yeas and nays, by a vote of 85 to 108.

The amendment moved by Mr. Ferry was rejected.

The amendment moved by Mr. Kilbon was adopted, by a vote of 52 to 48, and, accordingly, resolution No. 324 was substituted; and it was ordered to a third reading, by a vote of 60 to 51, Thursday, June 20.

The resolution was read a third time Friday, July 26.

Mr. Bryant of Milton: I desire to offer the amendment printed under my name in the calendar, — inserting after the words "Com-

monwealth and," in lines 5 and 6, the words ", when authorized by the General Court".

I desire to call the attention of the Convention to the resolution as it passed to the third reading, and to the resolution as framed by the committee on Form and Phraseology. As we passed this resolution at the last hearing it read: "The General Court shall have power to authorize cities and towns to take land," etc. As framed by the committee on Form and Phraseology it reads: "The Commonwealth and cities and towns therein shall have power," etc.

Now, it seems to me that there is a real difference between those two phrases; that is, between whether you are giving the General Court power to authorize the cities and towns to act, or whether you are giving the powers directly by the Constitution to the cities and towns. As the committee on Form and Phraseology has put it the power is granted directly to the cities and towns. The Legislature has no control over the question whether cities and towns shall go into the business, although they may have some power of regulation afterwards.

I do not think that that method of granting powers to cities and towns appears in any other part of the Constitution. The other provisions in our Constitution invariably empower the General Court to do that thing and the powers of corporations, whether municipal or of individuals, come not directly from the Constitution, but through the General Court.

It seems to me proper that cities and towns should not go into this business unless the Legislature has decided first that it is feasible for them to do so. If we leave the amendment as it is recommended by the committee on Form and Phraseology, it means that any city or town in the Commonwealth, of its own motion, might take land for the purpose of improving, etc., to relieve congestion. Any single city or town in the Commonwealth might take land, whether or not it was deemed advisable by the Legislature for them to do so.

I do not think that was the intent of the Convention when it passed this resolution to a third reading. I have consulted with the chairman of the committee on Form and Phraseology, and I understand that he does not object to my amendment. I think that with the addition of these words the resolution will be in the same form as it was when it last was passed upon by the Convention, but if left as it is by the committee on Form and Phraseology I think an essential feature of the resolution really has been altered. Therefore, I hope that this amendment will be accepted by the Convention.

Mr. Loring of Beverly: The committee on Form and Phraseology endeavors to ascertain what it can of the meaning of the Convention and then to crystallize it into words. We had some doubt as to the actual meaning of the Convention, after giving careful attention to the debate. In the second section of our report we call attention to the fact that we were in doubt on this very point, and that we had resolved that doubt in the way in which we thought the Convention meant it should be resolved. The Convention, as the measure was passed originally, did not give the Commonwealth itself any power to take land, and if the meaning of the Convention was that in each case in which the city and town was to act in such matters, that is, take lands for providing homes, it should be discussed first by the

Legislature, then the amendment of the gentleman from Milton (Mr. Bryant) is appropriate and should be inserted. If, however, the Convention meant the cities and towns to act directly, on their own initiative, then the draft as submitted by the committee is correct.

We supposed that we had interpreted the meaning of the Convention correctly; that is to say, that the cities and towns were to be authorized directly. If we were mistaken in that, then the amendment suggested by the delegate from Milton should be adopted.

Mr. Bryant of Milton: May I ask the last speaker if he has in mind the wording of the resolution as it went to the committee on Form and Phraseology, which was as follows: "The General Court shall have power to authorize cities and towns to take land"?

Mr. Loring: I had that in mind, but the delegate from Milton will notice that the General Court had authority to allow cities and towns to take it, but gave no authority for the Commonwealth itself to take it; and in the course of the debate the impression was left very strongly on the minds of the committee that it was the Commonwealth that was expected to take the land, and not the cities and towns.

Mr. Dutch of Winchester: May I ask the previous speaker (Mr. Loring), if in view of the fact that municipal corporations are considered generally as creatures of the Legislature, it would not be better in his personal opinion, as distinguished from his attempt to interpret what the Convention already has done, if it would not be better to incorporate the amendment as suggested by the gentleman from Milton (Mr. Bryant), — have this power go through the General Court rather than to have the power in the municipalities direct?

Mr. Loring: In my personal opinion the amendment is justified.

Mr. Morton of Fall River: May I ask for the reading of the resolution which is the basis for the bringing of the amendment proposed by the gentleman from Milton (Mr. Bryant)?

The Secretary read the amendment moved by Mr. Bryant.

Mr. Kelley of Rockland: I think in justice to the committee on Form and Phraseology it will be well to review the situation as it was when No. 324 was substituted for No. 320. Members will remember that we now have the forty-third Article of Amendment of the Constitution, which provides that the Commonwealth may take land, and build and subdivide, etc., — do all but lease or rent. And therein is a further provision that the Commonwealth shall not sell for less than cost.

Now, the committee on Public Affairs reported a resolution which expressly repealed the forty-third amendment. If this resolution is passed as it now reads we will have a repetition in the Constitution, giving the Commonwealth authority, unless we take some action relating to the forty-third amendment.

Mr. Loring of Beverly: I am afraid there is some confusion in the discussion of this matter. The committee on Form and Phraseology reported back in document No. 391 the measure as it came from the Convention. That is the first report. They then recommended a substitute, which is on the fifth page of document No. 391, which I think is the one that we have been discussing, although it of course

could be adopted only on motion. The resolution that we recommend be substituted is as follows:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

SECTION 1. For the purpose of relieving congestion of population and providing homes for citizens, the Commonwealth and the cities and towns therein shall have power, upon payment of just compensation, to take land, and, under such regulations as the General Court may adopt, to hold, improve, subdivide, build upon, lease, rent or sell the same.

SECTION 2. Article forty-three of the Amendments to the Constitution is hereby annulled.

Now, that is the form, not that we reported back, but the amendment that we thought ought to be adopted. Therefore, I move that that be substituted for the draft as reported back by the committee.

Mr. FLAHERTY of Boston: I hope that the substitution will prevail. I dare say the Convention will recall when the report of the committee on Social Welfare as document No. 324 was under discussion, at that time objection was made to No. 324, relating to two phases of it. First, that No. 324 made no provision that the Commonwealth should have power to take land; and, further, that it impliedly, at least, annulled or repealed Article XLIII.

I dare say the Convention will recall that in that debate much point was made of the fact that under Article XLIII the Homestead Commission, as created and working under Article XLIII, were more or less hampered by reason of that proviso in Article XLIII, which limited the powers of the Homestead Commission to carry out the functions for which they were created. In other words, the Homestead Commission found it impossible to do the work for which they were created, because under it they were unable to provide a home for a citizen unless that citizen was prepared or able to pay a sum equal to the cost of the home.

The purpose and design of this article of amendment is to give greater freedom of action on the part of the Homestead Commission. It is not, as some gentlemen say, to give cities and towns a chance to provide homes without any charge whatever to citizens; but its purpose is to enable properly constituted authorities to take upon themselves the duty of seeing to it, on the one hand, that worthy citizens are helped; and, on the other, that the municipality or the Commonwealth shall not suffer unduly because of the doing of such work.

This movement is one of progress and one which is pretty largely along the spirit of the times. It is the duty of the State to help its citizens, and no greater function can a State exercise than to help worthy citizens to be able to stand up and face the world as householders, in the true sense of the term, to become real citizens of the community. To reject this proposal it seems to me would be reactionary in the extreme. Every enlightened community and government worthy of the name has such a provision as this, not by way of constitutional amendment, but by way of inherent governmental function. The criticism that this will open the door to corruption or fraud seems to me to be narrow. The broad, general scope and purpose of the law is an answer to such a suggestion.

I therefore hope that the motion of the gentleman from Beverly (Mr. Loring) will prevail.

Mr. Bryant of Milton: I desire to offer my motion as an amendment to the substituted motion of the gentleman from Beverly (Mr. Loring), if that is the proper procedure to bring it before the Convention.

Mr. Hobbs of Worcester: I think, perhaps, in justice to the committee on Public Affairs, some statement ought to be made from them at this time relative to the reasons for presenting this amendment.

The amendment, Article XLIII of the Amendments of the Constitution, lodges power in the Commonwealth to provide homes for its citizens under certain restrictions, an important one being that they should be sold at not less than the fair cost thereof. The subject of providing housing facilities for the inhabitants of our municipalities is one that is perhaps a novel proposition in this Commonwealth, but elsewhere has formed a normal part of State policy. It has been found necessary, for reasons of sanitation and reasons of fire protection as well, to take some steps which ordinarily would not be taken on individual initiative, to relieve the congestion of crowded districts in our great manufacturing cities, and establish homes that should be healthful and desirable places for the inhabitants of the city to live in. There is no great question as to the desirability of the result, whatever you may think about the method.

Mr. Dean of Fall River: I should like to ask the gentleman to tell the Convention where the plan has been tried and has worked well.

Mr. Hobbs: The plan has been tried out in a number of places. I am not prepared at this moment to give the gentleman definite and accurate information as to the way in which it has worked. It is claimed it has worked satisfactorily in some places. It has resulted in some places in the abolition of particularly noisome sections of large municipalities.

The problem of dealing with this matter has a number of practical difficulties. In the first place, it requires the taking of land, usually in a congested section of a district, and that is a very expensive proposition. The city of London, I think, has attempted that and has found it extremely costly. It has torn down sections of thickly settled tenement districts and replaced them with model tenements. Financially it is not a success. From another standpoint, however, it does abolish districts that have been eyesores to the community, and the sources and seats of infectious disease and fire hazard.

In considering the financial benefit, the relief in those matters must be taken into consideration; for we are only just beginning to come to a realization of the enormous losses to the community by fire, and the equally enormous burden to the community that the residence of large numbers of our citizens in unsanitary surroundings entails. The Convention has only to glance over the list of our State expenditures and see how much we are spending for tuberculosis, for instance, and it is in those crowded districts that tuberculosis flourishes; they have only to look over the report of the State Police, and see how great the burden is that we pay for losses by fire; it averages something like $10,000,000 a year throughout the Commonwealth and has gone a great deal higher than that on occasions.

Within easy walking distance of the State House there is at least one municipality whose building laws, at the last time at which I was informed, which was about two years ago, permitted wooden houses

to be built within two feet of the lot line; that is to say, within four feet of each other. There is another large manufacturing city that allows them to be placed even closer than that. It does not take any argument to see what is the fire risk of building combustible structures so near together as that, and what the sanitary conditions must be that are entailed by the crowding so closely together of a nest of human habitations. That is the situation that the housing law is designed to reach.

It is fair to state at this time that it is a problem which the great governments which are now engaged in war have found it necessary to take up for the purpose of building up the physical strength or stamina of their inhabitants; that is to say, for conserving their human resources. The Federal government even now is engaged in the same work and has invited the coöperation of our municipalities in this experiment. I mention this merely to indicate what the original amendment was undertaking to reach, and I wish to adduce a few reasons as to why the committee on Public Affairs drafted that amendment.

The requirement that buildings should be sold at not less than cost entails two possibilities. In the first place, it is quite possible that the Commonwealth might find itself, by some ordinary course of events, in a position where it had got more in than it could get out. In such case what would be its position? Under this constitutional power it would be unable to sell them, it would have to hold them and carry them at a loss, which of course is a very undesirable result.

In the second place, if the Commonwealth desired really to abolish slums and replace the buildings torn down by model tenements, that could not be done ordinarily on any cost proposition, nor could it be done as a selling proposition. The normal way of managing tenements would be to lease them, and that is the only practical way in which that sort of property could be made available. It is for that reason that I should deprecate the amendment which is printed in the calendar under the name of the gentleman from Boston (Mr. Horgan), because if it is desired to have the Commonwealth undertake that function, which other nations and municipalities have undertaken, it is desirable that the power to lease should not be omitted. The emphasis, however, of housing legislation is now laid, not on the building of tenement-houses, but on providing homes for citizens, with enough space for a garden, and enough space so that families can be raised in comfort and under healthful conditions.

Mr. Bennett of Saugus: Would it be held to be constitutional under the present amendment, Article XLIII, to lease property incidentally, as an attribute of ownership? That is, the government having taken the property for purposes of sale, would it be constitutional, — without this, it seems to me, dangerous amendment, about "lease and rent", — would it be possible to lease the property temporarily, incidentally, in the process of changing over?

Mr. Hobbs: The forty-third Article of Amendment gives no express power to lease. Possibly it might be included as a necessary incident of the power given by the forty-third Amendment. I am not prepared to say what the courts would find upon the subject. Municipalities, of course, even without express power to lease other property they hold, do lease it, and no objection is raised or likely to be raised.

Mr. Edwin U. Curtis of Boston: Has the committee made any estimate of what the rental charge would be? That is, if they charge a just and fair rate on the investment, and enough to cover repairs, in case people move in and move out, and the payments for collectors? Has the committee made any estimate of that?

Mr. Hobbs: The committee made no estimate of that. That is a problem that I think the gigantic intellects of the General Court are perhaps as well competent to deal with as those of the Convention. It is an entirely proper subject to be considered with regard to what the meaning of the amendment is if the words "at cost" were retained.

Mr. Curtis: Did the committee consider whether a house built in the suburbs, as it would have to be built in order to have gardens and all these things, — did they consider what additional cost it would be for the tenant to get to his place of business, pay his additional car fares, etc., especially under government ownership? In other words, does the gentleman think that a man working in a place in Boston would move to a suburban town, where he could have this beautiful house and garden, and pay the additional travelling expenses he would have to pay every day to get to and from his business?

Mr. Hobbs: I assume that some would and that some already do. That many would object to moving out of easy range of their work unfortunately is true. We are creatures who tie ourselves pretty closely to a definite routine and hate to make even the sacrifice of an additional nickel or an additional fifteen or twenty minutes of time. The result has been the intense congestion of certain limited areas, both in the metropolitan district and elsewhere, which has produced conditions which I think all will agree are extremely lamentable.

Mr. Adams of Quincy: May I ask the gentleman if the committee has any plan by which this system is to be administered?

Mr. Hobbs: I have not got as far as that. The desirability of the power, and the machinery by which the power should be carried into effect, are entirely different propositions. The first is properly for the Convention; the second is properly for the General Court.

Now, as to the amendment which is moved by the gentleman from Beverly (Mr. Loring). I see no objection to the amendment. The question as to whether the amendment of the gentleman from Milton (Mr. Bryant) should be adopted or not is a question which the Convention must settle ultimately for itself. The bald language of the resolution as it was before us, probably would lodge in cities and towns a power independent of the Legislature, though probably we would reserve the power of the Legislature to regulate the method whereby they should exercise that power; but until the Legislature had spoken they probably would have a constitutional power to go right ahead with the work. Under the amendment of the gentleman from Milton (Mr. Bryant), as I understand it, the General Court must act first, before they can engage in such undertakings.

As to whether it is wise for cities and towns to engage in this business until the General Court has made some provision as to the method in which the power shall be exercised, perhaps may be questioned. It is desirable that there be some uniformity in the action of cities and towns in this matter, and upon that side the amendment of the gentleman from Milton carries with it considerable force. On the other side, question of course may be raised as to the desire of the

General Court to act decisively in this matter. That proposition, I think, having stated briefly the argument both *pro* and *con*, I will leave to the decision of the Convention. Offhand, I am inclined to approve the amendment of the gentleman from Milton.

Now that, I think, is the story of this resolution. I trust that I have indicated that there is some basis of sound reason as to why the General Court should have this power, particularly in the fact that an important work upon this line is being undertaken by the Federal government, and the Commonwealth ought to have full powers lodged in it to join in this work.

Mr. Lomasney of Boston: I think we should pause and go slow on this matter. In the first place, talking about slums, it was my privilege to have been a health inspector for 10 or 12 years. The board of health now has the power to remove any slum in the city if, in the judgment of the board, it is injurious to the public health. And it is removing slums right here in Boston every day. There is no necessity of talking about additional legislation to clean out slums. It is not necessary at all. The city council can appropriate money for street purposes, land can be taken by right of eminent domain to put a square through a slum, if necessary, and the board of health can order buildings taken down, and it does these things daily.

It was my privilege to be in the Legislature when this matter first came up, and that body passed the forty-third amendment for the reason that it did not want to have the cities and towns engage in the real estate business at a loss. This amendment, if adopted, would inject the real estate business into the politics of the cities and towns, and would give the mayor and city council the opportunity to give away public property, which was paid for by citizens, in any way these officials desire. The provision of the Constitution which was adopted provided that they should not sell the city's lands and buildings for less than the cost thereof. The Legislature was charged at that time in the committee on Ways and Means with the management of the State's affairs. And why should a city or town sell its lands and buildings for less than cost? The Homestead Commission is erecting houses now in some part of the State under that great act that was passed dealing with the creation of homestead rights. Why not wait and see how that act works out before you start to extend its power? I can imagine if I was mayor of a city or had control of a town where I could pass out houses and buildings to friends at less than cost, it would put a great burden on the ordinary taxpayer. Do you want to start piling up taxes at this time, when the cost of everything is increasing, upon the theory that cleaning out the slums is necessary? Why, when people talk about slums, I presume the district that I have the honor in part to represent is one of the districts which they talk about. Let me tell you that the deaths in that section from preventable diseases are the lowest of any section in the city (applause), — and the population of part of it exceeds that of any city by the acre, I dare say, outside of London. I submit, sir, that this is the situation here, and that the records of the board of health will prove it.

Do not be deceived and deluded by the talk indulged in here. If you want to give the right to the cities and towns to do what the Constitution now limits to the Commonwealth of Massachusetts, that

is, to build homes and sell them to citizens at cost, I am with you on that proposition, — because then the working-man is given a chance to purchase a home at cost, and I am not objecting to that proposition. But if you are going to allow the cities and towns to go into the matter of selling houses below cost, and leasing and renting them, I think that is socialism, and we should not do it.

When the gentleman talks about what the United States government is doing now, let him remember that the government is doing it in time of war. It is going to build, I do not know how many, houses in Quincy and other places. What do you suppose that it has done down there? It has built houses just where the Fore River Ship Company down there told the government to build them, right up under the walls of the factory. Now, then, where will the men who bought land and houses and have mortgages in Quincy be in competition with the United States government? If the United States government is doing it, let it do it. It is now war time. It is building houses over on Cambridge Common. It also is putting houses on Boston Common. But we are making here a Constitution that is to last beyond the war.

I say that you should adopt the amendment of the gentleman from Milton (Mr. Bryant), and also the amendment of the gentleman from Boston (Mr. Horgan) and strike out the leasing and renting part, and also put in the *proviso*, as the gentleman said, that before the cities can undertake the business they must go to the Legislature, present their petition, and show that they have investigated the subject and prove that it is going to be a good proposition for all the people of that city or town, as the case may be. Otherwise, it would be too much power to give to them.

We have in Boston a city council of nine men elected under our new form of government, who never would vote against building houses under this proposition. Why? Because they are elected at large, and everybody would say: "Why not have houses, since we can purchase them cheaply if we have a friend of ours at city hall?" Now, that is the way this matter may work out. You may say that you do not intend to have it that way. Hell is paved with good intentions. Therefore, you must provide a proper restriction in this matter. Men to-day do not do the things that you think they should do, but do what the law says that they can do, and what the court says is permissible under the law. Consequently, when the present law was passed it provided that any honest, decent working-man who wanted a chance to get a home should be given a chance to get one. But it provided further that he should pay what it cost. There is no objection to that, but when you let down the bars and allow cities and towns to pass these houses out as favors and below cost, I say, sir, look out for squalls. Why, there are men here who can remember the days in the city of Boston when the public lands of the city were given away and can remember the scandals that were created thereby. Those of you who remember these things know how people were said to secure lands that were worth tremendous figures. Men who have read anything about city affairs know what the situation in New York is, where the docks are leased frequently at less than they should be, and you are asked now to put our cities and towns into that line of business.

I suggest that there has been no sound reason advanced for the passage of this amendment. People who simply are carried away with fads do not put up the money to pay for them. It comes out of the taxpayers, who must take it out of the rent payers. It seems to me we should go slow in this matter. I trust we will adopt the amendment of the gentleman from Milton (Mr. Bryant), also the amendment of the gentleman from Boston in the first division (Mr. Horgan). Then you add to and improve the present law, because, though you now allow the Commonwealth of Massachusetts to do it, yet this amendment will allow the cities and towns to do it if the Legislature, in its opinion in each case, says that they should do it. For instance, if Cambridge wants to do it, then it comes to the Legislature and gets permission. If Boston wants to do it, it also comes up and gets permission. And with the tax rate the way it is now, why not adopt such a safe and prudent resolution?

Mr. Horgan of Boston: I offer the amendment which is printed under my name in the calendar, — to strike out, in lines 9 and 10 of the new draft offered by the gentleman from Beverly (Mr. Loring), the words ", lease, rent".

I oppose this resolution because I believe that it goes too far, and I offer my amendment to remedy what in my opinion is a most unwise provision, for, although I favor a reasonable State control so far as necessary and freely admit of a restricted government ownership within certain well-defined limits, namely, to realize public well-being and private prosperity with particular regard to the interests of the poor, I protest against opening the door so wide that State control degenerates into State paternalism, and when, like an excessive government ownership, it rightly may be called socialistic. In such case, and this resolution in its present form is an extreme sample, it no longer contributes to the common good, which ever must be the one object of governmental activity. In fact, it then is to be regarded as socialistic, not, I admit, because in any way it has become identified with socialism, but solely because it expresses a tendency in that direction, and thereby it helps to prepare the way for socialistic ideas, even though State control and State ownership, no matter how excessive or absolute, — I emphasize this point because repeatedly the statement has been made in this Convention that State ownership, even in its most limited sense, is socialistic, an obvious fallacy if the tenets of socialism are properly understood, — never in themselves can constitute socialism. They still differ essentially from it. The very idea of the State itself as now understood must be abolished first before socialism in the proper sense of the word can make its beginning.

In justice, private ownership, whether in the name of consumption or production, is to be fostered and protected, though no quarter should be given to abuses that may spring from it. This principle does not prevent the introduction of government ownership where the common good actually may require it, and could be established upon the supposition only that due compensation was made to private owners. The State does not exist for the purpose of undertaking by itself what can be accomplished equally well, or far better, by private enterprise when duly regulated. Nor is government ownership the first step in the economic process. If intended to remedy abuses it

should follow only where State control is incapable of attaining this end. It certainly is wise, yes, even necessary, where self-help proves unavailing to meet the economic evils of the day. Such is the case when the rapaciousness of private capitalists cannot be curbed otherwise; when just prices, fair wages and similar conditions, essential to the public welfare, can be brought about by government intervention alone. State control, so conditioned and so limited, is in no sense socialistic. For this was the State instituted, that it might provide adequately for the common good without interfering unduly with individual enterprise. To confuse such measures with socialism is to dress the latter out in borrowed plumage.

Is it necessary, in solving the problem under consideration, to take that step which may commit this Commonwealth to socialistic ideals and policies? I think not. If the Legislature does not enjoy now the power to solve equitably our housing problem within reasonable restrictions, let us confer it on them, but do not do it under the form or guise of the resolution under consideration. Let us beware lest we overstep the bounds of prudence and break down the barriers of reason and justice.

Personally I am of the opinion that it is unwise, unjust and dangerous to force the State into the real estate business in all of its ramifications. Is it necessary? While the dangers of State control itself are no less real when it is employed heedlessly, without prudence and without restraint, yet history teaches us the lesson that only at their peril can citizens permit such control to degenerate into State paternalism. The latter, as past experience shows, readily may become little less tyrannical than socialism itself would prove to be. Is not that danger now present? If we pass this resolution in its present form it at least degenerates into State paternalism. As suggested, by eliminating the lease and rent provision we largely eliminate that danger, but at the same time it seems to me that we must not lose sight of the fact, if we study the resolution which was submitted to the people and adopted in 1915, the forty-third amendment, that that resolution goes as far as, in justice and fairness, any resolution dealing with this question ought to go, and that we ought not to proceed to the extreme by setting up a business, a real estate business, either in a city or in the Commonwealth itself.

We are in perilous times. The exigencies of the moment and the criminal greed of individuals and of some corporations may lead to a false solution of our difficulties in this as well as in other matters. As Senator Newhall, chairman of the committee on Interstate Commerce, recently said in the United States Senate:

> I wish to call attention to the fact that almost all of us have been wrenched from our own moorings by the extraordinary exigencies of this war, and that our reasoning has been driven into unaccustomed channels.

But that does not justify the extreme, which spells socialism, as a remedy for our difficulties. We must remember that while we owe a duty to individuals we owe a greater duty to the State. We must not jeopardize its stability by worshipping false gods. We will not bridge our difficulties but we will open the door to the excesses of radicalism if we adopt this resolution in its present form. Hence I urge my amendment which modifies the resolution and emphasizes the fact that "reason still holds sway."

Personally, I take this position without fear of misunderstanding, because I always have advocated equitable treatment of all classes, with special regard for the poor man, and in the firm conviction that the remedy suggested by this resolution is worse than the disease that they desire to remedy. I believe, with all respect to the members of the housing commission, who unquestionably have done good work from their viewpoint, who have endeavored, as far as they believe they have authority and as far as authority was vested in them by the Legislature, to solve problems from their viewpoint, that as far as the power of this government under natural law and in justice will permit they have gone, and that if we give them authority which permits them to do what is sought for under this resolution, we will be confronted, under the provisions of the initiative and referendum and the other method of direct appeal to the Legislature through this opening wedge, with dangerous fallacies and policies. Consequently, personally I feel that we ought to padlock the door now, when in sober thought and judgment, after considering this problem in all its phases, we realize what possibly may result. And I say advisedly with all respect to the judgment of the gentleman on the committee on Public Affairs from Worcester (Mr. Hobbs), who spoke a few moments ago with enthusiasm, probably accentuated by the hypnotic influence of the chairman of the commission in question, that they have overstepped the bounds, and that that not only does not justify us in adopting this resolution in its present form but that this weakness of the committee in accepting and reporting the resolution ought to warn us to beware of specious and fallacious pleas which jeopardize our social structure.

And I want to say, further, that I believe that the amendment offered by the gentleman from Milton (Mr. Bryant) is beneficial and strengthening, and combining that with the amendment which I have offered, if any resolution is to be adopted, our difficulties are solved and a proper and reasonable restriction is placed upon this unwise, even though unconscious, attempt to turn our government over to the devotees of socialism.

Mr. Pillsbury of Wellesley: As a humble follower of the leaders here I have naturally made a careful study of the position of the leader of the Convention, my friend from ward 5 in the third division (Mr. Lomasney), and I have some difficulty in finding out the standards by which he selects socialistic schemes for his support and differentiates between those and the socialistic schemes which come under his disfavor. As nearly as I have been able to work it out, my friend is a socialist on Tuesdays and Thursdays, while on Wednesdays and Fridays he sets his face like a flint against any scheme having the slightest socialistic flavor. [Laughter and applause.] Perhaps I ought not to make this comment upon his general attitude in view of the fact that on the present occasion I am entirely in accord with him, which greatly strengthens my confidence in my own judgment. But what I rose to say was this:

A few minutes ago my friend from Fall River in the fourth division (Mr. Dean) put a question to my friend from Worcester (Mr. Hobbs) which I understood him to disclaim his ability to answer, which at any rate he did not answer so far as I could gather from his remarks, and a crumb of information which tends to meet that question has

been put into my hand in the interval, which I think may be worth the Convention's hearing. The question was how this government housing scheme has worked elsewhere. It appears that in Ontario, Can., the loss on the government's dwellings for workmen, as found by a legislative investigation, was over $100,000 a year, and in England the voters cast enormous majorities against such undertaking after an experience of it covering twenty-five years. I cannot guarantee the authenticity of this information, although it appears to be official, but it is entirely in line with what my general impressions have been upon this subject, and for this and other reasons I am against all these socialistic schemes, whether made in Germany, as most of them are, or elsewhere.

I will only detain the Convention to add that if there is any prospect of the adoption of the resolution, which at present I do not apprehend, of course the amendment of my friend from Milton (Mr. Bryant) should go into it. It is true in general at present that cities and towns have only the powers which are delegated to them by the Legislature, but here in so many words is an express and direct constitutional delegation to them of this power, which apparently they may exercise without let or hindrance if the resolution should be adopted in its present form.

Mr. Walcott of Cambridge moved to amend the resolution moved as a substitute by Mr. Loring by inserting in place of the article of amendment the following:

Article XLIII of the amendments of the Constitution is hereby amended by inserting after the word "Commonwealth" in the second line thereof the words "or the cities and towns therein", so as to read:

ARTICLE XLIII. The General Court shall have power to authorize the Commonwealth or the cities and towns therein to take land and to hold, improve, subdivide, build upon and sell the same", etc.

Mr. WALCOTT: The purpose of this amendment is to prevent an unnecessary duplication. The speakers have pointed out here the inadvisability of passing an entirely new amendment to the Constitution when the present amendment, with the introduction of two or three words, will satisfy, it seems to me, the wishes of a majority of this Convention. From the discussion which we have heard it seems to me that what the members of this Convention want to do is to give the cities and towns the power that the Commonwealth already has, that is to say, to buy land, build upon it and sell, but to preserve the restriction that the sale shall not be for less than cost. Now, there are also the new words put in the provision that authorization from the Legislature shall be given to those cities and towns which desire to go into this business, so that power will not have to be specially delegated. That is, it incorporates the suggestion made by the gentleman from Boston in the first division (Mr. Horgan) and the gentleman from Boston in the third division (Mr. Lomasney) and the gentleman from Milton in the fourth division (Mr. Bryant), and does it by the introduction of only four new words to an existing amendment of the Constitution instead of having an entirely new amendment to produce that desired effect. I hope, therefore, that if this meets the wishes of the majority of the Convention it will be adopted instead of a new amendment of eight or ten lines in substitution for the existing one upon the same subject.

Mr. UNDERHILL of Somerville: If all the members of the Convention could have heard the gentleman from Lowell who sits in the first division (Mr. Charbonneau) when he spoke on this subject, and if they would remember his words, it would be perfectly plain what to do with this resolution. Accept all of the amendments that have been offered thus far and then throw the whole thing out of the window. Experience has shown that from the barracks which the government proposes to build down at Quincy to the race suicide cottages which the State has built in Lowell, the government, neither National, State nor municipal, can go into the real estate business and satisfy the people to whom they are trying to cater. I trust the gentleman from Lowell (Mr. Charbonneau) will take a position in front of the Convention and repeat what he told us regarding the conditions which surround the building of the cottages at Lowell.

Mr. BENNETT of Saugus: Some weeks ago when this matter was first brought up I called attention to the fact that we had in the South Cove district in Boston a sample of the plenary power of the Commonwealth to do about everything that it was proposed to do advantageously in this amendment under the sovereignty of the Commonwealth. If my recollection serves me right, precisely the same thing occurred in the old Fort Hill district. Fort Hill was an exceedingly populous community. It was cut down, and the hill was used to build Atlantic Avenue, and the square which was on the top of the hill is now Fort Hill Square, on the surface of the city, and the population, the close, dense population of Fort Hill almost all moved over to South Boston and furnished the basis of the population of that salubrious section of the city. It was built up in that way.

This Amendment XLIII, which was adopted in 1915, gave no new power so far as health is concerned, but it broadened the power of this homestead movement to a certain extent. Here is a tremendous extension of the power given in 1915. I am somewhat surprised at the unanimity of the committee in support of this proposition when we had so radical a proposition in 1915. Now, this proposed amendment amends 1915, Article XLIII, in three particulars. First, it extends that power to the cities and towns to provide homes; second, it takes away the provision of the amendment that the property should not be sold below cost, and third, it proposes that the commission may lease and rent.

I asked a question here which I think is somewhat basic, as to whether I have been answered in my desire to have lease and rent stricken out some time ago. I have been told that the reason they want to put in lease and rent is not the purpose of going into the wholesale business of leasing and renting, but in order that they may lease a little piece of property temporarily while they are taking it for purposes of selling or for other purposes. While it remains idle they want to rent it until they can turn round and do something else.

Now my question is: Can they not do that at the present time? As near as I can make out, they can. The gentleman from Worcester (Mr. Hobbs) answered not only that they can but they do at the present time. Incidental to their taking property for other purposes they lease and rent it. Therefore, in order to enable them to proceed economically by temporarily leasing or renting it is not necessary to read into the fundamental law of this State that not only the Commonwealth but cities and towns may enter into the business of build-

ing property, taking land and building houses for purposes of lease and rent. You make this tremendous innovation for the purpose of accomplishing a supposititious difficulty which does not exist.

I would prefer to see this whole matter killed. I do not see any necessity for it. It is visionary. It is proposed by people who see something way off in the future, they think. It is not proposed because of difficulties which have been found to exist at the present time; it is proposed because they want to go way off farther.

I am surprised, I say, at the unanimous report of this committee, apparently, and I hope that if we cannot kill this thing we shall leave it just where it is. There is power enough, there was power enough before the forty-third amendment, under the general sovereignty of the Commonwealth, to look after the health of its inhabitants. You notice I do not use the words "police power", they seem to have been worn threadbare, but under the general sovereignty of the Commonwealth health can be taken care of. Now, we have gone further than that in the forty-third amendment. We have extended it enormously. If we are not willing to rest right there and be conservative, I certainly hope that these amendments will be adopted. Why, the idea of giving the town of Saugus, the town of Lynnfield, the town of Webster, the right to go in and build houses to lease, is preposterous. It is preposterous that this Convention should entertain such a notion for a moment. But what may come out of it? If we cannot adopt those amendments and strike out lease and rent and put back that it shall not be sold for less than cost, and leave it wholly to the Commonwealth, then I hope the whole proposition will be killed.

Mr. CHARBONNEAU of Lowell: There is much that is objectionable in the proposition before the Convention now. It is supposed to be presented for the purpose of relieving congestion. There are two kinds of congestion. One is to have too many people in one tenement, and another to have too many tenements in the same locality. In one case I suppose both kinds exist, and in the other but one.

The city of Lowell has had its troubles with congestion, but it is a condition that has been remedying itself for the last twenty-five years. I have taken the trouble to find out what has been done privately to remedy the conditions that existed, and I have discovered that in twenty-five years more than 2,500 single houses and two-tenement houses have been built by private parties in the suburbs of the city. So that a situation was reached before the war where large blocks easily could be found without a single tenant. People gradually were moving out in the suburbs. The men who have built these houses have developed large organizations of trained men, skilled labor, and have invested a large amount of capital in the business. They sell a cottage of six, seven or eight rooms with as little as $200 cash down, and they give a deed. The bank takes a first mortgage, and the builder takes a second mortgage payable in monthly instalments. Under this system the conditions in Lowell have been remedying themselves to such an extent that people found that it did not pay to build large blocks immediately before the war. At the present time conditions are abnormal. There are many war workers who have come in, and tenements are taken up. But under normal conditions there is no need, absolutely no need, of State help. Things will take care of themselves normally under private control.

It does not follow that building houses by the government will relieve the second kind of congestion, that is, having too many people in the same tenement. We have an experiment in Lowell by the Homestead Commission, and it has built there some ten or twelve houses. I inquired of the neighbors, — these houses happen to be in my district, — what the general opinion is of them. I asked a civil engineer. He said: "They are toy houses." I sent one of my office clerks to inquire from residents of the neighborhood what they think of the houses erected by the Homestead Commission. The neighbors say these houses are a disgrace to the locality. As a matter of fact, they have become known in the community as race suicide cottages, and one of the reasons for that is their size.

The Homestead Commission has published a pamphlet that gives some illumination on the subject. I have here on page 9 a plan which shows a parlor 8 ft. x 8 ft. 6 in. Then on another page I have a bedroom. The floor space of the bedroom is 10 x 9. This is in a *pitch* roof, and the roof pitches quite sharply, so that when you get to the ceiling the space cannot be very large.

The Boston Herald of a week ago Sunday had an article covering this subject, and it practically substantiated the name that has been given to these cottages by saying that they are adaptable to young married couples without children and who do not expect to have any.

Mr. MAHONEY of Boston: I should like to ask the gentleman a question, if he will answer it. What is the frontage of that house on page 9, the frontage of the house? Also, you gave the dimension of the second floor, which practically calls for 10 feet 6 inches across and 9 feet in length. Is that right?

Mr. CHARBONNEAU: That is as I understand it.

Mr. MAHONEY: Then the width of that building is 26 feet; is that right? The front of the building?

Mr. CHARBONNEAU: I have not the width of the building. It does not seem to appear in my plan.

Mr. MAHONEY: I will say that if you look at page 3 it says 26 feet, that is the high priced house, and the lower priced house is 22 feet.

Mr. CHARBONNEAU: Possibly the gentleman is right about the 22 feet, but that includes hallways, stairways, and other necessary spaces in the building. But the dimension as given here on page 9 is for the parlor 8 ft. x 8 ft. 6 in.

Mr. HERBERT A. KENNY of Boston: I wish to ask the gentleman from Lowell if the United States government were not in possession of these facts that he has given us. Has not the United States government now appropriated $1,000,000 to relieve congestion in the city of Lowell, notwithstanding what he said?

Mr. CHARBONNEAU: I understand that the United States government is now investigating the situation in Lowell for the purpose of providing homes for war workers, but the question before the Convention is of a permanent policy for the Commonwealth and cities and towns to engage in the building of houses, and not a temporary experiment to relieve war conditions. The United States government now has full power to erect houses for war workers and that phase of the situation is not in issue here.

Mr. DONOVAN of Springfield: I should like to ask the gentleman if

his objection is merely that the houses are too small, if his objection is really not against the building of houses but the failure in this instance to build houses sufficiently large to accommodate the tenants of those houses.

Mr. CHARBONNEAU: I object to the building of houses by the State and by any municipality. I refer to the experiment in Lowell as tending to show that it is very difficult, if not impossible, for the State or a municipality to compete with private capital to build as good and as suitable houses as private persons can do. I do not desire to criticize the members of the Homestead Commission. I think that they individually are good people, but it is the scheme. It seems that this Commission does not understand the need of a working-man. It is stated that these houses are for working-men. Assuming that a working-man and his family can be lodged in a house that was built by the commission, the expense of paying the interest on the purchase price and paying the taxes and keeping his property in repair has been figured to be something like $30 a month for four rooms. It seems to me that is wholly unreasonable. These houses will be occupied during the period of the war, during the present shortage, but I have been assured by men of many years' experience in this line that they will fall back on the State just as soon as conditions become normal again; that there will be absolutely no demand for them.

The most objectionable part of this resolution is the one which provides for leasing and renting. I have had occasion to investigate houses similar to these, only larger and suitable to accommodate a working-man and his family. These were built in Centreville, R. I., — I think the name of the town is Arctic Center, — and these houses were let and leased to tenants. The owners found it necessary or convenient to lease these houses originally at $2 a month, and subsequently the rent was raised to $4.60 a month. The cottages in Lowell are on a basis of cost, actual cost, including interest on the purchase price, taxes, repairs, etc., of something like $30 a month, so that it seems by considering conditions elsewhere and in Lowell that the scheme is impracticable, and that it must fail because it cannot work out.

There are other objections to this scheme. One is that it has a tendency to segregate working-men. If the city or the State attempts to build a large number of houses, and sell them or lease them to working-men, it has a tendency to draw only working-men in that particular section, and it depreciates the surrounding real estate and is very undesirable to any community. I do not know how things are in most cities of the Commonwealth, but in our city of Lowell there is very little distinction between working-men, business men and professional men. As a matter of fact, I was much surprised to find here men who pretend to be solely representatives of labor. We seem to have no such men in our city. We have what we pride ourselves on, a democracy where every man who is honorable and lives well can meet every other man, whether he works or not.

Another great objection to this scheme is that it does not help the man who really needs help. The man in our city, at least, who needs help is the working-man who has eight or ten young children, too young to work. It is obvious that he would need probably three of these cottages to lodge himself and his family.

In view of these facts, I submit to the Convention that this reso-

lution ought not to pass in any form, that conditions in the Commonwealth will relieve themselves naturally by private capital, by private enterprise, by means that we have now, and that there is absolutely no need for this resolution. [Applause.]

Mr. KILBON of Springfield: As a humble member of one of the committees, there having been two which considered the substance of this resolution, and both of them having presented a unanimously favorable report, I wish to rise under the bombardment of heavy guns which has been going on for the last half hour or so to express certain ideas that still remain unshattered in my mind. The gentleman who just spoke and most of the gentlemen who have been preceding him for some little time past have acted on the supposition that we were proposing to adopt a law whereby full authority was given to the Commonwealth and to any city or town therein that had any notion of doing it, to buy up all of the real estate it could lay its hands upon, build houses at wholesale and give them away to anybody who came along. What actually is proposed is this: That in cases where there is congestion of population, when the desire of the people of any community runs in that direction, the Legislature may have authority to allow them to go as far as the Legislature thinks it is wise and good for them to go in the direction of an experiment, or, if you please, a project that actually is carried into effect, for helping the situation in which they find themselves.

I suppose that every member of this Convention is as well aware as I am that there is no business in the country that is so wide open to the charge of profiteering as the business of developing real estate for homes on the edges of cities. We all of us know people who are interested in that kind of work, and I never have known any of them who did not have plenty of cash in their pockets. They make money out of it in very large sums. Now, it is possible that the State is not able to do that business effectively or economically. It is possible that the State will lose money every time it tries to do a thing out of which private citizens make a pile of money. I am not at all sure that the State does not generally do that sort of thing. I am not very much of a government ownership man, but I am firmly convinced that the constitutional power of government ownership, with the threat, if you please, that something of this sort may be done, may be done wisely and economically and effectively, serves at least to a small extent as a curb on the profiteering that is going on in this kind of business, and it is with that view that I have given my support, and will give my support very heartily, to the amendment in the form in which it has been moved now by the gentleman from Beverly (Mr. Loring).

I am inclined to think that the amendment proposed by the gentleman from Milton (Mr. Bryant), while it does not make quite so good English of the proposition, is to its advantage. I thought at first that it was not, but some things have been said in the debate which would lead me to support it. I do feel that the thing which is before us should be held clearly in mind in this form: May the Legislature be empowered to allow an enterprise of this sort to be carried on? May the Legislature be empowered, if the people desire it, to have a class of enterprises of this kind carried on? May the Legislature, if it finds an exigency arising, allow, under some circumstances, the leasing or

renting of property which for some reason or other has not come to be handled advantageously in the ordinary routine of bargaining, so that it could be sold at cost or something more than cost? May it, in such unusual cases, allow a parcel here and there to be sold at what it will bring? That is the proposition that is before us, just that and nothing more. It is not a proposition to enact a law allowing all our cities, or any of our cities, or the Commonwealth, to go into the real estate business in a large degree or in a small degree. It simply lays open to the Legislature the power to grant certain advances which it seems to me the exigencies of the situation clearly require. I hope that the members of the Convention in casting their votes will recall once again that fact to their minds, and that we shall not fall, as I think we sometimes have fallen, into the error of thinking that because a power was granted to the Legislature it therefore of necessity would be supposed that every bit of the power so granted was to be used in the most reckless and ruinous fashion.

Mr. Waterman of Williamstown: I believe that we are thinking that the remarks of the last speaker are certainly along the lines of the dreamer. Here we are in Massachusetts, with taxes soaring every year, and we have in this Convention by the budget system, as we have recommended, proposed that our financial outlook for the future shall be so guarded that we will not run into excessive debt without knowing it. Now that is a measure as a stop-gap for the expenditure of money by people, reformers, dreamers who come before the Legislature constantly and ask for appropriations for this thing, that thing and the other; and the consequence is that our annual State taxes have gone up to $30,000,000 or more. Now here is another chance to increase that, to run away with the control of the moneys that we wish to use for the State's benefit. That is why we have taxation, and the idea of selling or leasing property for less than cost is the idea to put it into taxation, and that has been the constant error. When the amendment was passed taxing intangibles at a different rate than other property, that was forced upon the Commonwealth of Massachusetts because of the increased necessity of getting funds to meet all these schemes. That is it, and nothing more. So that a great proportion of our citizens who are not able to get into schemes whereby they can have an easy income are taxed almost to desperation. And to-day, with the prospect of this country in the next fifty years having a debt that will make many and many a citizen groan, to say nothing about the great debts of the world, some of which may be repudiated, and the government of the United States and the people of the United States will suffer from that repudiation, — the business basis that we should stand upon, the same as the three bills that went through the Legislature this last winter for the rehabilitating of the street railway systems, — it was only a matter of putting them on a business basis so that they could go on and live and not become a public charge through taxation. And I leave it to you if that is not the fact. We are getting away from business principles and these schemes coming on make it so that people become helpless through the power of the Commonwealth to exist. And that is the reason that they have asked for these reliefs so that the people may not move out of the Commonwealth. That is why we passed the amendment providing that intangibles might have a different rating, so that

those people may stay in the Commonwealth with their money we wish to use. So I trust that these dreams may be only dreams and that this matter may be killed here and now.

Mr. Ross of New Bedford: I am not surprised that the gentleman from Saugus (Mr. Bennett) should say that the Commonwealth and cities and towns should not be trusted to lease or rent homesteads to people who live in the houses that would be built under such a proposal as this. I am doubtful if I would want to trust the people of Saugus, knowing that the largest farmer in Essex County resides therein. The gentleman from Somerville (Mr. Underhill) is at his old tricks. He usually waits until amendments have been offered, and then he asks the Convention to adopt all the amendments and kill the measure. And I think about one of the first things I heard when serving in the Legislature, — and it is a good many years ago, — was that old trick, and it is as old as the hills.

Now, I am going to tell you something about homesteads and the cleaning up of your State land. I have had some little experience with that sort of thing in the Legislature. Ten years ago I introduced a bill looking to the reclamation of the wet lands of Massachusetts for the purpose of making farms and building homes thereon. I remember about the last fight I had on this matter before my retirement was with the chairman of the committee which had the matter in charge, and that gentleman now serves as the second highest official in the State (Lieutenant-Governor Coolidge), and he came in with a committee report adverse to appropriating moneys for the purpose of investigating methods whereby the lands could be cleaned up and rented out as farms or homesteads for the people. Of course the old question of constitutionality was raised. I am somewhat surprised to see this great difference between the attitude of the gentleman I have referred to and several delegates to this Convention. In that case I was met with courtesy after the first day's fight. After that we got together and a bill was framed and money was appropriated for the purpose of investigating the conditions of our wet lands and to provide for their reclamation. And when I inquired later with regard to the use of this money I was told it had been used for some other purpose.

I want to say that the intent of this measure, — and every delegate knows it, — is not to go into real estate business like a real estate man; that the intent is not to do the things that a city, a town or the Commonwealth should not do; that the sole purpose is to relieve the congested districts and take our people out in the country and build homes for them fit to live in, not like those that have been referred to by the gentleman in the first division, I believe, from Lowell (Mr. Charbonneau). I want to say that if the truth were known I will warrant that somebody else rather than the Homestead Commission is responsible for those houses, the way they are built and the size of them, and so forth.

When the matter was up in the Legislature some time ago we tried to clean those meadows, — the Neponset meadows, so called, — 4,000 acres of land. Had that proposition been adopted and had the State acquired those lands, it would have held them to-day at a value about twenty times or more greater than their cost then. In other words, they have been cleaned up in large measure under the health law, not

as a reclamation by the Homestead Commission, and the result is, I am told, that one-half of those 4,000 acres were bought for $7 an acre and sold by the same people for $200 an acre after reclamation by the State. Now if you want that sort of thing to continue, why, kill this measure, of course; adopt all the amendments and throw it out through the window. How much better it would be if we could throw the gentleman from Somerville through the window! [Laughter.] To the north of us there lie some 10,000 acres of wet land that easily could be secured. I know one individual who had an invention, which was offered to the State at cost, that could be used on those lands, by which for all practical purposes they would clear themselves so far as surface water was concerned, and thus render them fit for reclamation by the State. The very scheme of the Homestead Commission is to lease and rent. How can any person acquire property otherwise? How can a person who has not got the money acquire a home? Are you going to give it to him? Are you going to turn it over to him? In what other way can you permit him to move into a house with land, owned by the State or municipality, and stay there without having either a lease or renting it to him? That is the intent, and when you take that out it seems to me you in large measure have nullified the resolution.

The idea of the Homestead Commission is to permit the cities and towns to do this work. I do not think it would be wise to limit it to the Commonwealth, and I will tell you why. The cleaning up of these lands will be known; the parcels of property will be known to the real estate dealers, and I am as much afraid of them as any delegate in this Convention, and by the time a city or town has secured authority from the Commonwealth the land would have been bought and the said city or town would have to pay several times more than it would have if the fact had not been known.

That in my opinion is just what would happen. The Homestead Commission, if it is permitted, — and if the resolution moved by the gentleman from Beverly is adopted without amendment it will be, — can prevent this in large measure. It is much better to do that than to pass all the amendments and kill the measure. Then you are doing something that will enable the Homestead Commission to do the work which has been done successfully in Australia, in New Zealand, in the South American republics and in various countries of Europe. And in not one solitary instance, — and I have made some inquiries about this, — has one country that has tried this scheme gone back on it. I trust the amendment moved by the gentleman from Beverly will be adopted and all other amendments killed.

Mr. WHITTIER of Winthrop: I have been a real estate agent for twenty years and I want to say that I am in favor of this resolution in spite of what the last speaker has said in his reference to real estate agents. I want to give you one or two reasons why I am in favor of the resolution. Incidentally I will say that I am chairman of the Winthrop Planning Board. Some ten years ago we were face to face with a very serious problem in our town. In the center part of our town there was a large marsh area of about a hundred acres. Now Winthrop is, next to Nahant, I believe, the smallest town in area in the Commonwealth. We have only about 800 acres available for development and we have reached a considerable measure of conges-

tion. This area had been purchased by outside interests who had absolutely no civic interest in the community, and was in the process of being sold to Tom, Dick and Harry at exorbitant prices, and we were in danger of a development which would be not only prejudicial to the town but prejudicial to the persons so developing it. It was, as I say, a low, marsh area, without streets, sewers or any public service, and the character of the buildings that were being erected was such as not to be fit for human habitation. We realized that there was a fearful menace there. How were we to meet it? I want to say further that in proportion to area the town of Winthrop has more park space than any other town or city in the Commonwealth.

Mr. Bauer of Lynn: Except Lynn.

Mr. Whittier: I will not make any exception. The only way that we could meet that situation was to take that enormous area for park purposes and tie our hands for any possible way of developing that property in a way which would be a credit to the community and give us taxable property for decent development. And there it lies to-day, a waste area, and it will be years and years before the town will be in any position to develop it as a park, and as a park we do not need it.

Now I say that this power should be extended to cities and towns. I have not very much time, but I want to say one or two words why I am not opposed to the Commonwealth or cities or towns renting or leasing. I think that situation is going to take care of itself. As I say, I have been in the business of taking care of other people's property for the last twenty years. In that time I have gained some experience. If I had a tremendous autocratic power and could regulate how people were to live in a house, I think that I might be able to work the thing out to a satisfactory solution. But my experience shows that the average person prefers to live as he or she pleases, without dictation.

Mr. Herbert A. Kenny of Boston: It seems to me that this resolution will wipe out two great evils in our Commonwealth. One is the slum evil and the other is that great distressful thing which we see in times of strikes, where the corporations of mills owning these large apartment-houses throw out the strikers and intimidate them in that way by eviction. Now it is all very well for the gentleman from Williamstown (Mr. Waterman) to say that we are dreamers. Gentlemen, we must do a little dreaming in this Convention. We must deal with probable expectancies. The Legislature can handle the business problems, but this Convention is to reach out, to anticipate what the future will do, a little bit at least.

Are the landlords of this country so altruistic as to wipe out the slums? Have they done it in any of our large cities? Is it not incumbent, therefore, upon the Commonwealth to wipe out those slums? Is it not incumbent upon the Commonwealth to give the laboring men a fair chance in their houses, and not have them evicted under the lash of the employer? Is that fair?

Now, gentlemen, all the large cities of the world have found that they must deal with the slum problem direct. They may do it under their police power, but they must do it in order to conserve the health, the strength and the energy of the people. As I said before, there are coming back to our shores probably one million men who

will be steeped in new socialistic ideas. I have been trying very hard to find out what is the problem to meet the trend toward socialism. How are we going to meet this spectre of socialism or what is termed socialism which is appearing before us? I want to quote no less an authority than President Eliot of Harvard College. President Eliot, in his late thesis on dealing with this labor and capital problem, states that the only way, the only method for America to do and for the various Commonwealths of the United States to do is for the employer to form some coöperative plan with the employee, and not only that, the greatest measure offered by President Eliot is that the citizen of the Commonwealth, the citizen of the country, should have in his country some interest, and if the alien comes here and has no interest in this country, if he has not a Liberty Bond, if he does not pay even a poll-tax, he is nothing but a liquid commodity that moves from place to place. For instance, a hundred thousand Italians have said that in the event of prohibition they will move to Buenos Ayres or elsewhere in South America. They have no root in this country. Now let us take President Eliot's advice in this matter. Let the Commonwealth say to the soldier who has come back or to the struggling workman: "We will give you a home; we will give you a home much as the English government has given the agricultural laborer a home." By following President Eliot's advice in the matter it does seem to me that we shall dissipate this spectre of socialism which already is frightening the very ablest sociologists and publicists of our country.

Mr. Mahoney of Boston: I hope that this resolution reported by the committee will be accepted by the Convention. In 1911 the Legislature created the Homestead Commission, and on that commission were such men as Mr. Gettemy of the Bureau of Statistics, a member of the Board of Health, the President of the Massachusetts Agricultural College, the Bank Commissioner, and three other persons appointed by the Governor, one of whom was a woman and another a laboring man, — with instructions to report to the following Legislature a bill under which mechanics, factory employees, laborers and others might be assisted by the Commonwealth in acquiring a homestead for small houses with a plot of land. The commission reported a bill in 1912, but the Supreme Judicial Court handed down an opinion in answer to an inquiry that the use of public funds or any funds over which the public had control for such purpose was unconstitutional. An amendment to the Constitution to make such appropriation constitutional, being adopted by the Legislatures of 1914 and 1915, was submitted to the voters at the State election of 1915 and was ratified by a majority of three to one, every county in the State voting for it.

Now coming down to the question why we want to pass this amendment, you all know that in this State it is pretty hard for any man to get a mortgage from a savings bank. We have in this State about 196 savings banks with a total of $1,350,000,000 deposits, and out of that there is about $500,000,000 loaned on mortgages on real estate. As you know, the savings banks were created to give the people homes, but now they have gone away from that principle to a great extent and they are investing more and more in stocks and bonds. In 1916 the loans on real estate by savings banks increased to about $32,000,000. Last year the increase in loans on real estate by savings

banks in this State was only $19,000,000, making a falling off of about $13,000,000. What have the owners of real estate done for that $13,000,000? This is a question that vitally concerns the laboring people. I do not know what the laboring classes would do except for the coöperative banks in this State. The coöperative banks have increased their loans $4,000,000 on real estate in this State during the last year. We must have some additional means of helping the laboring people.

In 1917 the Legislature took the first definite step in this direction by passing the following act (General Acts, 1917, Chap. 310):

AN ACT TO AUTHORIZE THE HOMESTEAD COMMISSION TO PROVIDE HOMESTEADS FOR CITIZENS.

SECTION 1. The Homestead Commission is hereby authorized, with the consent of the Governor and Council, to take or purchase in behalf of and in the name of the Commonwealth, a tract or tracts of land for the purpose of relieving congestion of population and providing homesteads, or small houses and plots of ground, for mechanics, laborers, wage-earners of any kind, or others, citizens of this Commonwealth; and may hold, improve, subdivide, build upon, sell, repurchase, manage and care for such land and the buildings constructed thereon, in accordance with such terms and conditions as may be determined upon by the commission.

SECTION 2. The commission may sell land acquired hereunder, or any parts thereof, with or without buildings thereon, for cash, or upon such instalments, terms and contracts, and subject to such restrictions and conditions as may be determined upon by the commission, but no tract of land shall be sold for less than its cost, including the cost of any buildings thereon. All proceeds from the sale of land and buildings or other sources shall be paid into the treasury of the Commonwealth.

SECTION 3. The Homestead Commission is hereby authorized to expend a sum not exceeding fifty thousand dollars for the purposes of this act.

SECTION 4. This act shall take effect upon its passage.

Mr. JOHN W. DALY of Lowell: Since my colleague from Lowell (Mr. Charbonneau) addressed this Convention I have heard some comment that impels me to arise and correct an erroneous impression that he has created, namely, that there is no laboring class in the city of Lowell. At the present time the city of Lowell is choked with men, women and children who are laboring in relays 24 hours every day, producing materials to help the country in its present crisis. Furthermore let me say that the reason the Homestead Commission selected the city of Lowell as a place of experiment in housing problems, and the reason that the Federal government, after investigation, authorized an expenditure of over $1,000,000 to build houses in the city of Lowell, was because the investigation showed and proved that from a humanitarian standpoint it was absolutely necessary to provide adequate housing facilities for the laboring people of the city of Lowell. [Applause.]

Mr. SULLIVAN of Salem: I was considerably interested in the question asked by the gentleman from Fall River in this division (Mr. Dean) of the gentleman from Worcester in charge of the measure (Mr. Hobbs) which to my mind was not answered, although the gentleman from Wellesley (Mr. Pillsbury) did say a few words with regard to the experiences of Ontario, Canada, on this housing proposition. I have a few facts here which I am going to call to the attention of the delegates and let them draw their own conclusions.

In the first place, the early experience of England in providing homesteads is seen in the report of the London Metropolitan Board of Public Works, dated December 21, 1883: Up to the previous Sep-

tember, at a cost of a million and a quarter pounds sterling (equal to about $6,000,000 in our money at the normal rate of exchange), it had unhoused 21,000 persons and provided homes for 12,000, the remaining 9,000 to be thereafter provided for, being meanwhile left houseless. London expended in the year ending March 31, 1905, over $19,000,000 to house 31,339 persons in 5,929 apartments and 1,147 sleeping places in dormitories, and in England after 25 years' experience the English people voted against the proposition by enormous majorities at the polls in 1906 and again in 1907. The exact figures of the vote are available in the reference library here in the State House.

The gentleman from Wellesley (Mr. Pillsbury) spoke about the situation in Ontario. Ontario's annual loss on the housing business was $131,113 on the working-class dwellings such as we have been talking about. That information is contained also in a legislative report on file in the State Library.

Here is another rather significant fact that after 20 years' experience but little wisdom has been gained as shown by Lord Rosebery in these figures of workmen's dwellings at Shoreditch, England: 533 persons displaced, 472 persons provided for. He said:

> This is a curious way of housing the poor; dishousing would seem a more appropriate expression. It is evident that the more poor are housed the more would be houseless, — they turned out 533 poor people and housed 472 people, many of whom were richer and better off. There would have been in those buildings none at all of the class for whom they were intended, if the Borough Council had not exercised a wise discrimination in refusing tenants who offered much more than the rents which you are prepared to accept; that is to say, a wise discrimination in letting them below their value. Inspired by German example, socialistic schemes transplanted into England and her Colonies have weakened them by piling up enormous debts, and loading down the taxes, making more easy the Prussian subjugation of her enemies. England was blind to the game.

Socialistic homesteads may be one act of the same "blind" game in Massachusetts. Rent under this lease provision in this measure will be a gratuity, in part, because interest and depreciation will not be considered. Fictitious profits on paper will deceive voters, and the illusion will spread from city to city and from town to town, until the total cost may rise to $200,000,000, the amount stated by the Homestead Commission's secretary, who is the leading sponsor of the movement in Massachusetts.

The Prussian method is State Socialism by which the government contributes nothing but cost of administration. The democratic method requires that the taxpayers through the government shall largely support the undertaking.

John Stuart Mill in his Essay on Liberty argues that if houses, markets, insurance offices, coal yards, lines of communication and transportation, were departments of the government and all their employees appointed and paid by the government, "Not all the freedom of the press and popular constitution of the Legislature would make this or any other country free otherwise than in name."

The impracticability of the undertaking of adequately meeting the need by municipal provision of workmen's dwellings was brought out in the annual report of the London County Council for the year ending March 31, 1905, p. 128, report of the Housing Committee:

> The total sum which has been expended on capital account under the Housing of the Working-Classes Acts up to March 31, 1905, is 3,922,086 pounds sterling (about

$20,000,000 in U. S. money). Result: 31,339 persons housed on the basis of two persons per room, 5,929 tenements of 1 to 6 rooms each in block dwellings and cottages and 1,147 sleeping places in dormitories in Parke Street and Carrington Houses.

Now right in our own country the New York State Tenement-House Commission says in its latest report:

At the most such public buildings would better the living conditions of a favored few at the sacrifice of self-dependence.

Here is the opinion of one of the gentlemen who frequently was quoted in the initiative and referendum debate last year by some of those who were in favor of that irresponsible and reactionary amendment, Mr. Perley Morse, who wrote in the Forum:

My experience as a certified public accountant has shown me that government enterprises always cost more than private enterprises.

Herbert Spencer says:

Injury to property and check to business results where municipal bodies turn house builders because they inevitably lower the values of houses otherwise built, and check the supply of more.

Lord Avebury makes this significant comment of the English housing system:

To provide 16,000 rooms in 25 years is only dealing with the fringe of the question. If we are really and thoroughly to carry out a policy of housing, it is easy to see what a gigantic sum would be required.

In conclusion, Henry Holt in his book, "Late aspects of government regulation," says:

From the chaos of statistics regarding municipal housing two facts stand out in unquestioned clearness: TAXATION and DEBT have ENORMOUSLY INCREASED.

Mr. DONNELLY of Lawrence: This resolution that is before the Convention at this time, — that is, assuming that we accept these amendments proposed and especially the amendment of the gentleman from Cambridge in the third division (Mr. Walcott) which covers this matter pretty broadly, — is far more progressive than the mere act of leaving it to the cities and towns themselves. We all know the favors to be granted in city politics if cities and towns are to dabble in real estate. When it is in the Constitution, and we all know that the General Court has full authority over the matter, then the cities and towns that want these dwellings built, and placed within their confines, will have to come here and show their plans, their facts and their figures. I say to you that in the city of Lawrence, — a city of 105,000 population, a city that has grown largely and steadily since the year 1900, and it has not grown over night, — we have been in a very congested condition for the last ten years in regard to tenements and housing, especially since the beginning of this war. We are making practically the bulk of the khaki uniforms that are worn by the National Army and the regular army to-day. Since the American Woolen Company has broadened its field in Lawrence, it has built a great number of cottages and a great many three-tenement houses there, and if it had not been for the building of those houses by the American Woolen Company the city of Lawrence would be in a very serious predicament to-day as far as housing people is concerned. And as you want to see your own city or town progress, I also want

to see the city of Lawrence go forward also and not back. On the outskirts of your cities and towns you have placed signs inviting people to "Come to Live In Malden", or Boston, or Lowell, or some other place, stating on those bill-boards the water-power, the tax rate, the schools, and so forth. If you want to develop one of the best valleys in the Commonwealth of Massachusetts, one of the best valleys in the country, I ask you to give this resolution careful consideration. As you know, without a doubt, the city of Lawrence is bordered by two splendid towns and the new city of Methuen. We have a vast area; its resources are very great, and if we have not the facilities to house our people, how can we hold out open arms and extend an invitation to come and live within our confines? We want the city to progress. It is the biggest manufacturing city, as you all know, not in the State or in the country, but in the world. New mills have gone in there every two or three years since 1904, and only lately two more new mills have been added. We have the best artificial dam anywhere in this region, and we have very valuable water-power for inducing new industries to come to our city, but still with increasing population we have no place to house them. So why not give this resolution ample consideration if we are to have a city that is to progress like the city of Lowell, which has not been choked in population over night, because I believe it is like my own city, that has progressed for the last ten, twelve or fifteen years? Our valley is a textile and industrial centre, and we are bound to grow steadily and normally and abnormally. In conclusion, let me say that if you give us laws that will permit progress and let us develop our cities and valley in that section, and also give us a navigable Merrimack River from Lowell to the sea, we can develop a wonderful valley, and bring more commerce and business to Massachusetts than it now has. We shall be able then to ship our goods from our back door to the most extreme corner of the globe. It would mean also a great reduction in freight rates on all imports to our section, thereby greatly benefiting the people.

Mr. Harriman of New Bedford: To my mind it is not a question in this Convention between socialism and individualism. It is a question between the real estate interests and the mass of our people. Land is as necessary for human existence as water or air, and around every city where vacant land is to be found you will find those who will exploit it. It is almost impossible for the workmen to acquire that land. And I believe, sir, that people even in the so-called "race-suicide" buildings that are alleged to be in process of construction in Lowell, are more healthy and that the children they bear will be better citizens than those who are reared in the private tenements of our cities in this Commonwealth.

The gentleman in the second division (Mr. Waterman) has referred to the fact that we cannot pay for these things. Let me say if the debt in the future is to be paid it has got to be paid by the people, and the health of the people should not be measured by dollars and cents. The people cannot be healthy and cannot be moral and the highest character of citizen cannot be obtained when men and women are crowded together as they are in our industrial centers. And I trust, sir, that this amendment will go to the people as it is drawn by the committee, for I can see nothing more reasonable. This

amendment if it is adopted will make it more feasible for the workmen to get out into the open air and have homes of their own. I believe that is one of the most fundamental matters of government that can be prescribed by the will of the people and I trust that the resolution as reported by the committee will be adopted.

Mr. Creamer of Lynn: I simply wish to call to the attention of those members of this Convention who dislike to see the government go into business for itself, the fact that under the forty-third amendment, now a part of the Constitution, the government can do this thing now; that under this amendment the government is empowered if it so desires to lease or to rent land and let private individuals go into the business of building. Is not that a healthier condition than the present one where, in order to have land of this kind used for homestead purposes, the government cannot only build, but must go into business? Pass this amendment, and the government does not have to go into business, but it may act simply as the landlord. Is not that an advantage?

Mr. Morrill of Haverhill: Twenty-five nations among the leading civilized countries of the world, in one form or another, provided homesteads for their citizens. New Zealand, for illustration, cited more because it was the first to adopt that method of meeting a troublesome situation than because of any bearing the fact may have on Massachusetts' problem, took the first steps in that direction as long ago as 1893.

A discussion of New Zealand's reasons for embarking upon such a policy would be idle for purposes of this debate, but I may remark that to some degree they were similar to those which have impelled economists in this State to think seriously of discovering a method of dealing with the land question. The New Zealand government now, in any event, provides 22,000 homes to its citizens, showing at least that the State's participation in the real estate business has not been a failure, whether it be regarded in point of results achieved or merely in point of popularity.

Now, it so happens, that the success or the failure of any policy is determined by its relationship to the fundamental interests of the people governed, and the New Zealand homestead act, tested by that precept, justifies itself. For instance, only 2 per cent of the entire population was unemployed in 1911, to use the figures of a single year which I happen to have before me, while in Massachusetts the rate was 8 per cent. The death rate in New Zealand in that year was 9.4 per 1,000 persons; it was 15.4 per 1,000 in Massachusetts. The significance of the first comparison lies in its application, for a Nation which has attained to a productive capacity of 98 per cent of its man power, surely is prosperous enough to be happy. The second comparison points to an equally hopeful era, — for certainly the elimination of slums, and, through that, the extension of life and health among the people, is an end worthy the effort of any State.

Then again, the eight-hour day is universal in New Zealand and wages have increased more rapidly than the cost of living, — and this, gentlemen, in a country where most of the inhabitants are land-owners and actual producers. Does not that sound strange to us in this country? In regard to infant mortality, quoting from the figures of 1911, the death rate among infants under one year of age in New Zealand

was 56 per thousand, in Massachusetts 119 per thousand. In 1912 it was 51 per thousand in New Zealand and 117 in Massachusetts.

These are all reasons, gentlemen, why Massachusetts should go forward and grapple constructively with a problem which is becoming more and more pressing. Our opponents, however, rather than adopt conditions that exist as the yardstick with which to measure the importance of the policy, stand aghast and point to the cost in money. I do not concede the justice of such an ideal, but, viewed even in that light, New Zealand's experience should beckon us onward, for, if the expenditure of money by government be an evil, as has been insinuated here, then its acquisition by government must be a benefit, — a contention most economists refuse to admit, but, for the sake of argument, worthy of consideration by this Convention. What then are the facts? There has been an actual profit to the New Zealand government of half a million dollars, all of which is returned to the public treasury and all of which plays a part in reducing the public taxes.

In 1915 the voters of this State approved an amendment relative to homesteads and this present amendment is simply a change, the people having voted for the general principle empowering the General Court to authorize the taking of land to relieve congestion of population and provide homes for citizens. The vote in 1915 was 284,568 in favor and 95,148 against, approving the proposition by a vote of more than three to one. In Saugus the vote was 786 against 236. In Wellesley it was approved by a vote of 457 against 337. In Suffolk County it was approved by a vote of 650,214 against 150,355, more than four to one. It was approved in Boston also by a vote of more than four to one. Now is it not reasonable to suppose that, from that vote, the people have given us a mandate to pass this resolution to-day? I leave it to you to decide.

Mr. Flaherty of Boston: Some years ago, when it was proposed that cities and towns be permitted to take over the plants of water companies and electric light companies, the same arguments that have been advanced here to-day against this measure were advanced against that measure. The same criticisms largely of organization by cities and towns of a business proposition or management of them were made. The criticisms here by the gentleman in the third division from Boston (Mr. Lomasney) and by the gentleman from Wellesley (Mr. Pillsbury) are criticisms not of the soundness of the principle but rather of the practicability of it. The criticisms are directed to the men who may administer the law which the Legislature sees fit to pass under this amendment. The principle is not challenged or impugned. The very criticisms that were offered by the gentlemen from Salem in this division (Mr. Sullivan), of the cost, the expense, the difficulties, the disappointments experienced by other communities, should have no weight when we come to regard the soundness, so to speak, of the principle itself and the overwhelming vote of the people of this State in favor of this principle.

Mr. Sullivan of Salem: Is it not true that the overwhelming vote of the people in favor of the present forty-third amendment was based on the policy so ably described by the gentleman from Boston in the third division (Mr. Lomasney), namely, that the property should not be sold at less than cost?

Mr. Flaherty: I do not believe that is so, sir. That phase of the matter was not discussed in the campaign, nor was it called to the attention of the people. The practical politician's view of what a politician in office might do was not considered and surely ought not to be an argument against the adoption of this very wise principle. It is a governmental function and ought to be adopted without the necessity of resorting to a constitutional amendment, and unquestionably would have been adopted years ago but for the fact that the Constitution was held to prohibit it. All of these things are in the line of progress.

Mr. Hobbs of Worcester: I find myself in somewhat a strange position with both the ultra-conservatives and some of the ultra-radicals combined in opposing this proposition of which, unfortunately, I happen to be in charge. Such a combination of the two extremes is always a joy to witness except when you behold it at your own expense, because unanimity ordinarily is a delightful thing. And yet it often happens when you touch on the problem of housing legislation, no matter what the reform is, you have at once a combination between the men who own the houses and the men who are supposed to represent the people who live in them. The one group are afraid of the value of their investment; the other, as a rule, are afraid of changing the character of their district. They do not want changes, they want things kept as they are, and that sort of conservatism is a natural trait in humanity. I do not say that in criticism; it is a thing that is so natural that it may be that some may have observed it even in myself. But it is a striking thing indeed which brings those who have lifted their voice in defence of the vested interests with the gentleman from ward 5 (Mr. Lomasney) who has been somewhat inadequately described as the greatest reformer in the State.

Now the chief argument against the housing proposition has seemed to come on the matter of dollars and cents. Dollars and cents are a very important thing and I want to say right here that I have no doubt whatever that on a strictly financial basis housing reform does not pay. I do not believe you can make a profit out of it. But on the other hand it never was started with the idea that a profit should be made out of it. The State does not go into these businesses for a profit; it goes into them to better conditions, and the dividends it seeks on the money are dividends in increased health and better conditions of the persons whom it seeks to care for. If those are secured it may swallow even a considerable expenditure and still claim that the money was well expended.

Something might be said even on the money matter, because in making up these figures no respect is paid to what the State pays for conditions arising out of bad housing, — the money that it pays for fire, loss of property, the money that it pays for the care of the tubercular and those afflicted with other diseases that thrive in the noisome overcrowded districts of our great cities.

Mr. Sanford Bates of Boston: I should like to ask the member before his time has expired if he thinks it is wise or safe or proper as a constitutional matter to authorize the town of Chilmark or the town of Granby to put an unlimited investment into homes for the citizens of Boston?

Mr. Hobbs: I believe in each municipality paying its own bills

and I think the gentleman's caution is entirely unnecessary. No city or town nor the State itself can go into this matter to such an extent as to prejudice its financial condition. There is a natural law which operates as a very satisfactory brake, and that is one over which the Legislature has no control.

Mr. Hobbs continued his speech after the recess.

I regret the interruption in my speech. When I stopped I was attempting to develop the proposition that the value of housing legislation was not measurable properly in money alone. I have not had time to prepare an extensive set of figures and facts to show wherein the other side of the column must be taken into consideration, nor have I the time, had I them in hand, to place them before this Convention. I shall confine myself, however, to three pieces of evidence. The first is a statement of the chief sanitary inspector of the health department of the city of Cleveland, which is:

> Our city has prepared a set of pin maps that show where the cases of tuberculosis, of contagious diseases, of gastro-intestinal diseases, of infants' deaths and all deaths that have occurred during the year are marked. It has prepared another set of pin maps showing where the family plumbing, the faulty yard closets, the dark rooms, the overcrowded lots are, and in either map the pins have gone into practically the same places.

Now, I take it that if mortality statistics show a decided difference in one community with the average of the State, that that is a fair indication that there is something wrong with that community. Now I want to read as an indication some figures as to infant mortality in some of the cities of our Commonwealth, and I think that in one case at least they will be fairly significant. During the period from 1910 to 1915 the infant mortality of the State ranged from 133 per thousand live births in 1910 to 102 in 1915. Those figures I will ask you to remember.

In Fall River in that time the maximum was 186, the minimum was 151, and in 1915 was 168, over 50 per cent higher than the average. In New Bedford the maximum was 180, the minimum was 143. In Lowell the maximum was 231, the minimum was 147, and in 1915 was 156, again 50 per cent, and we have had expert testimony from Lowell as to the housing conditions there. In Lawrence the maximum was 168, the minimum 128, and in 1915 138. In Holyoke the maximum was 213, the minimum 163, and in 1915 169. In Taunton the maximum was 212, the minimum 123, and in 1915 158. In Chicopee the maximum was 177, the minimum 137, and in 1915 138. That is what is happening in some of our cities. In some of them there is a death rate of children 50 per cent in excess of the birth rate. Does more than 50 per cent mean nothing in the consideration of this subject? Every one of those cities is a big manufacturing district, with a big tenement population.

Take children under five years of age. Out of each 100 deaths, average for the State in 1914 24.6, — out of 100. What was the average in some of those cities that I have mentioned? New Bedford 39.6 per cent, Lawrence 41.4, Holyoke 39, Fall River 44.5, Chicopee 48.6, Lowell 32. That is what is happening in some of our cities to-day, and yet in the face of those figures it still is maintained that there is no need of State activity in the matter of providing better housing facilities.

Let me read a further citation, and this will be the last citation I shall read, as to what has happened in some of these places where it is has been claimed that public housing is a failure.

In 1913 Col. G. Kyffin Taylor, chairman of the Liverpool housing committee, reported to the Tenth International Housing Congress at the Hague that

> In the model tenements built in Bevington and Burlington streets, London, there was a mortality rate as follows: From 50 per 1,000 to 27 per 1,000, a saving in life of nearly 50 per cent. At one time typhus fever was never absent from the slums. In an epidemic year it claimed its victims by thousands. During 1910, for the first time in the sanitary history of Liverpool, not one single case of typhus was reported. In 1895 the number of cases of typhoid was 1,300. There has been a remarkable falling off, until in the year 1911 the number of cases was only 200. In 1901 154 people died from typhoid, and this number fell to 42 in 1910. The diminution in the disease runs with the diminution in unsanitary property. The average death-rate from phthisis has fallen from 4 to 1.9 per thousand. During the past year, out of the 2,601 cases of phthisis which have been under observation at their own homes only 33 were found to reside in the dwellings erected by the housing committee of the city council.

The amendment moved by Mr. Bryant of Milton was adopted.

The amendment moved by Mr. Horgan of Boston was adopted, by a vote of 78 to 41.

The amendment moved by Mr. Walcott of Cambridge was adopted, by a vote of 88 to 32.

The amendment moved by Mr. Loring of Beverly, as thus amended, was then adopted; and, by a vote of 89 to 56, it was passed to be engrossed Friday, July 26, in the following form (No. 406):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

Article XLIII of the amendments of the Constitution is hereby amended by inserting after the word "Commonwealth", in the second line thereof, the words "or the cities and towns therein", — so as to read as follows: — Article XLIII. The General Court shall have power to authorize the Commonwealth or the cities and towns therein to take land and to hold, improve, subdivide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: *provided, however*, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

It was restored to the Orders of the Day Tuesday, August 6, because it had not been referred to the committee on Form and Phraseology, and on the following day it was reported by that committee in the following form (No. 417):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

Article XLIII of the amendments of the Constitution is hereby amended by substituting the following: Article XLIII. The General Court shall have power to make laws whereby the Commonwealth or the cities and towns therein, for the purpose of relieving congestion of population and providing homes for citizens, may take land and hold, improve, subdivide, build upon and sell the same; but such land or buildings shall not be sold for less than the cost thereof.

Mr. Loring of Beverly: This resolution has been amended, but the amendment as now submitted means nothing more than the original amendment of the Constitution, No. XLIII. This amendment has been put into good English by the committee on Form and Phraseology, but in our opinion it adds nothing whatever to the former amendment in substance. It seems to me that it is a great mistake to put meaningless amendments on the ballot, and I hope that the measure will be killed on this stage.

Mr. Dennis D. Driscoll of Boston: Will the gentleman from Beverly (Mr. Loring) allow me a question? The question I should like to ask is this: As this amendment now is, having been adopted by the people, does it not give to the cities and towns power that they never had before according to the Constitution?

Mr. Loring: I think that the Commonwealth could act through the cities and towns before by getting authority from the Legislature, and that is all they can have by this amendment.

Mr. Dennis D. Driscoll: Would it not clear up the doubt as to the legislation if there was a constitutional amendment adopted by the people to give the cities and towns that right? It would not need any legislation.

Mr. Hobbs of Worcester: I feel that I can concur in what the gentleman from Beverly (Mr. Loring) has said as to the effect of the proposition in its present form. Of course that was the intention of the substituted proposition, to make it mean as little as possible, and the only effect of the adding of those words, so that the amendment shall read: "The Legislature shall have power to authorize the Commonwealth, and cities and towns thereof, to take land", is perhaps to clear up the question as to whether a taking by eminent domain must be in the name of the Commonwealth or can be in the name of the city or town. I do not think that it makes a very radical difference in the situation. There is very little question in my mind but what under the preceding amendment the Legislature could have delegated the essential function of taking land to the cities and towns, with the one exception that possibly the takings, if any such were made, would have to be made in the name of the Commonwealth, which is, after all, not a very great difference. If, however, there are any persons interested in this matter who consider that it does add anything of value I am perfectly ready to vote for it. It is not my proposition any longer, and I do not feel any responsibility for the proposition in its present form.

Mr. Pillsbury of Wellesley: I see no reason to doubt that my friend from Beverly (Mr. Loring) is right, and that the amendment makes no change in the legal effect of Article XLIII as it now stands. It is familiar doctrine that the cities and towns are mere agencies of the Commonwealth, and that the Commonwealth can exercise its powers through the cities and towns so far as it sees fit. There is nothing here worth saving, and the resolution ought to be rejected.

Mr. Bennett of Saugus: I certainly hope this resolution will not be rejected. There are a good many of us who were opposed to the leasing proposition, and we were opposed to selling the land for less than cost. Now, those objections have been made. I think we have a good amendment here. A lot of time has been spent upon it. The Convention was absolutely in favor of it; there is no question about

that. The Homestead Commission is doing good work. I think they went too far when they wanted that leasing proposition and when they wanted to sell for less than cost. Those provisions have been stricken out. We have got a perfectly good amendment. It is something that has been striven for all the session. It cannot do any harm; I believe it will do good, and I hope it will not be rejected.

The resolution was rejected Wednesday, August 7, by a call of the yeas and nays, by a vote of 90 to 94.

Mr. Samuel Ross of New Bedford presented the following resolution (No. 114):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Cities and towns shall have power to take land and to hold, improve, subdivide, build upon and sell, lease or rent the same for the purpose of relieving congestion of population and providing homes for citizens.

The committee on Social Welfare reported, July 16, 1917, the following new draft (No. 324):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to authorize cities and towns to take land and to hold, improve, subdivide, build upon and sell, and, under such provisions and regulations as the General Court may establish or approve, to lease or rent the same, for the purpose of relieving congestion of population and providing homes for citizens.

The resolution was taken up for consideration Thursday, June 20, 1918.

Mr. Frank P. Bennett of Saugus moved that the resolution be amended by striking out, in lines 6, 7 and 8, the words ", and, under such provisions and regulations as the General Court may establish or approve, to lease or rent".

This amendment was rejected, by a vote of 27 to 82.

The resolution (No. 324) was rejected.

THE DEBATE.

Mr. KILBON of Springfield: As this resolution, No. 157, is the resolution which has just been adopted by substitution and passed to its third reading, I ask: What is the proper proceeding?

Mr. PILLSBURY of Wellesley: Let me ask whether No. 157, in its order as it is upon the calendar here, is left for any further action to-day. I understand, as the gentleman from Springfield (Mr. Kilbon) has just said, that we have substituted that resolution for No. 142 in the calendar. Does that not dispose of it on this calling of the calendar?

The PRESIDENT: The Chair understands that a resolution in the same form as No. 324 has been substituted for document No. 320. It becomes an amendment to that resolution, and is now a part of the resolution that was presented originally as document No. 320. It is no longer, so far as the previous action of the Convention is concerned, document No. 324, but is an amendment to the other. The present resolution is properly before the Convention, and has not been acted upon as such.

Mr. Hobbs of Worcester: In order that there may be no difficulty, I would move that No. 157 be laid upon the table.

Mr. Luce of Waltham: No advantage occurs to me from establishing the precedent of the table in this matter. We already have adopted this resolution, and if there is occasion to amend it on the next stage that is much easier, it seems to me, than by keeping this form alive. I trust the motion will not prevail, and that we will reject this resolution.

Mr. Pillsbury: I rise only for the purpose of seconding what my friend from Waltham (Mr. Luce) has said. It seems to me clear that the thing to do is to reject this resolution, and I ask my friend from Worcester (Mr. Hobbs) if he does not concur in that view.

Mr. Hobbs: It is possible that some traces of the practice in the General Court remain on me, but in that tribunal it is more customary to lay matters of identical nature on the table than to reject them, in order that there may be no question as to whether unfavorable action on one might not bar action on the other. If it is perfectly clear that that is not the rule in this Convention, and that unfavorable action on this matter will not preclude the Convention from still further considering the matter which previously was acted upon, I would have no objection to withdrawing my motion to lay on the table.

Mr. Bennett of Saugus: I desire to amend the resolution by striking out from the word "and", after "sell", in the 6th line, the remainder of that line, the next line and the first part of the 8th line until the words "the same", so as to cut out all reference to leasing.

I should like to vote for this resolution, but I shall not vote for any proposition to have the Commonwealth go into the business of leasing property. I think we are making experiments enough. I should like to vote for this resolution, but I cannot vote for the leasing part of it, and I move therefore that that be stricken out.

I certainly hope that amendment will be adopted. I do not believe that this Convention, the conservative element in this Convention anyway, is ready to ask the Commonwealth to go into the business of holding and leasing property. To engage in the business of providing homes or improving property, why, there is nothing new about that. The whole South Cove in Boston, if my memory serves me right, was improved and put into condition in that way as a health proposition, and there have been many cases of that kind. There is no doubt about that, the Commonwealth can do it now without any new constitutional amendment. But when it comes to going into the business of leasing property we are creating a new industry in this Commonwealth, and I think we are going beyond anything that heretofore has been proposed. I hope we will strike out the leasing feature. Then I shall be very glad to vote for the measure, but I cannot vote for it with that leasing proposition in it.

Mr. Kilbon: I think it is proper to say that the idea of the committee on Social Welfare, as it appeared to me, in regard to the matter of leasing is of this sort. I may illustrate by a condition which arose in the city which I have the honor to represent. We are widening one of our main thoroughfares in that city. In the taking of property for that widening the city got possession of a number of parcels of property on one side or the other of the street that was to

be widened, several months in advance of the time when the widening work was actually to be done. It was proper and lawful for the city to rent that property until it was required for demolition under the laws existing with regard to street widening, and that was done. The city gained thereby the rental value of that property for the time when it was waiting for further action. The case which would arise with regard to a homestead operation would not be precisely similar, but it would have something of the same character. The idea that was in the mind of the committee with regard to leasing was purely temporary, to avoid greater loss than otherwise might happen, and the form in which the resolution now has been put before the Convention leaves to the Legislature the power to regulate the leasing of such property, the idea of the committee being that in all probability, with the public sentiment as it is and with the outlook for building as it is, the only possible use that the Legislature would allow of this right would be the leasing of property which, for the time being, might require to be held at a financial disadvantage. If the Commonwealth has paid $5,000 for a homestead and can sell it for only $4,000 at the present time, but hopes within two or three or even five or ten years to be able to sell it for its cost or a sum exceeding its cost, it certainly would be better for the Commonwealth to rent it than to hold it idle. It is with that idea in mind that the committee has desired to open to the Legislature the possibility of granting the right to lease to those who are handling homestead matters for the Commonwealth or for the cities or towns.

Mr. Underhill of Somerville: Either some of the members of the Convention or myself have got the wires crossed, and we are wasting considerable time. If I am right in my contention, this document No. 324 has just been ordered to a third reading by the Convention. The proper way to amend it is on its next stage, when the amendment of the gentleman from Saugus might well be offered, but at this time to discuss this measure, which already has been adopted, is wasting a lot of time. Therefore I move the previous question.

Mr. Bennett: I hope the main question will not be put until I have an opportunity to say that we are voting upon this, and when we vote we take a stand, we take a position, and the amount of time required to take a position on this is not half as long as my friend has taken in some of his speeches here. Now, we either are going to adopt this, or we are not. If we do not adopt it, if we vote it down, we put the Convention on record.

As to the opportunity to save money if legislation should be limited to the modest proposition which my friend from Springfield (Mr. Kilbon) has made, we would not need any Constitution, but we have a Constitution in order to guard against those very contingencies of taking action far beyond the original intention. I see no reason why, under this leasing proposition, the Commonwealth may not in future go into the business of owning all the property in the Commonwealth and leasing it. I think it is a very dangerous proposition, and I hope that it will be amended. I hope it will be amended right now if we are going to adopt this, but if not I certainly hope it will be amended, as is suggested, on the next stage.

The amendment moved by Mr. Bennett was rejected, by a vote of 27 to 82.

The resolution (No. 324) was rejected, Thursday, June 20, 1918.

XXXVI.

OFFICIAL PENSIONS.

Mr. Samuel George of Haverhill presented the following resolution (No. 67):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments; but when any person ceases to be a public employee and returns to private life he shall not receive further remuneration on account of services already rendered from the public treasurer, except for injuries received in dangerous and hazardous employments.

The committee on Bill of Rights reported the following new draft July 13, 1917 (No. 308) (Messrs. Curtis of Boston, Coolidge of Milton, Barnes of Weymouth, Anderson of Newton, Pelletier of Boston and Walcott of Cambridge, dissenting):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments; and no person holding public office, position or employment shall be entitled to receive from State, city, county or town any pension, gratuitous payment or emolument upon his retirement in amount exceeding the rate of one thousand dollars per annum. This amendment shall not apply to war pensions, veterans of the civil war, nor to pensions for which such person has contributed according to law.

The resolution was considered Thursday, June 20, 1918.

Mr. Samuel George of Haverhill moved that the resolution be amended by striking out lines 4 to 17, inclusive, and inserting in place thereof the following paragraph: —

In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments; and no public official or public employee upon retirement, excepting soldiers and sailors and those receiving injuries resulting from dangerous and hazardous employments, shall receive any pension, gratuity or annuity for services already rendered, unless and until a system of civil pensions has been approved by a majority of the voters of the Commonwealth voting thereon at a regular State election.

This amendment was withdrawn.

Mr. William S. Kinney of Boston moved that the resolution be amended by striking out, in lines 4 to 10, inclusive, the words "In order to prevent those

who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments; and".

This amendment was rejected, by a vote of 59 to 85.

Mr. Charles L. Underhill of Somerville moved that the resolution be amended by striking out, in lines 13 and 14, the words "one thousand", and inserting in place thereof the words "six hundred".

This amendment was withdrawn.

Mr. Edmund G. Sullivan of Salem moved that the resolution be amended by inserting after the word "town", in line 12, the words "or any other political subdivision of the Commonwealth".

This amendment was rejected.

The same gentleman moved that the resolution be amended by striking out, in lines 14 to 17, inclusive, the words "This amendment shall not apply to war pensions, veterans of the civil war nor to pensions for which such person has contributed according to law", and inserting in place thereof the words "This amendment shall not apply to those who have actively and honorably served in the army or navy of the United States in time of war, nor to pensions for which applicants have contributed according to law".

This amendment was rejected, by a vote of 49 to 88.

Mr. Frederick P. Glazier of Hudson moved that the resolution be amended by striking out, in lines 13 and 14, the words "in amount exceeding the rate of one thousand dollars per annum", and inserting in place thereof the words ", except as may be provided by a contributory system established by the General Court"; by inserting before the word "veterans", in line 15, the words "nor to"; and by striking out, in lines 15, 16 and 17, the words "nor to pensions for which such person has contributed according to law".

These amendments were rejected.

Mr. Charles Frederick Dutch of Winchester moved that the resolution be amended by striking out lines 4 to 17, inclusive, and inserting in place thereof the following paragraph:—

In order to prevent the granting of special privileges and the creation of class distinctions, pensions or other like emoluments shall be granted to those who have served the Commonwealth or any political division thereof, only by general law, and, except in case of persons who have contributed toward said pensions or who have been permanently injured in dangerous or hazardous occupations, only when and to the extent that they may be dependent thereon.

This amendment was rejected.

Mr. Walter L. Bouvé of Hingham moved that the resolution be amended by inserting before the words "war pensions", in line 15, the word "existing"; and by striking out, in the same line, the words "veterans of the civil war", and inserting in place thereof the words "to war pensions hereafter granted by the General Court".

These amendments were withdrawn.

The resolution (No. 308) was ordered to a third reading, Thursday, June 20, by a vote of 135 to 12.

The resolution was discharged from the Orders of the Day Thursday, July 25, was read a third time and was recommitted to the committee on Bill of Rights.

That committee reported, Friday, August 9, that it ought NOT to be adopted.

It was considered by the Convention Wednesday, August 14, in the following form, as changed by the committee on Form and Phraseology (No. 392):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments, and no person upon his retirement from public office, position or employment shall be entitled to receive from the State or any civil division thereof any pension, gratuitous payment or emolument in amount exceeding the rate of one thousand dollars per annum. This amendment shall not apply to those who have actively and honorably served in the army or navy of the United States in time of war, nor to pensions or retirement allowances for which applicants have contributed according to law.

Mr. Charles L. Underhill of Somerville moved that the resolution be amended by striking out, in line 14, the words "one thousand", and inserting in place thereof the words "seven hundred and fifty".

This amendment was rejected.

Mr. Martin M. Lomasney of Boston moved that the resolution be amended by striking out, in lines 10 and 11, the words "upon his retirement from public office, position or employment", and inserting in place thereof the words ", who shall hereafter be elected or appointed to public office, position or employment, upon his retirement therefrom,".

This amendment was adopted, by a vote of 100 to 26.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution be amended by striking out, in lines 13 and 14, the words "in amount exceeding the rate of one thousand dollars per annum".

This amendment was rejected.

Mr. Joseph Zoël Boucher of New Bedford moved that the resolution be amended by striking out, in line 14, the words "one thousand", and inserting in place thereof the words "fifteen hundred".

This amendment was rejected.

Mr. Robert Walcott of Cambridge moved that the resolution be amended by striking out lines 4 to 19, inclusive, and inserting in place thereof the following:

Except to soldiers and sailors honorably discharged from active service in the army and navy in the time of war, and to their dependents, to those persons now in receipt of pensions and those persons holding offices for which pensions are provided, no pension or gratuity shall be granted to any employee or official of the Commonwealth or any political division thereof except by general law upon a contributory basis.

This amendment was adopted, by a vote of 97 to 55.

The resolution (No. 392), as amended, was rejected Wednesday, August 14, 1918, by a vote of 99 to 67.

A motion to reconsider the rejection of the resolution was made Thursday, August 15; and this motion was negatived.

THE DEBATE.

Mr. GEORGE of Haverhill: I now move the amendment printed in the calendar. I am informed by a great many people that this is a very ticklish question, that when you come to speak about pensions there is something about it that has a very bad effect on any person who undertakes to oppose a scheme of civil pensions. I think there is something in it, and I think we ought to be perfectly frank in considering the situation.

We have more than 100,000 employees of the State. Some of them are pensioned already, and the rest of them expect to be. They already are getting unionized with respect to their future. We all know what it means for any large body of citizens to be united in political matters. I believe that the various organizations of employees in the Commonwealth are getting to be about as strong as the Bar Association, which I think is the strongest union in the State.

Up to the year 1885 the Commonwealth had no civil pensions. We had adopted pensions now and then for those who had been injured in the public service, who had held dangerous or hazardous positions and in the discharge of their duty were injured, and therefore it was thought by the Commonwealth that they were entitled to some compensation. I am not opposed to that sort of pension. I believe that a pension is to be given to those who need it for certain reasons, and the reason may be because they have held some public position and in the discharge of their duty have become injured and therefore, like the soldier and the sailor, they are entitled to different treatment than an ordinary citizen. But in 1885 it occurred to the legal fraternity that the judges ought to be pensioned, that is, the man who has had the greatest and probably the most favorable opportunity in life and has secured an appointment to the bench with a salary of $6,000, $7,000 or $8,000, after he had served a period of twenty years and retired ought to be pensioned. I think they first began to give him a pension of one-half or one-third, and then finally they have increased it up to three-quarters. While the ordinary citizen or the ordinary public functionary can draw only one-third or one-half as a pension, if he only belongs to the legal fraternity he can draw three-quarters. I want to say that that is not unusual. I well remember in the customs service that a similar condition prevailed. If the Appraiser of the Port of Boston went to New York or Philadelphia or Washington he was allowed $5 a day for his travelling expenses, but if an attaché of the legal department of the customs service he received $6 a day. That is, he had to appear before the Board of General Appraisers in the morning, and, as they said, had to get shaved and to have his boots blacked and pantaloons creased and go through several other things in order to make a presentable appearance before the board. In other words, if he belonged to the legal profession he received $6, but if he was only an ordinary Appraiser of the Port he received only $5.

They started in in 1885 to pension the judges of the Supreme Judicial Court. Then it drifted along, and they extended it to the judges of the Superior Court. Then they began to agitate the question of extending it still further, and in 1900 they wanted to extend it to the judges of probate. Just why the judge of probate needs a pension

I never have understood, but they say that the judge of probate needs a pension like the judges above him. Finally they adopted the scheme of pensioning the probate judges, and then of course they had to take in the judges of the district courts, the men who appear in court once or twice a week and get anywhere from $1,800 to $4,000 salary. One of the judges who lived in a near-by city and received $2,800 a year for many years used to hold his court at 8.30 o'clock in the morning so that he could get through at half-past nine and attend to his regular practice in Boston. If that man only held on long enough to be seventy years of age he would retire on three-quarters pay for holding a position that required an hour a day and then attending to his private practice during the remainder of the day. Then finally it dawned upon other people in the public employ that the pensions ought to be extended. I have looked over the list of pensioners that adorn the annual reports of the Auditor. In the first instance I want to read from the Constitution, so that you may fix in your mind what our forefathers started out with so as to show you how we have drifted. Article 7 says:

> 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.

Now I turn to the Auditor's report and I see four pages under the heading of pensions paid to preferred classes, and these preferred classes receive all the way from $300 up to $7,750. We have judges who have retired, and they are appointed as masters, and they receive $100 a day for sitting as masters. I cannot see any virtue in a pension law that gives a man $5,000 or $6,000 or $7,000 a year and then allows him to sit as a master and draw $100 or more a day. Then we have other pensions, — $4,000, $3,000, $1,750, all the way down to $300. I presume the fellow who draws $300 had a very few friends, — at least, it indicates it.

This condition has grown until it is costing the people of this Commonwealth one million dollars a year, — and in five years from now it is going to cost nearer $5,000,000 than $1,000,000; and the people are perfectly helpless.

Now, how did this begin? In the first place, to be perfectly frank, it began with the legal profession, and then it kept growing. Finally they would get a bill through the Legislature affecting some city; of course it would not take immediate effect, but they would say that this would "take effect upon its acceptance by the city council." Well, now, you can see what a thousand police officers, and a thousand firemen can do, and two thousand other employees can do in a city election. Why, they simply elect a city council that will accept that act of the Legislature. Then of course they take their place on the pension roll, and the result is what I have given you.

I read from the Boston Herald of December 30, 1917. I am not going to call any names, because this is not a personal matter. I find that one official in Boston is pensioned at the rate of $1,500 a year, and he is drawing $7 a day from a commission in the metropolitan district. I find that another man is drawing $1,000 out of the city of Boston, and he is holding a position in one of the largest corporations at a large salary, more than he is drawing from the city of Boston. I find another citizen of Boston who is drawing a pension of

something like $900 a year, and he is holding a similar position in another city at $1,200 a year.

I find another man who retired some years ago on $600 a year pension, and he is in the detective service of the United States drawing another salary. I have thirty or forty other cases of people who are drawing substantial salaries from the city of Boston and they are holding places in public and private employment and undoubtedly are receiving full pay as able-bodied citizens.

Now I cannot understand the virtue of a pension system that will permit a man to draw $1,200 or $4,000 from the State and then go out and perform the same amount of labor in other employments that he would if he did not receive that pension.

Now my proposition is this, — and I am not going to take up much time: My proposition is to substitute my amendment for the report of this committee and let it go into the calendar and let these delegates for the next two weeks have an opportunity to investigate this subject, and then put this thing up to the people and say: "Do you want this unequal condition to exist? If you do, kill this proposition; on the other hand, if you do not, adopt it." And then if the people adopt it the Legislature, if it is necessary, can devise a scheme of pensions and submit it to the people, and then the people can vote on it, and if the people want anything of this sort they will vote for it; if they do not want it they certainly will vote against it. I am fully aware that this is one of the dangerous propositions, but what danger is there in putting before the people a situation that cannot be corrected in any other way? It is for the people to say whether they want this condition to exist.

Mr. William S. Kinney of Boston: I noticed that the first nine lines of this proposed amendment already are embodied in Article VIII of the Declaration of Rights of the present Constitution, therefore I move to amend this resolution by striking out the first nine lines of the proposed amendment, — not of the amendment moved by Mr. George but of Resolution No. 308. I have no especial interest in this proposed amendment. I moved this amendment because the language used is a verbatim copy of the language of Article VIII of the Declaration of Rights in the present Constitution and I can see no reason for reënacting those words, neither can I see that they have any connection with the subject of pensions, so I move to strike them out of this resolution.

Mr. Washburn of Middleborough: Just an inquiry of the gentleman from Boston in the second division. Is he not in fact striking out lines 4 to 9, inclusive, and not the first nine lines of the resolution No. 308?

Mr. Kinney: That was my intention, — lines 4 to 9; and I ask unanimous consent to have that considered as my amendment.

Mr. Webster of Haverhill: It having happened in the deliberations of this Convention that many times I have been in disagreement with my honorable friend from Haverhill in the fourth division (Mr. George) I embrace this opportunity to say a word in behalf of the measure which he has suggested and with which I may say I find myself in complete accord. I have no objection to the payment by the Commonwealth of a suitable and appropriate pension to those of its officers who, by long and faithful service, have deserved such a recognition.

But I do feel that we have gone about that matter somewhat hastily. I was a member of the Legislature when it passed the legislation giving pensions to judges, and I must admit candidly of all votes which I cast in three years' service in the Legislature none has caused me more regret, I will say frankly, than that vote. Not that I wish such compensation withheld from any man who deserves and needs it, but because I feel that it was a precipitate action. Now, sir, it strikes me that the proposition of the honorable member from Haverhill, embodying as it does (to my understanding, as far as has been suggested) the only method of dealing with this matter in a way which is in line with modern and accepted practice, should receive careful attention from the members of this Convention and deserves their approval. His proposition is that the matter of pensions should be left to such action as may be taken by the voters upon submission to them of a carefully digested plan. I think that is in line with all practice which has for its object the relief of the Commonwealth from the burdens of excessive and ill-considered appropriations and also with the budget system and all our up-to-date attempts to administer the financial operations of the Commonwealth upon a better plan. And I bespeak the members of the Convention for the measure suggested by the honorable member from Haverhill, their earnest and favorable consideration.

Mr. Underhill of Somerville: I offer an amendment striking out, in lines 13 and 14, the words "one thousand", and inserting in place thereof the words "six hundred", — so as to read: "No person holding public office, position or employment shall be entitled to receive from State, city, county or town any pension, gratuitous payment or emolument upon his retirement in amount exceeding the rate of six hundred dollars per annum."

I wish that every member of this Convention might have had the privilege during the past fifteen years of serving at least one year in the Legislature. I think if there is anything for which the Legislature can be particularly censured, it is its good-fellowship and its freedom with the money of the people in giving emoluments or pensions to various public officials. Always the same plea is offered, that for the best years of a man's life he has given the best there is in him to the service of his State, municipality or county, — never for a moment stating that the man has been well paid for his service, never for a moment stating that he has received regular employment and got his pay envelope every week, never stating that if he were sick or out for a week he rarely was docked, rarely stating that the pay he received was far in advance of any money he could have received in any other line of employment, but the same old sob stuff given to the Legislature each year, that this poor old man has given anywhere from ten years upwards to the service of the Commonwealth or the municipality. Why, we had an instance only last year where a man, seventy-six years of age, came here and asked for a pension, and they said he had given twelve years, the best years of his life, to the service of the Commonwealth. The man was seventy-six years old; he had worked for twelve years for the State preceding his reaching that age of seventy-six years, and those were the best years of his life, — and the man had property in the Commonwealth which was giving him an income of close on to $8,000 a year.

I have been fighting this thing vainly for many years in the Legis-

lature. I can quote man after man, by name, if you please, who has been employed in the fire department or the police department of the city of Boston who today is drawing a pension from the city of Boston for total disability and at the same time holding a position of responsibility and activity such as a young man with all of his faculties would find it hard to fill. In my own city of Somerville a police officer was retired fifteen years ago for total disability, — and he has been the chief of the Wakefield police department ever since. Man after man, man after man, in the Commonwealth has retired. Why, just for one illustration, because I know he is a good fellow and will not mind it, there is Chief Watts. He has been pensioned by the city of Boston and look at the business he does outside, while drawing his pension every month. He is only illustrative. There are so many lieutenants and captains and privates in the police and fire departments drawing pensions that it has become a scandal and today the Auditor of the Commonwealth will tell you that we are spending almost a million and a half of dollars for pensions to persons who are no more deserving of it than are you or I.

Furthermore, these are not contributory pensions. Money is paid out of the pockets of the people of the Commonwealth to those who need it less than those who pay it. Where we have a contributory pension, — as an illustration the teachers' pensions in the city of Boston, — the limit of the amount that any one can receive is $600. Now that includes the principals who are receiving $6,000 or $7,000 a year, just as it does the elementary teacher who is getting only $600 or $700. It is true she does not get the maximum of $50 per month or $600 a year, but she has put her little mite into that fund every year, and when she retires she gets a good return from her contribution. The principals have tried over and over again to raise the limit and get one-half of their salary of five or six thousand dollars, which would almost deplete the treasury of the fund in three years if such a thing should occur. The United States government pays a major in the service $600 a year pension when he is retired. Now we are paying at least one judge $8,000 a year pension. Why are we paying him that? Because he would not retire until they made the pension two-thirds of his salary.

Mr. E. U. Curtis of Boston: I should like to ask the gentleman of what court that gentleman is a judge.

Mr. Underhill: I will find out and let the gentleman know a little later. Two years ago we were paying three judges in this State $18,500 pension. We have gone down the line of public employees and when a few years ago I made the suggestion that we had begun at the wrong end and that we ought to have pensioned the laborers first, it was seized upon immediately by friends in the Legislature and they went to work and pensioned the scrubwomen employed on part time in the State House under the sentiment that on their bended knees they cleaned up the dirt which was brought in on our feet. Now perhaps they were entitled to a pension in addition to their pay, but at that time I had a concrete proposition before the Legislature giving to all employees a pension under a contributory plan. And if my plan had been adopted by the Legislature at that time, those same scrubwomen would have been better treated than they were under the special bill. Each year pensions are asked for, — pen-

sions from Boston, Brockton, Lawrence, from every city and town in the Commonwealth, — for some fellow who has got a political pull with the mayor, the city solicitor or the board of aldermen, who come up here asking the privilege from the Legislature to pension this employee. Last year we had the city solicitor and mayor from the city of Brockton asking for a pension for a man who had been discharged three years before because of crookedness in his office. What do you think of that! And the Legislature gave it to him! — with this restriction: that it should be subject to the approval of the mayor and the board of aldermen of the city of Brockton. Almost every man in the Legislature with whom I have talked is opposed to this proposition, but they say: "You can't discriminate; you already have established a principle and you must continue." Continue how long? Indefinitely. I tried to compile figures of the amount of money that was being paid in this Commonwealth in pensions to those who had held good jobs for years, and I found as well as I could figure from the sources from which I could obtain information that the people of this Commonwealth were paying a grand total in the vicinity of twelve million dollars. You do not realize when a pension bill comes into the Legislature for $1,500 or $2,000 or half of a man's salary, what it means. It is only $1,500, a drop in the bucket. But that multiplied and multiplied and multiplied, as it has been, has reached the enormous total which I have stated. And now some such measure as this is absolutely necessary. There are dissenters to this resolution, but, sir, they could not have investigated the question and then objected to the principle. I personally would like to vote for the proposition offered by the gentleman from Haverhill cutting out entirely the pension evil, and I think it might possibly have a chance of getting by with the people. But with every police officer and every fireman and practically every public employee in the State to oppose this proposition or electioneer against it next fall when this goes before the people, you are going to find it pretty hard work, because those who are receiving less than $600 are people who really need the money and the sympathy of their neighbors is going to be enlisted in their behalf. If you place a maximum of $600 you eliminate the opposition of those who are receiving $50 a month and less, and you then have the opposition of those only who have grafted themselves upon the public treasury. It is not altogether their fault.

Mr. Washburn of Middleborough: Does the gentleman think that the adoption of such an amendment as he advocates would wipe out the pensions which already have been granted by the General Court?

Mr. Underhill: I should sincerely hope so. If there is a possible way that any legal mind in this Convention, — and we have the best in the State, — can bring about such a thing, I think it is the duty or the combined duty of those gentlemen to bring about such a solution if possible. If it is retroactive and will not work, then let us stop its advance now. Some time or other these pensioners are going to die but if you continue to give pensions to new ones the few that die will make very little difference. I cannot conceive of a man who comes from an industrial center where the workers do not begin to get as much in the way of wages as these people receive from pensions, who can support the system. There is not a shoe worker, there is not a cotton mill worker, there is not a man who is employed as a

laborer who begins to get the amount in wages that most of our public employees get upon their retirement from a pension. It is all wrong and it is up to this Convention, if it does nothing else for the people of the Commonwealth, to relieve them of the burden, which is becoming unbearable with the other taxes and the high cost of living which will continue to prevail if you do not stop establishing a favored class in the community. They are those who have had good jobs at good pay, with vacations, Saturday afternoons, short hours and a pension of one-half or two-thirds the salary they have been receiving. It is a gift from the pockets of the people of the Commonwealth who cannot afford it. [Applause.]

Mr. Brown of Brockton: Last summer if this matter had come up I should not have taken part in the debate because I should have considered myself a beneficiary in this way. It so happened that under the system of the Board of Retirement I became eligible to a pension, but I was obliged, as the law has been interpreted by the Attorney-General, to apply within two years. I knew that and I have not applied, on the ground, if I want to assume a virtue, that I could earn my own living and was not entitled to a pension. But I would have liked to remain on the Board of Retirement, having contributed to it, to the end that when I have attained the age of 95 or more, — which I hope God Almighty never will allow me to attain in this life, — I might then feel probably that I would be glad, having lost all my friends and relatives, to have a place to get boarded at the expense of the Commonwealth. But I am free now and I want to speak for those who in some way have contributed under the Board of Retirement Act and thereby are entitled to pensions more or less large, as the case may be. I hope that we shall not take any action that will affect the rights that have accrued to the employees of the Commonwealth.

Mr. Underhill: I would call the attention of the member to lines 14, 15, 16 and 17 in this resolution:

> This amendment shall not apply to war pensions, veterans of the civil war nor to pensions for which such person has contributed according to law.

I never have made a fight against contributory pensions and never will.

Mr. Brown: I understood him to read "such person," and I suppose that connects with the words which precede, which are "veterans of the civil war." I think I am right in that particular although the gentleman from Somerville is right so often and I am wrong so often that I hesitate to consider that my judgment is superior to his. The argument of the gentleman from Somerville is a condemnation of the acts of the Legislature. He says the Legislature has granted pensions improperly. He cites a case in the city of Brockton; but if it came to the Legislature for such a pension and the Legislature granted it possibly members of the Legislature are so educated that if a fellow is a little crooked he has not gone really out of their pale of recognition.

Possibly those who voted for the questionable pensions to judges were willing to get a judge out of the way. Some men may not be adverse to granting a pension to get the judge out of the way so they possibly could get the appointment themselves.

Mr. Underhill: I wish to correct the gentleman's supposition because it is nothing more than a supposition. The true facts are these,

that unfortunately, — and first I beg the pardon of the legal talent of this Convention, — unfortunately a majority of the House each year, or very nearly so, are lawyers. They have not the inclination to oppose pensions to those judges before whom they have to practice [applause] and I do not blame them. It is human nature for those men who have been associated with these judges for many years not to oppose a pension proposition. And that is the reason judges' pensions have been granted.

Mr. Brown: I am pleased that the gentleman apologizes to the lawyers for what he said. I do not complain that the gentleman did not apologize for taking my time to interject something of that kind into my argument. I have no doubt it is as he says; it is human nature. In the last analysis we must consider a man's environment and the effect it may have on his acts. It is up to them to determine how far their environment places them either in harmony or in conflict with their duty to the whole people. I myself challenge no man's vote here on account of his profession, although at some times I have had something to say about the lawyers. At the present time the matter pending before us is the amendment of the gentleman from Haverhill among the other amendments, and it plainly provides that there shall be no pensions until the people have passed upon a system of pensions. That would take a long time and surely we ought not to adopt it. If the Convention rejects that, we come then to a proposition to limit pensions to a certain sum. With that principle I am in harmony. If a man has mentality enough to command five or six thousand dollars a year, if he needs five or six thousand dollars to live upon, he must be living under such physical conditions that nature can furnish to his mentality and to his physical structure a sufficient amount of energy to earn a reasonable living. I feel that a pension should go to one who is not able mentally or physically to support himself; and from a humanitarian viewpoint, if he is that way, he has a right to become a charge on his relatives or the community. There ought to be some way to provide that if a man is drawing a pension, — and I call this to the attention of the labor members here, — he has no right in our ranks as a worker. He has no right to offer his services, which are subsidized by all the people, to compete with a part of the people and thus possibly reduce their wages. The pension act should so provide. The labor people cannot ask pensions for themselves, and deny pensions for others. I should not object to some one who has been accustomed to a certain way of living getting a little larger pension than a man who has had a different way of living. I hope that the amendment of the gentleman from Haverhill, cutting out all pensions until the people act upon the question, will not be adopted.

Mr. Edwin U. Curtis of Boston: I have spoken to the gentleman in the fourth division who has charge of this report (Mr. W. H. Sullivan of Boston) and by agreement with him I shall try to state the position of the committee on Bill of Rights. We had one very hard subject to settle in that committee and it left us very little time to properly consider other subjects which had been referred to us. When this subject came before the committee I think I can say fairly that every man on the committee thought that something should be done in regard to pensions. That was my own belief and I believe I am

safe in saying every one else thought that the pension system had gone too far. But speaking now for myself I felt that we had not time to study out and present a proper remedy to this Convention, and therefore I signed with the minority.

Since that time I have found that the Legislature authorized the Governor to appoint a commission on this subject, and accordingly Governor Foss appointed James E. McConnell, Magnus W. Alexander and Henry S. Dennison as members of the commission on pensions. They filed their report on March 16, 1914, and it is a very interesting report, containing a great deal of matter which requires much time to digest. I shall read you one statement here which I think shows the magnitude of the question back at the time of their report:

> The complete returns show that on August 31, 1913, there were 1501 pensioners in the Commonwealth who were drawing $721,264.03 in annual pensions. Of this amount the city of Boston paid 931 pensioners at the rate of $450,955.70 per annum.

Since the date of this report the Legislature, if I am correctly informed, has passed additional pension acts, which of course would make the amount much larger than it was at that time.

If the Convention will pardon me I will read just another little section of this report:

> The large number and variety of pension and retirement laws now on the statute-books of Massachusetts, some of which have been repealed in part, while others are effective in full, are startling; their proper understanding by the beneficiaries or the public is possible only after exhaustive study.

And I agree with that statement.

> These laws differ in features of administration and application, as well as in fundamental principles; in some cases members of the same branch of the public service come under entirely different provisions for old age incapacity, as, for example, teachers, whose pension provisions vary according to whether they are teaching in the public schools of one city or another, or in the normal schools of the State.

In regard to the judges I think there are nine separate acts.

Why I asked the gentleman from Somerville a question this morning was this: I do not think that any retired judge is drawing $8,000. The justices of the Supreme Judicial Court are authorized on retirement to draw three-quarters of their pay when in active service, and I think that does not equal quite that sum.

Now this commission proposed certain legislation, — several bills. One, I think, was the contributory pension, and that the Legislature did not accept. I think there were one or two of their recommendations that were adopted.

The point I wish to bring out is that this subject is so great a subject that we ought to move carefully, while we all agree that something should be done, and not create an injustice or an inequality. Of course there are examples of people who have obtained a pension and who are now serving in some other capacity, and that, of course, we all admit and know, but that exception may not condemn the whole system. I know that pensioners of the Commonwealth of Massachusetts are working for the United States government; I have seen them in my own experience. But, for instance, we would not want to shut off the pension from a fireman who has been injured in the performance of his duty. We would not want to cut off the pension of a police officer who has been injured in the performance of his duty. Now it may be that that would be a fair limitation for pensions in

those two employments, namely, that one should not receive a pension unless he were injured in the performance of the duties of those dangerous or hazardous employments. But if you pass a general clause limiting the amount to $600 I do not believe it would be fair to-day to a police officer who in the performance of his duty lost an arm or leg and had a family to support, to give him $600. I do not think it would be a fair pension. I say so fairly here now; I doubt if a thousand dollars would be enough under the present way of living. Now I say that while I agree there should be some change the doubt comes in my mind whether this body sitting here can hope to bring about a proper and effective change in the limited time that is allowed us when the commission appointed by Governor Foss spent so many months and produced something which the Legislature did not accept.

Mr. Walker of Brookline: I should like to ask the gentleman whether in his opinion any good would be accomplished by a provision in the Constitution to the effect that the pensions should be granted only under general law and that special pensions should not be granted to individuals?

Mr. Curtis: I would say in answer to the gentleman from Brookline that he has had a wide experience in the Legislature and that if he thinks that would bring about any good result I should be glad to see it done, but I should defer to his long experience in the Legislature.

Mr. Walker: I wish to say that I know very little about this subject and shall not express any opinion, but it has occurred to me that if we provided in our Constitution that pensions should be granted only under a general law, it would then compel the Legislature to frame a general law according to principle, and would not allow the Legislature from year to year without principle, often without good reason and always inconsistently, to grant pensions to special individuals.

Mr. Curtis: Not wishing to criticize the amendment offered by the gentleman from Haverhill I would call his attention to five words, — "a system of civil pensions," — and say to him that I believe that would bring about endless controversy as to what is meant by a system of civil pensions, and suggest that some other word probably would save a good deal of legal complication.

Mr. Brown of Brockton: Would not the amendment of the gentleman from Haverhill, if adopted, cut off even the pensions of the Board of Retirement?

Mr. Curtis: As I recall the amendment of the gentleman from Haverhill I should say it would cut off all pensions except those of persons who have been engaged in a dangerous or hazardous employment, — if those were the words. That is my conception.

Mr. George: With reference to the words to which the gentleman from Boston referred, I had in mind possibly what the gentleman from Brookline said, and that was that a system of pensions would be in a general pension law. Perhaps it was worded unfortunately. It was not my purpose to repudiate anything that the Commonwealth had done, and if I may be permitted to say, if this proposition is accepted for the time being, I think that we can present a resolution on the next reading which would be agreeable to the members of this Convention.

Mr. Curtis: I had one other suggestion to make to the gentleman

from Haverhill. If I understand the amendment he leaves it open so that by initiative and referendum or any other means this system can be gotten up, and if somewhere in that amendment he would put in the words "by the General Court" or "by law" so that it could be done in either way, I think perhaps that might help; but I only offer that suggestion.

It has been suggested to me that in the principal amendment the following words might be added: In the article of amendment which the gentleman from Boston (Mr. W. H. Sullivan) has charge of, strike out everything after the word "retirement", in the fifth line, and insert the following words: "unless and except as he may be dependent thereon for the necessities of life," which means that nobody would get a pension unless he needed it. I do not think the gentleman from Boston heard what I offered. Strike out after the word "retirement" everything down to "This amendment", and insert in place thereof, "unless and except as he may be dependent thereon for the necessities of life."

Mr. Underhill: I would ask the gentleman if he can inform the Convention if that is not discriminatory in its nature, and, consequently, would be unconstitutional.

Mr. Curtis: I can answer that question very easily and I am glad to get the opportunity. It would not be unconstitutional because it would be in the Constitution. Now, why I am glad to answer that is this: The trouble with a great many resolutions before this Convention is that we are writing legislative matter into the Constitution, and not constitutional matter. That is, we are not making a great many of our resolutions simple, broad statements or enunciations of principles on which the Legislature or the initiative and referendum can make legislative acts, but we ourselves are making legislative acts in the Constitution. That is why I think that even this resolution here ought to be on some broad term, leaving the Legislature or the people by the initiative and referendum, if adopted, to write in the specific thing.

Now, Mr. President, just one more word. I want it understood that I am not in opposition to the principle of making some restrictive change in the present pension laws, and that I do not believe there was a man on our committee who did not think something should be done. The only thing is, if anybody here, any of the great lawyers here, can find something on which we can agree, some broad statement of a principle, by which the Legislature can correct the system, I think it would make our entire committee satisfied.

Mr. Lowell of Newton: In my opinion this is a very important subject and I think we should look at it very carefully. The thing which I think should be adopted in some form or other, if it is possible, is that there should be no pension granted to which the pensioner had not contributed.

Now let me instance, in the first place, the pensions to the judges. They were granted in the first place, as I understand it, for the reason that it was considered, — it was granted first to the Supreme Judicial Court judges, — it was considered and rightly considered, that they were underpaid. Instead of giving them a handsome increase in their salary, which they deserved, the Legislature made the place more attractive by giving them a pension. In those days it was not quite as

well understood as it is now what danger that entailed. There is no reason, in my opinion, why the judges of the Supreme Judicial or Superior Courts or any other court should be given a pension if they have not contributed.

Now, we have here in this State four systems of contributory pensions. One is the retirement system for State employees, which has a very considerable number of members, — I have forgotten the number, — and nearly two million dollars in the fund, or something of that kind. Another is the teachers' retirement system, which applies to all teachers except those of Boston, and that has a large membership and a very considerable fund. The third is the county employees' retirement fund which I believe has been accepted by three counties, I have forgotten which ones they are. Fourth is the city and town employees retirement fund, which has been accepted by nobody.

Our State retirement system is based, as many of you gentlemen know, on the amount of salary. It is quite complicated in the various provisions as to what shall happen in certain cases, but the general idea is that every State employee who comes under its working shall give not less than three dollars or more than seven, — I think those are the figures, — of the amount of his wages, and I believe it has been settled that each man shall give five per cent of his wages. Then when he comes to a certain age he retires and gets a pension, which is made up of two parts. In the first place, he gets an equivalent based on his expectancy of life, — the equivalent of what he has put in, — a pension which is calculated to amount to his being paid back what he has put in, so much a year. That is one part of it. The second part is that the State just duplicates that. So that he gets a pension of what he would get if he had bought a certain annuity, at a certain age (those things are way beyond me and up in the higher mathematics), but the State then gives to him just the same amount, so that he gets twice the amount.

That system, it seems to me, is a very excellent one and it is working extremely well, in the case of State employees and of certain teachers.

It seems to me that that is the way that we should act as regards all pensions. This system might be extended to the judges of the Supreme Judicial Court, or some other system invented, whereby they would pay say 5 per cent, or 10 if you wish, or 7, or something like 5 per cent, from their regular salary; and then when they retire they would get that back in the form of an annuity, and the State would just double it, as it does in other cases.

That is a system which is a just system. The scandal, if it is a scandal, at any rate, the great inconvenience and gross extravagance which the gentleman from Somerville has told us about, is becoming an evil, or even a scandal. We should say, in my opinion, that it is the sense of this Convention that there should be nothing but contributory pensions. This idea has had a great vogue, especially in the last two or three years. We all are familiar with the tremendous sum which has been raised by the Episcopal Church on this same idea of contributory pensions; also the sum which the Methodist Church has raised; and this is something which is coming to the front. People are seeing that it is a sensible, practicable, statesmanlike way of dealing with a very difficult proposition.

The same thing is true in our National government. We are now insuring our soldiers who are fighting for us. That is an insurance plan, but it is along the same idea as this. We are getting away in many cases from the idea of gratuities. When I was in the Legislature we had a great fight which was fathered and carried along by the gentleman from Ipswich, Mr. Schofield, for the granting of a gratuity to the veterans of the civil war. Now, Mr. Schofield made the point with great emphasis, — and it was a point, too, to be talked about, — that this giving to the men who had fought in the Grand Army a gratuity was all right, because we did the same thing for the judges of our courts. That was a hard point to answer. The only way we people who did not like the idea had to answer it was by saying it was illegal, it was unconstitutional. That suffered the fate of all such arguments, or most of them, in the Legislature, and they laughed us out of court and passed the act amid great shouting.

But Mr. Schofield had a good idea about it. His criticism in my opinion was just. We should not give anybody, high or low, in my opinion, a pension unless he has contributed to it according to his means, five per cent, or a certain percentage of the salary or wage which he has drawn.

Personally I am against the amendment offered by the gentleman from Haverhill, because that cuts out of this thing the very basis, the solid foundation, which this thing should rest upon, namely, the question of contribution. Under his amendment, as I read it, it is not a question of contribution at all, but that we should not give pensions until the State at large votes that certain civil pensions should be granted.

Now, that is wrong, in my opinion. The point is, as I said before, and will say once again, that you shou'd not grant pensions unless the pensioner contributes. I am therefore more in favor of this document No. 308, and I am in favor of the amount which the gentleman from Somerville has offered. I should be more in favor of it, perhaps, if we cut out entirely the minimum amount; but I realize, as the gentleman from Somerville has stated so clearly, that that very likely would endanger the passage of the whole thing before the people.

So it seems to me that the proper thing for this Convention to do is to pass this amendment. It would be an improvement over the present situation if we had the kind of an amendment which the gentleman from Brookline (Mr. Walker) on my left has suggested, namely, the general law. That, however, I criticize also because there is nothing in that about contribution. I will say that I am not wedded to the wording of this No. 308; perhaps you can get a better wording. But if this Convention sets before the people its careful conviction that pensions should not be granted unless contribution has been made by the person who drew the wages during his term of office, I think we shall have done a great thing for the future of this Commonwealth.

Mr. Washburn of Middleborough: It is obvious from the remarks of the chairman of the committee on Bill of Rights that this very important subject received scant consideration in the committee. It is evident, too, that some available material was not called to the attention of the committee at the time it dealt with this question. I think it ought to receive the most careful attention on the part of the committee which has reported it. The amendments which have been

reported seem to me somewhat obscure. I find some difficulty in understanding precisely what they mean. They seem to me to be loosely drawn.

For example, take the final clause of this Resolution No. 308.

> This amendment shall not apply to war pensions, veterans of the civil war nor to pensions for which such person has contributed according to law.

Well, now, what persons? There is a distinction made between war pensions, apparently, and civil war pensions. Does "such person" refer back to veterans of the civil war or does it include those who have received war pensions? That is only one instance.

The amendment of the gentleman from Boston in the second division (Mr. William S. Kinney) shows further that we are asked to reënact something in part that already is in the Constitution. Because of all these things, I move that this document No. 308, and all amendments thereto, be recommitted to the committee on Bill of Rights.

Mr. W. H. Sullivan of Boston: Mr. President, I oppose the recommittal of this measure and I resent the suggestion of the learned and astute gentleman from Middleborough (Mr. Washburn) that we were not informed about the existence of certain material evidence.

Mr. Washburn: I intended to cast no reflection on the gentleman from Boston. The gentleman from Boston in the first division held in his hand that legislative report, and said that was something that had come to their attention since the committee had made its report.

Mr. Sullivan: He spoke for the minority of the committee, but the member of the committee who has charge of the report was fully acquainted with the commissioners' report. There is no occasion to recommit this measure to the committee. The way to defeat a measure of importance to the people of this Commonwealth is by amendments and recommittals, but it is not the proper way. What more information can we get if it is recommitted to the committee? We gave time, we advertised the hearings. What man is here who is competent to tell us any more than we know about this report? The majority members of our committee were fully acquainted with the report of this commission, — an able report, — and everything said here to-day is in entire accord with the report of that committee. The gentleman from Newton has said very well all that was in the minds of the majority of that committee; also the gentleman from Somerville. Every statement he made can be commended, except the amount he suggests as the proper limit of a pension.

No change can be made except perhaps the phraseology, and we have a committee on Form and Phraseology which will take this resolution, eliminate the unnecessary words, or correct the words, if necessary, so that it can be referred without question to the Convention. It seems to me entirely unnecessary, an entire waste of time, to recommit this measure to the committee.

Mr. Lomasney of Boston: I hope we will not recommit this matter. It seems to me this is one of the most important matters coming before the Convention. The Constitution contains these words, Article 7:

> 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.

That kind of government is just what the early settlers intended to build up in this Commonwealth; but starting, as the gentleman from Newton well said, with the best idea in the world, to do something for the Supreme Judicial Court judges, the Legislature established pensions for them and the precedent was established. Then came these other different officials who had the judges' pensions to refer to, and with the opportunities they had to invoke the aid of their friends. The Legislature extended the system until the cost to-day is surprising.

The people most entitled to pensions have a hard time getting them. There are two or three classes of pensioners that are absolutely entitled to it. No one would question that a person injured in the performance of his duty ought to have it. In that class naturally would come the firemen and the police. We also have another class. Take the school teachers. What element in this community does more for the State than the teachers in our schools, men and women who take the youth of our country and put ideas into them, so as to make them good citizens, whom we shall have to depend upon and look up to in times like the present? And many of these teachers are working overtime, with forty or fifty school children in each room. Let us go back to the days when we were all youngsters, raising "the dickens" in school, and recall how these men and women tried to educate us so as to bring us up to do what was right. Still these people were the only ones who had to save out of their salaries enough to contribute toward a pension so as to make it a means of taking care of them in their old days; and they did not ask, nor did they receive, from the Legislature, more than an amount equal to what they had contributed; and I say we all will admit they have done a great deal for our country.

Now, where do we stand on this matter? We are taking steps that affect us more than we realize. How can any gentleman here who votes for these pensions say a word against the requests of the laboring man, as presented by the gentleman from New Bedford who is trying to assist him to get a home for his family? Where is the justice of your system, when you say he shall not have a chance to purchase it with money loaned out of the public funds, and yet by legislation you permit these pensioners to walk up to the State treasury day after day and take the public funds under the present pension system?

We all will agree that the police, the firemen and the laborers are entitled to what they get. The laborers came last. They come last, but they get the least pay. They came last because they were poor and not powerful enough to be considered before. They did not have the means to speed up legislation here. When the Legislature put through the pension act for the judges, the police came with their friends. Then came the firemen, because their duties are similar and more dangerous. Then came the court officials.

Mr. Balch of Boston: I trust the motion to recommit will prevail. It seems to me there is not the slightest reason to doubt that the committee did its work properly in preparing its report for us, but there is, I presume, at least one important point on which they certainly must know more now than they did then. That is the attitude of this Convention.

It has been perfectly clear throughout this morning's discussion that the temper, the opinion of this Convention, was not crystallizing prop-

erly and clearly about either of these proposed amendments. And why? Because they do not present two clear contrasted proposals or alternatives. Neither of them presents a clear system or intelligible scheme for meeting the situation. That has appeared in the course of the debate. The preliminary work of threshing that matter out, in the light of what has been done here this morning, — the work of producing two texts which shall present the two contrasting views, one or the other of which we should choose, — properly should be done in the committee, in order to save the time of the Convention; and I trust that the committee, with the benefit of this morning's debate, will be given an opportunity to put these in a form about which our thought may properly and clearly crystallize.

Mr. WALKER of Brookline: The committee on Rules has determined in every way it possibly can to expedite the business of this Convention. We all want to get through and we must attend to business and not pass any motion which will cause delay. Unfortunately, the chairman of our committee on Rules is in Cambridge attending Commencement, and has asked me if I would attend to this matter in his absence.

I simply wish to say if we begin to recommit matters we certainly will be unable to adjourn within a reasonable time. Let us thresh out all matters as they arise. We can pass this question now. It has two or three stages. It will not be reached again for weeks. The men who are interested can get together informally, the committee can get together informally, and they can come to some conclusion; but to recommit the measure seems to me would amount to nothing but delay and will accomplish no real good.

The motion to recommit was negatived.

Mr. WILLIAM H. SULLIVAN of Boston: As the member of the committee in charge of the measure, I may be indulged a few moments while I discuss briefly some of the suggestions which have been made. I am in entire accord with everything which the gentleman from Newton in the third division (Mr. Lowell) has said; but he has made the same mistake as was made by the chairman of our committee, in contending that in this Convention we must prescribe a specific amendment. A broad and liberal resolution should be submitted to the people.

I agree with him that every pensioner should contribute to his pension, and this measure makes for the contributory system. The chairman of our committee spoke representing the minority, and undoubtedly the minority never had heard of the report of this commission. Unfortunate y, too many commissions and recess committees are appointed by the Legislature whose reports never are read. The chairman of our committee, as I said, expressed the fear that we had not been specific enough, and as he reads the different recommendations suggested by this commission he is worried as to which one he ought to favor. But that is just the thing we should not do here. We should not pick out a specific resolution; we should frame a general resolution.

This measure, which I favor, in behalf of the committee, is a general resolution. It is one which encourages the retirement system. I commend the gentleman from Somerville because, during his career in the

Legislature, he has fought consistently unlimited and unnecessary expenses. I cannot approve the amount suggested in his amendment because it would not be accepted by the people.

The gentleman from Haverhill (Mr. George) has introduced an amendment here which is very like himself, — much good in it, but it is not all good. The most delightful thing about his address was his statem nt that he believed in giving the people a chance to speak upon this matter, a hopeful change in one who opposed the I. and R. most consistently and somewhat aggressively. But I suppose he thought this was a time when they could be trusted to vote on this simple proposition. Perhaps his amendment is friendly, because he is one who is opposed to undeserved pensions. However, his amendment proposes that only those who are injured while engaged in a dangerous or hazardous occupation should receive a pension. The question would arise: What is a dangerous and hazardous occupation? Is the judge's a dangerous employment because he may try an anarchist some day? And how about workmen receiving injuries? Under the Workmen's Compensation Act it is possible to pay a workman injured in a dangerous or hazardous occupation much more than he ever can hope to receive from a pension. He suggests doing away with the retirement system, so we cannot take his amendment very seriously. (At this point Mr. George of Haverhill passed the speaker on his way out of the Chamber.) I am glad to see that the gentleman from Haverhill appreciates that there is no hope for his amendment after my eloquent exposition of its weaknesses. [Laughter.] He goes, retired but not pensioned.

I realize that there has been no hostile criticism of the resolution suggested by the committee, that every comment has been friendly, wherefore I do not feel inspired to do my very best in its behalf. [Laughter.] This occasions me great happiness, because I have in my pocket the stenographer's report of one of my so-called speeches, made the other day, and when I read the first two pages I was almost deterred from saying anything today. I hope I shall not have to read the report of this speech for a long time.

There is a serious pension evil in this Commonwealth. The gentleman from Haverhill said that the Auditor had told him that we pay now in pensions one million five hundred thousand dollars. This is a conservative estimate, and with wages going up every day, and the Legislature getting more generous every year with the people's money, you are going to pay greater pensions. The chairman of the committee read the report of the commission appointed to investigate the pension system, in which it was stated that in 1913 Boston was paying its pensioners $450,000, and it was predicted that in the near future the amount would be much greater. Well, in 1917 Boston paid more than $630,000, almost fifty per cent increase within four years.

In 1913 we were paying the judges of the State in pensions $14,779; in 1917, $35,610. The Metropolitan Park Commission in 1913 were getting $1,738 out of the treasury; in 1917, $4,598. The district police in 1913, $750; in 1917, $1,213. The prison officers in 1913 were getting $7,293; in 1917, $16,100. The veterans in 1913 were getting $58,000; in 1917, $63,000. The total amount paid the same beneficiaries in pensions in 1913 was $82,867; in 1917, $121,114.

In 1913 we were paying in pensions to judges, State and metropoli-

tan police and State employees, $100,443; in 1917, $256,805. In 1915 the State, cities and towns paid in pensions, $1,171,626.17. So the total today is over $1,500,000, and constantly going up.

Now, as I said before, this measure encourages the retirement system, because one who contributes to his pension can get more than $1,000, the limit in non-contributory pensions.

Mr. Douglass of Boston: May I ask the gentleman if I correctly understand him? Did I understand the gentleman in charge of this measure to say that the only object of the introduction of this resolution from the committee was to limit the amount that should be paid on any pension?

Mr. Sullivan: The purpose of the committee in the introduction of this measure was to provide that no pension exceeding in amount $1,000 should be paid to any pensioner who did not contribute toward said pension. So far as I have been able to learn in my investigation this resolution will affect only judges, police captains, captains in the fire departments, and the higher officers and chiefs in the police and fire departments.

Mr. Douglass: I would ask the gentleman, if that is the only contention and desire of the committee, why is not a matter of a pure financial question like that a proper question for the Legislature and not for this Constitutional Convention?

Mr. Sullivan: It is a proper matter for legislation, with a limit fixed of $1,000; and that is why I should like to see the Convention adopt this resolution, because it would limit the generosity of the Legislature to $1,000.

Mr. Douglass: Can the gentleman conceive of a case resulting from an injury from a hazardous occupation, where the pensioner might be entitled to more than $1,000 a year?

Mr. Sullivan: From my experience with the Workmen's Compensation Act, I would say that if the injury arises out of and in the course of his employment, the injured person would get much more than he ever would get from a pension. The injured person in a dangerous and hazardous employment is well taken care of by the Workmen's Compensation Act.

Now, as I said before, a smaller amount would commend itself to me, but the committee felt that we ought to present to this Convention a measure which not only would meet with the approval of the Convention but would be endorsed by the voters. With the amount fixed at $1,000 you eliminate as antagonists the State employees and all the other recipients of a pension. If this measure is approved by this Convention and submitted to the people there is no question it will pass unless the judges develop greater strength with the people than they ever have had before.

Mr. Douglass: I will just put another supposed case, outside the Workingmen's Compensation Act. Suppose a judge sitting on the bench was wounded, as might have happened in this accident here in the Suffolk County court-house recently. Suppose a judge was wounded, incapacitated for his duties, would he not be entitled to a pension of more than $1,000?

Mr. Sullivan: It is a question in my mind, — and I think I will answer it favorably, — if he would not be entitled to workman's compensation.

Mr. Douglass: He is not entitled to it under the Workingmen's Compensation Act today, is he?

Mr. Sullivan: I do not see any reason why a judge would be denied the benefits of the Workingmen's Compensation Act to-day. But without any quibbling, without any hesitancy, I will say that, even if a judge was injured and could not recover under said act, for the sake of the financial welfare of Massachusetts it would be better to have one judge suffer individual hardship than to have the whole pension system the prey of a crowd of pensioners, and the system of pensions at the mercy of an incompetent Legislature. Moreover, under this resolution, any judge or other favored party, if he desired an adequate pension, could come under it by the voluntary retirement system or he could contribute to the pension, — and no one can have any objection to that. Let each contribute an equitable part. As I said before, perhaps the strongest and most potent argument in favor of this measure is that it would bring all under the contributory pension system, which is the only scientific system and the one that is inevitable in this Commonwealth, unless we wish to be financially embarrassed by reason of the ever-increasing number of pensions.

Mr. Sullivan of Salem: I notice that lines 11 and 12 of document No. 308 read in part: "shall be entitled to receive from the State, city, county or town."

In talking with the gentleman from Boston, the chairman of the committee on Bill of Rights, in the first division (Mr. Edwin U. Curtis), I asked him if it was not true that the metropolitan park division or system, the metropolitan water system, etc., really were not political subdivisions of the Commonwealth, and he said they were. Therefore I move an amendment to document No. 308, to insert in line 12, after the words "or town," the words "or any other political subdivision of the Commonwealth," so as to cover any such districts that may exist now or exist in the future in the Commonwealth.

Mr. Douglass of Boston: Without intending to enter upon any debate on this question, in order that I may inform myself, or be informed how to vote intelligently on it, I should like to ask the committee in charge of the measure, — the majority, — if they contend that this report or resolution now before us enforces or will bring about contributory pensions; and, if it does not, is the committee willing to go so far here and now as to recommend that an amendment be adopted to the resolution now before us?

Mr. Lomasney of Boston: The Convention has a condition before it and not a theory. I was saying before, that after the judges came the police and firemen. Then came the prison officials, and they told the same story, that they took charge of the prisoners after the police had convicted them, though of course they were unarmed. They hired eminent counsel, and they presented their claims in a masterly manner, as they always can when they organize throughout the State to do something of this kind. It is a pretty hard thing to resist the pressure when a personal friend appeals for a personal friend, and they all have personal friends, and of course you are not taking the money out of your own pocket, and you think: "After all, what is the use of my standing up against such a fair proposition?"

It has been my privilege to vote for one or two of them, although I

had opposed them many times. But what is the use of saying it is justice, what is the use of saying it is not creating a class in this Commonwealth, when you compel the operatives of the mills in Lowell, Lawrence, Fall River and New Bedford to work and contribute taxes to support a class of people through the State with money, for doing no work? What are we trying to do, honestly and fairly? We are trying to make a start and stop this thing now. We want to pass this resolution which will put a restriction upon the power of the Legislature. And I am willing to go further and make the amount $1,200 rather than $600, because that would save thousands of dollars yearly. If you restrict them to that extent you say to the Legislature: "So far and no farther can you go with the people's money." What will that do? That will tend to bring about the contributory system, which is the proper system, and which would be the system that any honorable, fair-minded man would be glad to adopt if he felt he was not getting something, which he was just as well entitled to receive as the other fellow.

Mr. DOUGLASS: I should like to ask the gentleman, who I understand is a member of the committee on Bill of Rights, if he is willing to amend this resolution as now before us so that it shall compel the contributory pension?

Mr. LOMASNEY: I believe in meeting a condition as you find it. I believe there is a growing evil in this Commonwealth, and I believe this is the proper way to meet it. Why? Because you bring about a great reduction by this restriction.

Mr. DOUGLASS: I should like to ask the gentleman why he is not willing now to go the full distance? Why stop along the road?

Mr. LOMASNEY: If the gentleman had restrained himself a moment, he would have got the balance of his question answered. I was telling him that in my way I was trying to restrict this proposition to a certain amount. That will bring about a demand for the other situation. I do not believe that the great majority of these people want to take this money for nothing. I do not believe they are a class of people who want to do nothing for the money. I believe the trouble comes in that one class sees another class getting it, and then they want to get it themselves. But if you pass this resolution to stop and restrict, and say that no one shall get a pension over $1,200, what do you do? You leave it to the Legislature to go up to that amount and no more. And what will that do? That will bring about in my opinion the contributory system, because these men are not all men who want something for nothing. In other words, it will do the greatest good for the greatest number of people, and they will come together and say: "Let us contribute something;" and that will apply to people pensioned hereafter, probably. But if you do not, if you start and try to cut it all off at once, you will incur, and properly so, the hostility of these gentlemen and their friends; and they will say, with some degree of right in that claim, that they have a contract or a kind of promise made by the State or the city when they relinquished a place for the remainder of their days, with the understanding that they were to be given a certain stated sum as a pension.

Now, Mr. President, pensions are getting to be a crying evil. It stifles ambition. It does not bring out the best in a man. Take a crowded community, where one boy has to go out of a tenement-house

at half-past six o'clock in the morning and work until five, and he gets the salary that he agreed to work for, say $10, $12 or $20 a week, whereas, when the son of a pensioner wakes up in the morning at ten o'clock, and with a cigar in his mouth and his shoes shined he laughs at the son of the laborer. Is not this the result of class legislation? Of course it is, and it is for the benefit of the few against the many. Read our Constitution and see how it has been evaded. How do they get around it? They say the pensioner has rendered service to the State. I submit this system is wrong and it should be changed.

Mr. Bouvé of Hingham: Before the gentleman sits down I should like to have him make clear to myself and some other members of the Convention the expression in line 15: "shall not apply to war pensions, veterans of the Civil War," etc. It is a question in my mind where the distinction comes in. And, in addition to that, what will he say, or what will the members of the committee say, about the veterans of the Spanish War and the present war if the Legislature shall see fit hereafter to grant them pensions? In other words, the resolution is not clear in those respects to myself and I think to some others.

Debate was continued after the recess.

Mr. Lomasney: I hope the Convention will pardon me. I do not like to take up its time, but this is a very important question. There is no contention on the part of the committee that this resolution is absolutely the best thing, but we have to make a start somewhere.

You know in some of these places when a man is about to be retired on a pension he first asks for an increase of salary. That is done a year or two or three years before his time comes to retire. He is raised $500 or $1,000, and of course he gets the benefit of that when he is pensioned.

Now, this starts by restriction. Some gentlemen have said to me that they hesitate to put into the Constitution a restriction in amount, and they suggest that this matter be left to the General Court. I sat in this State House as a member of the General Court, and I saw the wife of the Chief Justice of the Superior Court come in here asking for the balance of his year's salary. He was a veteran of the civil war, one of the best judges we ever had in this State, but that lady had to come in here, and she did not get it, although some of the most conservative men in the body fought for it. That man worked until a few days before he died. He could have retired with two-thirds of his salary; he could not afford to do it and maintain his family and when they came here as petitioners, the Legislature said no. I have seen some other people who did not have half the case, not a hundredth part of the case, granted relief. I cannot see, and I say it with due reflection, why we should leave it to the Legislature. We should start now and restrict the amount.

No one here knows what his financial condition will be when he is old. I say if any official has a wife, who has gone through life with him and they have not been able to save any money, at the end of their days, after he has given his life to the public service, we should not open the almshouse door to them. We should give him something substantial and proper to help keep them in their old age, and that is why I said either $1,000 or $1,200 a year would be about right.

One of the men in our city who held an important office, where by

a stroke of his pen, if he had been a dishonest man, he could have looted the treasury of half a million dollars almost at any time, did some things by endorsing his brother's notes, and he, being a poor man, had to take a pension from the city at the end of his days. He was honest. He was financially embarrassed. But it was a great gratification to us in the city to be able to say that we helped him to secure it. I am not in favor of turning the old employee out and claiming that he can go to the almshouse, but I claim that with a pension of either $1,000 or $1,200 a year in these days, he can take his wife and live decently on that amount, and not be a subject of charity. In my experience no one knows, no matter how much he has had in the past, how he is going to end his days.

That is my position. It is not to strike at the laboring man, it is not to strike at any necessary pension, it is to establish an amount where justice will be done to the person who has rendered honest public service, and no great injustice done to the community. But as this thing operates today, there is an injustice done to the community. We have men who get retired prematurely. They say they are sick, they get doctors' certificates that they are lame, that they are blind and unable to work; but the minute you put them on the pension roll they get cured by specialists at once, and they appear in another city, drawing a salary, shutting a man out of an honest day's work there and getting money both ways. Is that a proper system? I suggest it is not.

Now, the Legislature has built up this system. It was brought about by special acts of the Legislature. But they never were submitted to the people. I admit that in the matter of increase of salary the act generally provides that the city government and the mayor shall give their approval. I believe if we put this in the Constitution we shall reduce materially the amount expended.

There is a great deal to be said that some contracts, implied or otherwise, may exist between the Commonwealth and the cities and the towns, made when these people were retired. If that be so then let us say as in the anti-aid amendment, if there are any contracts in existence, protect them. The State cannot afford to break a contract. If you believe that there were contracts made with the persons who have been retired on pensions, protect them. But let us start somewhere to reduce the amounts paid. Do not allow this class to be created in the Commonwealth and have an overpaid pensioned class. I do not want to violate any secrets of the committee-room, but you, sir, heard arguments made why we should have an educated class created in this Commonwealth. Now we come to a pensioned class. Why, sir, what becomes of our good old Constitution, that says all men are born free and equal and entitled to equal rights and opportunities?

If we are going to have these classes doing nothing but taking money from the people, who is there to support them but the men and the women in the community who labor? Is labor going to bear all? I suggest it is not fair. And by this method you also open the treasury to a great many other attacks, because people point at these things when it is said they are trying to get something they should not get. But, they say: "Look at these pensions," and of course in many cases the men who receive them do not need them. One plan has been

suggested, — I am not trying to enforce it, — to compel an individual to go before some board, put his hand on the table, and if he did not have enough money to carry him through life properly allow it to him, just as we do State aid and other things. But they say that might be charity. Charity or no charity, it all comes out of the pockets of the people, and the taxes come out of the pockets of the masses, and that is not fair.

I believe this is a common-sense proposition, but it took some deliberation to have some of us agree to it, because we realized that it is a very unpopular proposition to take from an individual something which he receives and has been receiving for doing nothing. Of course it is unpopular, but we must do unpopular things if we are going to do right. We must make a start.

I say, we must realize also that we must submit this to the people. You cannot put through a measure, in my opinion, that strikes down all these pensions at once. I do not believe the people would indorse it, because there would be a great many arguments against it, and every community would see the injustice of it and the people would say: "Well, it may be right," and the people would give you this reason and give you the other reason. But if you say, and it comes before the people of the State, that any person the Legislature endorses should have a pension not exceeding $1,000 or $1,200 shall get it, I believe they would consent to leave it to the Legislature. I believe that the people would say: "Take it all in all, that is a pretty fair adjudication of the matter;" and the common-sense feature of the proposition would assert itself and it would go through the State and be approved, and it would be the basis for future legislation.

I have no personal interest in this matter; I am trying to strike no class. My sympathy naturally is with all these men. But I submit, we always must recognize that we have something else to consider besides too much sympathy in this proposition. We should do absolute justice in this case, I claim, just the same as if we were rendering a verdict as members of a jury. We should decide what is justice in this case. There is not a man who, if he were seeking a pension fairly and squarely, did not have his health, and were offered $1,000 or $1,200, would not say that was pretty decent treatment and that the State was doing something for him that was absolutely fair, because he had been paid his salary yearly and this was a pension for services rendered. I trust that we shall adopt some restrictive amount. I am not binding myself, but I believe any restriction is better than no restriction, because the time has come when you must limit the amount you are to expend if you want to save the treasury and the people of the State who have to contribute these funds. Now, sir, you may say: "Trust the Legislature." I am making no reflections on the Legislature. Many of you gentlemen have served in it. You know how it is. You know how you yield, and not improperly, to the sympathy with the individual cases for pensions. You cannot refuse, because if you do they say you are mean, they say you are narrow, they say you are illiberal. You say: "After all, what do I care? The act is passed," — and $10,000 more is expended. Then $50,000, then $60,000, and in ten years millions are spent. The time has come, it seems to me, to call a halt, and I hope we shall do something in that line.

Mr. Glazier of Hudson moved that the resolution be amended by striking out, in lines 13 and 14, the words "in amount exceeding the rate of $1,000 per annum", and inserting in place thereof the words ", except as may be provided by a contributory system established by the General Court"; and by striking out, in lines 15, 16 and 17, the words "nor to pensions for which such person has contributed according to law".

Mr. Douglass of Boston: I did not intend to have a single word to say upon this subject. In fact, I came here to be instructed upon it this morning. But there has been a great deal of camouflage thrown about this problem, and I think that my questions to some of the gentlemen interested in the report of the committee have brought the question squarely before this body. They admit that there was dissension in the committee, that they were not agreed upon this proposition, but that the resolution which they report to us means merely that the only restriction you shall place upon the pension system is in the amount of the pension. We have heard argument here this morning, and we have come down to this simple proposition. I asked the gentleman who just concluded, how far was he willing to go? Will he go to the limit of having no pensions at all? Will he put a barrier such as a contributory pension? Will he stop this whole crying evil that he talks about, or will he not? Is this vast and intelligent body assembled from all parts of the Commonwealth of Massachusetts gathered here on this auspicious occasion to discuss the question of a $500 pension, or a $600 or a $1,000 pension, when we do not know in twenty years from now what the value of a dollar bill is going to be, and whether a pension of $1,000 is going to be a fair pension for any man who is injured in service or grows weak in the service of the public? The committee that reports this resolution will not go the limit. The gentleman from Boston (Mr. Lomasney) will not go the whole way. If he is on the right road let him travel to the end of that road. Let us decide this question now and for the generations to come on a fair, intelligent, common-sense basis. I heard in the great debate on the anti-aid in this body a great problem put forth: "Let us settle this nefarious question. Let us get religion out of politics for all time." An appeal was made to this body to act for all time. Well, if this question is so important a question as the gentleman from Boston (Mr. Lomasney) says it is, if it is thoroughly understood, — and it is thoroughly understood by every member of this Convention, — then do not let us go part and parcel about it, but let us decide here and now, once and for all, according to the best of our light as we see the light. The position of the gentlemen on the committee reminds me of a doctor treating a case who does not know just what to recommend, or if he does know is not willing to go the limit with his remedy. The committee on Bill of Rights in the majority conclusion is in the position of a doctor treating a patient, and they say to the poor patient: "Mr. Massachusetts, you are suffering from cirrhosis of the treasury. We know you are in a bad state. We have diagnosed your case. We know you need a final remedy, but we won't go any further than No. 308. We send you to a future generation, hoping that some good Doctor Bill of Rights will give you a final medicine that will cure you forever."

Mr. Harriman of New Bedford: There is no question, perhaps, that

interests the working people of this State so much as pensions, and I have been amazed somewhat by those gentlemen who so eloquently defended the judiciary the other day in saying that it must be well guarded and be well taken care of in the future, and then who oppose old age pensions on the ground that it would make men slothful and would take away from them their initiative to do well. To my mind those two arguments do not agree, and these gentlemen I do not believe can be consistent in making them. I want to say, in reply to the remark from the gentleman who has just preceded me, that the labor movement is opposed to narrowing the system of pensions to make them contributory or non-contributory. I am somewhat in accord with limiting the amount of money that shall be given, although I recognize that it perhaps would be unwise to have a specific sum named in the Constitution, for no man knows what the value of $1,000 may be a few years from now. The condition that has grown up where State employees, particularly the judiciary, can get a pension of $7,000, $7,500, $7,850 per year, and after they have retired receive remuneration for services outside and be appointed to positions here or there and earn a living and get something for their work, is not fair to the taxpayers of this State. If there was any reason why these men were given pensions, — if there is any reason why any man is given a pension, — it is because they have done their work well and have reached a point where they ought to have rest and ought to be taken care of. All the odium that has been cast upon the pension system should not be thrown upon the shoulders of the poorer class of our community; it ought to be as well, where it fits, upon those who have received good salaries during their tenure of office. I have inquired and I know some of the reasons why the pensions for judges have been made. They have gone through Legislature after Legislature at the behest of lawyers who presumably might have wanted to make themselves good with the judges and have a fair salary and pension for them should the omnipotent power of appointment ever shine upon themselves and they should ascend the tribunal. It has not been an altogether altruistic idea that has made our pension system what it is, with particular reference to our judiciary. I believe that the fairest thing is the figure of $1,000, and I shall support that, unless something better appeals to me. I think that the amount ought to be limited. And I am glad that some other man besides those representing labor has stood here and at least has been rather fearful of the wisdom and good judgment of the Legislature. Some of the gentlemen who have talked about the lack of wisdom of the Legislature upon this question said during the initiative and referendum debate that they were almost infallible, and equal, perhaps, in wisdom to our judiciary.

Mr. Dutch of Winchester: The debate has opened up a great many different angles, has brought forth a good many amendments. In the midst of the morning debate I was asked to attempt to draft some recast of these propositions, and with assistance from about me I have suggested, largely due to that assistance, an amendment which I would ask to have read, and then I should like to explain it. It is to strike out lines 4 to 17, inclusive, and insert in place thereof the following:

In order to prevent the granting of special privileges and the creation of class distinctions, pensions or other like emoluments shall be granted to those who have

served the Commonwealth or any political division thereof only by general law, and, except in case of persons who have contributed toward said pensions or who have been permanently injured in dangerous or hazardous occupations, only when and to the extent that they may be dependent thereon.

In the first place, it seems to be agreed that lines 4 to 9 should not be in this resolution because they already are in the Constitution. The proper arrangement can be left to the proper committee to deal with later. In the second place, I think we should recognize that we are not here dealing with the general proposition of old age pensions. As I take it, this does not bear on that matter. We are dealing here only with those who have been employees or officers of the Commonwealth or some political division thereof, so that we are not considering the proposition of old age pensions. In the next place, I take it, — as already recognized by some one who has made an amendment, — that we should have the words "Commonwealth or any political division thereof", instead of the language which occurs in these resolutions, because we should include such political divisions as now recognized, the Metropolitan Park Commission, etc. That is a detail. In the next place, I should say that an amendment of this sort should not be retroactive. The amendment as I have drafted it says nothing on the subject, but it is the expectation of those who approve it here that it would not be retroactive. As has been suggested, we should stand by the contracts of the Commonwealth. We can act for the future, but we shall abide by what has taken place.

The debate seems to have brought out the feeling that the abuse of the pension system has been confined to non-contributory pensions and has been due largely to the fact that pensions have been paid which have been of large amount and have been paid to those who were by no means dependent upon them. If I judge aright the argument of the gentleman from Boston in the third division (Mr. Lomasney), it is that we should keep the pensions down to a basis where they fairly will take care of the obligations of the person who retires, and he suggests that we should have enough so that it will take care of the man and his wife and those dependent upon him, and that seems to be proper. There is the suggestion that we should limit pensions entirely to contributory pensions. I doubt if we are prepared to take that step. Certainly, as one who has not studied this question particularly, I am not prepared to make such a proposal. But it does seem fair that we should make the distinction that a contributory pension may well rise above ordinary support, and we may accept his suggestion, and that of others who have spoken, and say that it is bad policy to keep on giving non-contributory pensions, pensions not contributed to, which are not needed or go way beyond what is needed. And so the words of the substitute are calculated to bring about these results. Necessarily they have been drawn hastily. There is no pride in the exact language, which may be amended later if you see fit to adopt it today. But the intention is, and I think it is at least roughly expressed, that non-contributory pensions should be confined to the amount which is necessary to take care of the pensioned person.

It is suggested that a fixed amount should be put in, — $600, one man says; $1,000, another says; $1,200, another says, — and that very difference of opinion points out, I believe, that that is an attempt to go beyond Constitution-drafting into the realms of statute-drafting.

I believe as far as possible we should confine ourselves to Constitution-making, which I conceive to be the declaration of fundamental principles, — general propositions, keeping out legislative details. If it is wise policy, — and that is what I gather from this debate, — i it is wise policy to keep non-contributory pensions, with one exception which I have forgotten to mention but which I will mention in a moment, down to the fair amount to support a man and his dependents, why, let us say that, and not attempt to be the jury, and not attempt to read into the Constitution, crystallize there, a figure which, as has been pointed out, will differ greatly from generation to generation.

Mr. LOMASNEY: May I ask the gentleman a question? By his amendment does he not make the distinction? Does he not permit the General Court to give away the people's money by vote to any man, and does he not limit the amount that is to be paid to the people who contribute their own money, — a bad distinction at once?

Mr. DUTCH: If I understood the question the answer is that I attempt to do quite the contrary. There is no limitation on the contributory pension. There is a limitation on the non-contributory pension. And I guess I had better mention the exception lest I be misunderstood again. The two exceptions on limitation are the contributory pension and the person permanently injured in a hazardous or dangerous occupation. Apart from those two exceptions there is a limitation to dependency. But let me say that that will include the man, it will include the wife, it will include legal dependents on that man, which is a fair proposition, but the amount will be fixed by the Legislature, or, we will say, by some retirement board or commission, to which it ought to be delegated, and it will have to be done by general law.

Mr. LOMASNEY: I hope the gentleman will pardon me, but that is the way I understood him. May I repeat, sir?

Mr. DUTCH: Certainly.

Mr. LOMASNEY: In your amendment you said, "Only by general law." That means the Legislature by general law can give any amount they wish to any individual. Now, you go down and you say, "except in case of persons who have contributed toward said pensions or who have been permanently injured in dangerous or hazardous occupations, only when and to the extent that they may be dependent thereon." In other words, you have allowed the Legislature to give the people's money by law whether they need it or not, and you limit a person who puts in his own money, and the hazardous occupations; in other words, you give the Legislature the opportunity to do what they have been doing in the past by adopting this amendment.

Mr. DUTCH: I am sorry if the language is by any chance capable of that construction, but I would call the gentleman's attention to the fact that, just as he has read it, there is an "and" in there. That is conjunctive. It does not say "or". So that in order to grant the pension it has got to be both by general law and, unless it is within those two exceptions, limited to the dependents of the man. If it is not clear as a matter of English, that is certainly the intention, but I rather think on reflection that that is the proper interpretation of the language.

Mr. CREED of Boston: I should like to ask the gentleman, when he

speaks of dependency, would that not put a premium on thriftlessness? Would not the judge, for instance, who saved some of his salary and showed that he had goods, when the time came for retirement, be disqualified by the board of retirement, while the judge who lived up to his salary and had nothing would get a pension?

Mr. Dutch: I think that matters of that sort will be under the control of the Legislature or the initiative and referendum, the law-making body, whatever it is, under this provision. You have got to leave that amount of discretion in the law-making body.

Mr. Hart of Cambridge: I desire to ask whether the amount of pension which may be drawn by a person who has contributed is in any way proportionate to the amount which he has actually paid in? The text would appear to bear the construction that if a man had contributed any amount defined by law he might then be entitled to a pension to be determined by law without reference to the amount of his contribution.

Mr. Dutch: That is correct, and I think is a necessary possibility under a constitutional provision. It is not for us to put in the safeguards here in the way of the proportion, one-half or three-quarters or ten per cent of his contribution, or all of it plus ten per cent, or anything of that sort. That is, I believe, what we should keep away from. I believe that should be left, and properly may be left, to the General Court or the law-making body, because it is provided here that this is going to be done by general law. You are going to get rid of the log-rolling on special pension bills. That is one great evil. The second great evil is the overloading of the pension.

Now, as I say, we have no pride of language; it may be that we have slipped in our haste; but it is the opinion of several that this gets together the points which are desired, avoids a good deal of clumsy language and avoids a good deal of statutory language. I might say also that this has no effect whatsoever, I believe, on war pensions, but that they would be taken care of automatically, so that we need no exception on that ground.

Mr. Bouvé of Hingham: I desire to offer an amendment, as follows, — to strike out the words in the 15th line "veterans of the civil war", and in the 15th line insert after the word "to", the word "existing", and after the word "pensions," the words "to war pensions hereafter granted by the General Court", so as to read in the 14th and 15th lines as follows:

> This amendment shall not apply to existing war pensions, to war pensions hereafter granted by the General Court nor to pensions for which such person has contributed according to law.

After inquiry of members of the committee I am totally unable to ascertain the value of the words "veterans of the civil war" after the words "war pensions", and it has not been explained either after my inquiry this morning or my inquiries outside, of members of the committee. Again it seems to me that there should be no possible amendment to the Constitution on the subject of pensions which, by any interpretation, could make a distinction between veterans of the civil war now receiving pensions, veterans of the Spanish War for whom such provision is or may be made, or soldiers of the European War or of future wars for whom the General Court shall think proper to provide. It has been said that the general government will look out for veterans of the

present war, but of that we know nothing; and the time never will come that the Commonwealth of Massachusetts will not make some special provisions for her veterans as she has in every war of the past. And when those matters arise they should not be confronted by a failure in the Constitution to provide for that which we now foresee and I believe that the amendments which I have offered will clarify this part of the subject.

Mr. SULLIVAN of Salem: I tried to offer an amendment this morning somewhat in line with what the gentleman from Hingham (Mr. Bouvé) has just offered, but was not recognized. I have an amendment, somewhat in line with what the gentleman from Hingham has offered, but still I think an improvement on what I wished to offer this morning. I move to strike out everything after the words "per annum," in line 14, and to substitute the following:

This amendment shall not apply to those who have actively and honorably served in the army or navy of the United States in time of war, nor to pensions for which applicants have contributed according to law.

The only real change which I have made is to take out the words "war pensions, veterans of the civil war", and to insert "those who have actively and honorably served in the army or navy of the United States in time of war". I put in the word "actively" because I do not consider that the dollar-a-year men or those who are serving in certain government departments at nominal salaries are actively in the service of the army or navy, and I should like to have this statement go down in the record as far as this amendment is concerned. I inserted the word "honorable" because I do not want a man who is dishonorably discharged from the army or navy to come in for a pension on account of having served at some time or other in some branch of the service. Furthermore, my amendment puts the veterans of all the wars of the United States on an equal basis.

Mr. LUCE of Waltham: My justification for taking part in this debate is the fact that I have the honor to be a member of the Massachusetts Teachers' Retirement Board and as such a fiduciary duty presumably devolves upon me as having undertaken in part to look out for the interests of something more than ten thousand teachers who are now members of this organization. So far as I can now see, should the amendment offered by the gentleman from Winchester prevail, this whole system of teachers' retirement would be completely paralyzed, practically destroyed, and the efforts of the teachers of the State to protect themselves and those interested in education to protect its welfare would be wholly thwarted. Therefore, in behalf of these ten thousand teachers for whose interests I am officially somewhat responsible, I must protest against this amendment. The amendment says that in the case of a pension system, unless the petitioner has contributed thereto, the pension shall be dependent upon infirmity, or something of the sort. Let me explain the teachers' retirement system. The teachers contribute to an annuity fund. They do not contribute toward their pensions. They contribute to an annuity fund and they receive from that annuity fund an amount relating to or dependent upon the contribution which they have made. In addition, the State furnishes pensions but the teachers have not contributed in any way to the pension fund. That is a distinct fund related to the

annuity fund only by the statute. The teachers have not contributed to the pension.

Mr. Dutch: I should like to ask the gentleman if that is not a pure question of name. The resolution speaks of pensions or other like emoluments, and by a shift of name in your statute would you not come immediately within the scope of the resolution?

Mr. Luce: I will read the words of the statute:

"pensions" shall mean pensions for life derived from contributions by the Commonwealth.

And under the present wording of the statute I call attention to the harm that would be done so disastrously by the amendment in its present shape.

Mr. Edwin U. Curtis of Boston: I should like to ask the gentleman if the amount contributed in any case by the teachers to the annuity plus the pension equals or exceeds $1,000?

Mr. Luce: I do not recall that so far it has. Up to the present time the system is not in full operation. It has been at work only three or four years and the retiring allowances will be greater later on than at present. It is quite possible that later on this $1,000 limitation might interfere with the operation of the system.

Mr. Curtis: Then in the future, if the resolution offered here were adopted by the people, the teacher might have contributed to her annuity or his annuity, and then, plus the pension, exceed $1,000?

Mr. Luce: I would not commit myself positively to an affirmative answer, but such is my impression.

Mr. Curtis: Then in that case the teacher would have contributed in proportion more than she would get from the State if the State were limited to $1,000?

Mr. Luce: If that were the case, yes.

While I am on my feet, I should like to call the attention of the Convention to the unamended resolution that is before us in the matter of the exclusion of veterans of the civil war. It happens that the presence of that clause in the amendment saves me from having to ask to be excused from voting by reason of personal interest, — not that I am receiving a pension, but one very near to me is receiving a pension, and yet the injustice of a provision which said to one judge who had reached the age of 85, as was the case with the person to whom I am referring: "You shall receive a pension because you served in the civil war," and to another judge of 85: "You shall receive no pension because you did not serve in the civil war", must impress itself upon any one who gives the matter a moment's consideration. And further, sir, I am tempted to add one suggestion to this debate from close observation of the matter. The pension is part of the emolument and is so viewed by the man appointed to office at the time of the appointment. I have failed to hear any suggestion yet made that the inevitable result of putting in a $1,000 limit would not be the increase of salaries in order that the same inducement might be offered to men hereafter that is now offered. If that is the case the situation is just as broad as it is long. If you pay less in pensions you pay more in salary, therefore no financial gain to the Commonwealth is visible if the matter goes through in the manner in which it has been submitted. But certainly, sir, I trust the Convention will exercise the

greatest care and not interfere with this magnificent teachers' retirement system which is now so great a boon to ten thousand teachers, which already has more than a million dollars in its annuity fund and which bids fair to be of the greatest help to the educational interests of the Commonwealth.

Mr. Edwin U. Curtis of Boston: I should like to ask the last speaker another question. Do I understand the gentleman to say that under the wording of the last clause of this resolution a man who was a civil war veteran can draw his civil war pension and in addition would be entitled to a pension as a judge, whereas a man who had not served in the civil war and was a judge could not draw his pension?

Mr. Luce: My reading of the sentence is to the effect that a veteran of the civil war is to be wholly excluded from the operation of this amendment.

Mr. Chandler of Somerville: It seems to me that this question has been debated about long enough. [Laughter.] With the number of amendments that we have, if we do not vote on them pretty soon we shall forget what we are voting on, and I therefore move the previous question.

Mr. Reidy of Boston: I think the Convention is in a hopeless state upon this matter, and I trust we shall defeat the proposed amendment. It has been settled that the Commonwealth has full control over all its employees, and directly or indirectly over all the employees of every political subdivision of the State. The Legislature may increase, decrease or even abolish pensions, as it may deem to be for the best interest of all concerned. We have paid no pensions in this Commonwealth that we should regret. Perhaps in thousands of cases a few unworthies may be pointed out.

This amendment should be entitled: "A proposition to reflect upon certain of our judges and a few police officials in the larger cities of the Commonwealth."

We have allowed pensions to our judges in order to facilitate the retirement of men too old and infirm to stand up under the arduous labor of the bench. I am glad that we have assured our judges that in their old age, after years of high class service, want is not to be their lot.

With reference to the police let us not forget that during the past few weeks in almost every police precinct in Boston the man in uniform has worked from 25 to 40 hours a week more than his allotted hours of duty. For this there is no extra compensation, or even time allowance.

Firemen in Boston are retired at a comparatively early age because an old man no longer can do fire duty in a city with buildings up to 125 feet in height. The firemen were all picked men physically and mentally when they went on the department. They are forced to retire before the average man's working life is ended. Then why not liberally pension these men after their years of danger from explosions, falling walls and exposure.

Many of our large corporations now are seeing the benefit of liberal pensions to faithful employees. Why should the Commonwealth of Massachusetts and her political subdivisions change at this time?

Mr. Creamer of Lynn: There have been so many amendments

offered here that I think the minds of some of us at least are somewhat confused. I should like, therefore, to make the motion that this matter lie on the table until to-morrow morning, with a request that the amendments may be printed so that all the delegates may know what they are voting upon.

Mr. William H. Sullivan of Boston: I should like to call the attention of the Convention to the fact that the question is on ordering this measure to its third reading. We can pass it to a third reading today and debate it *ad libitum* later; let the proponents of amendments give notice that they are going to offer said amendments and ask to have them printed in the calendar. It will save much time because, from our experience with the calendar, apparently all these matters which are contested are going to be fought at every stage of their passage.

Mr. Creamer: I hardly can see how we can vote intelligently on many of the amendments that have been offered unless we see them in print, and I do not believe we should vote unintelligently even on ordering to a third reading.

Mr. Underhill of Somerville: I trust this matter will not be laid on the table in spite of the apparent neglect of the gentleman (Mr. Creamer) to follow the debate. Every one of these amendments either can be accepted or rejected. It does not hurt the resolution or amendments in any way, shape or manner; it goes to another reading and the same amendments can be offered again. If we put the matter over we have wasted a lot of time unnecessarily.

I would not take a minute's more time of the Convention if it were not for the fact that probably there has been no man in Massachusetts who has been so intimately in touch with this situation as myself for at least fifteen years, and I want to say that the resolution as presented by the committee, with a few minor changes, seems to be about the best solution of the problem at the present time. I am heartily in favor of my amendment for a limit of $600, because, if we do not make that limit $600, those who retire in the future are going to ask for the full $1,000, and it also seems to me that $600 ought to be the maximum. If we are going to accomplish anything we have got to accomplish it through the Constitution because, with the sympathetic sob of the gentleman in the first division who lately addressed you (Mr. Reidy) and the great influence of the gentleman who has spoken so ably in behalf of this measure (Mr. Lomasney), whom I have seen personally put through the Legislature more than one pension bill, — why, you are not going to get anything at all. You cannot get it through the Legislature. You have got to do it through the aroused indignation of the people.

Mr. Glazier of Hudson: I should like to inquire if the question is now open for general debate.

The President: The only question open at the present time is to give reasons why the matter should or should not be laid upon the table.

Mr. Glazier: I believe that the matter ought not to be laid upon the table because I should like an opportunity to say a few words, as follows [laughter]:

I have listened with a great deal of interest here today to this discussion. I have failed to hear anything in regard to any definite plan

for procedure in the Legislature. I have noticed the unanimity of the members and ex-members of the Legislature. I also gathered from what they have said that in recent years this question of pensions has run away with the members of the Legislature; they are not equal to its control. I believe that we should have a uniform system and I believe that the contributory system, as mentioned by the member from Waltham in regard to the teachers, should be broadened and spread out for other departments of this State. I believe it a wholesome system to work upon, and therefore I wish to suggest that the amendment offered here for a contributory system should be adopted. I am not so much opposed to the general law as suggested by the member from Winchester, only in this: I fear that there would be not general law but general laws enacted by the Legislature and we should fall back into the same position we are in at the present time. Again, I believe that the contributory system will take out the element of charity in much that has been paid heretofore and may be paid in the future, that there will be that uniformity, there will be that fairness, that all will be treated alike. It has been mentioned that this is not in accordance with the ideas of labor, that they are opposed to any contributory system. Let me say that this is not proposed in any such spirit, that I believe a system of this character can be adopted not only for those who are working as scrub women but those who are working in any department, and there will be that fairness, there will be that consistency in it which will appeal to the members, and I trust it may be supported.

Mr. Lummus of Lynn: I desire very much to support the action of the committee upon this matter. In one class of cases I have long had a conviction. I have been for years a consistent opponent of judicial pensions. At one time I think I was the only lawyer in the city of Lynn who refused to sign a petition for the extension and enlargement of the system of judicial pensions. If a man holding public office is not receiving adequate compensation for his labors, and for that reason is unable to provide for his old age, his compensation ought to be increased. If he is receiving adequate compensation for his labors, then any pension is in the nature of a gratuity, and he is no more entitled to a gratuity than the citizen in private life who helps equally to provide the public funds. I am anxious to support the report of this committee, but amendments have been offered and divergent views have been expressed that make it impossible for some of us to vote intelligently at this time upon issues many of which have been thrust upon us suddenly. If this matter were to be laid upon the table the committee, in whom I have the fullest confidence, could consider these various amendments and perhaps incorporate such of them as might meet with the approval of the committee, into one amendment which I hope the members of the Convention could find a way to support. It is with a view to being able to support the committee and not in any spirit antagonistic to its work, that I hope the motion of my colleague from Lynn (Mr. Creamer) may prevail and this matter may lie upon the table.

Mr. Harriman of New Bedford: I move as a substitute motion that the matter be laid over as the second order of business tomorrow. I do that because this Convention has voted to place No. 159 in the calendar (Resolution to provide for the regulation of advertising in

public places) as the first business after unfinished business tomorrow, and I think there will be ample time then to take up this matter.

The PRESIDENT: The Chair rules that the motion is not in order.

The motion to lay on the table was negatived.

Mr. WELLMAN of Topsfield: We are trying to do an almost impossible thing. This assembly apparently believes that this is a very important matter, and certainly many of the assembly believe something ought to be done. We are trying in the midst of a debate to write a constitutional provision, and that is a very difficult thing to do and to do it wisely, and we are forgetting certain very simple problems and principles. We are not legislating, and much of this debate has been wholly a debate on matters of legislation and not on matters of constitutional provision. Take, for example, the suggestion which has been made by my friend from Waltham. He proposes that a constitutional provision shall be set aside because, forsooth, a certain bill has been passed by the Legislature that conflicts with it. When we state the proposition it is apparent that it ought not to be considered. If there is any conflicting legislation the legislation ought to be modified and give way to the constitutional provision, if we decide that such provision is wise. Of course, as he put it, it is a pure technicality. Nobody desires to interfere with the arrangements for the benefit of teachers. But if this is a wise constitutional provision it is perfectly clear that after we have passed it the legislation should be made to conform to it and not the Constitution made to conform to some legislation which was passed without any regard whatever for the general subject which we are now discussing. I hope, therefore, that the amendment which has been suggested by the gentleman from Winchester will be adopted and that then, on the next reading, we may consider carefully whether any further changes are required. We certainly ought not to put into the Constitution, either in this or in any other case, a lot of details of legislation. If we do, the work of this Convention never will meet the commendation of the future.

Mr. BRYANT of Milton: I think enough has developed in this debate to show that our difficulties are partly that we are trying to legislate, and I should accuse even the gentleman from Winchester. One of the difficulties with his amendment is that he really is trying to legislate. The difference between $500 and $600 and $1,200 is obviously a legislative difference.

Now there is a great general principle which relates to pensions and which we can act upon at this time and which can be understood by the people if we choose to put it before them, and that is the great general principle of contributory pensions as opposed to non-contributory pensions. That question is simple. I do not know that it ever has been before the voters of the Commonwealth. Most of these pension bills, as I remember it, are put up to the voters. Under the practice in our Legislature, a system of pensions for town employees goes into effect only when accepted by the various towns and the question on the ballot is whether a pension system shall be established for the firemen and policemen, for instance. But the voter when he goes into his voting booth, I think, never has the alternative: "Will you establish a system of contributory pensions or will you establish a system of non-contributory pensions?" The alternative is not offered to him.

The alternative offered him is: "Will you have this system or will you have no system of pensions?" Every voter thinks it is fair to pension the firemen and police, and if they have a non-contributory system and nothing else offered to them in the voting booth they will vote "Yes." But I should like the general principle put up to the voters of this Commonwealth: "Do you want contributory pensions or non-contributory pensions?" And if I understand the eloquent argument of the gentleman from Boston (Mr. Lomasney) he is opposed to the non-contributory pension, but he says that an amendment to that end will not be accepted by the people. I am not sure but if it were put up to them they would vote for the contributory system, which to me personally appears to have a great many advantages. But if they do prefer the non-contributory system of pensions, why, they are the people to pay for it, they have adopted it with their eyes open and the Legislature will know how the voters of the Commonwealth feel upon that principle. I hope that the amendment of the gentleman from Hudson (Mr. Glazier) will prevail. It is a perfectly simple, understandable amendment, involving a general principle which can be understood in a minute by every voter, and I hope that this Convention will adopt it if it thinks contributory pensions are proper; and as I followed most of the speakers, they do feel that way; they simply are afraid to put it up to the people. Why will not your constituents feel just that way? Are they not just like you? Are they not people who have the same point of view that you have, most of them? I think they are. Now if you feel that way, that contributory pensions are better, or if you feel that the question ought to be decided by the voters, here is the opportunity to put it up to them. And I hope very much that the amendment of the gentleman from Hudson will be adopted.

Mr. DEAN of Fall River: I trust that we shall not write into our Constitution any one plan or scheme of legislation dealing with pensions. What we want to put into our Constitution is some such amendment as was offered by the gentleman from Winchester in the first division to incorporate the principle upon which we must act. If, later on, it seems advisable to make some specific limitation in regard to the amount to be expended we could add it. That again, however, is legislation and what it seems to me we must guard against here is a tendency to legislate rather than to set out those principles which should guide us in dealing with a question of this kind. As the matter now stands, while I regret we all shall not have an opportunity to read the Dutch amendment, that amendment incorporates the principles; that gives you an opportunity to make provision where the pension really is needed, and that is the first thing we are trying to meet in this situation. I trust that the amendment may be adopted.

Mr. GEORGE of Haverhill: I hope that this Convention will adopt either the amendment of the delegate from Winchester or the amendment offered by the delegate from Hudson. Either one will give a framework for a substitute proposal when we have an opportunity to see it. And I purpose to ask general consent to withdraw my amendment, with a view of offering it on the next stage in definite form.

We have heard a great deal here during this discussion about the officials holding office and how they ought to be taken care of; various classes of officials, from those who are drawing $10,500 down to, —

well, they do not get down much below $1,000. You have not heard anybody talk about officials getting less than $1,000; it is hardly dignified. Now what are you going to say about the seventy-five per cent of the people of the Commonwealth who under normal conditions earn less than $750 a year and who have got to pay a large share of the increased expenses? Here is a man who holds a public position for 20 or 25 years. He wanted it; he always has tried to stay there, and after drawing twice the remuneration he could get in any other place, then when he retires the State pays him over half of his present salary for life. But Mr. Ordinary Taxpayer, when he gets old and feeble, — what are they going to do with him? They are going to skip his taxes about once in three years and send him up to Tewksbury. The Constitution does not provide for any such inequality as this and I am inclined to the opinion that I would not permit this system to continue. I would hesitate to put into the Constitution a system that takes care of a person who has had a good position during his lifetime and spent all of his earnings with the expectation that the government was going to take care of him afterward. Now I think it is a reproach to any public official who holds a position in Massachusetts and receives anywhere from five to ten thousand dollars a year for twenty years, that he does not have a sufficient amount of money to take care of him when he gets to be 70 years of age. I remember in 1900 the proposition came in here to provide a pension system for all the judges below the Superior Court, and the distinguished gentleman from Everett in the second division (Mr. Newton) was chairman of the committee on the Judiciary and the flower of the Boston bar came up here to appear in favor of that bill to pension every conceivable judge whom they could think of. And when he asked them how it was going to affect other people in the public service, — "If you give pensions to these judges, these men of education, what are you going to do with the man who works on the street and in the sewer?" — one of the distinguished wallflowers of the Boston Bar Association said: "I don't think you ought to call these pensions for judges; you ought to call them annuities. Pensions ought to be paid to those people who hold ordinary positions." Annuities should be paid only to men of education and those holding the higher positions in the public service. That is the opinion some people have, and, mind you, there were scores of members of the Boston bar who left that meeting and were ashamed that they had come there to advocate a system of pensions that would take care of a certain class of people because they were educated and because they stood high in society. I think that principle is wrong. I think there is nothing in our Constitution that warrants it, that justifies it, and I believe that when any man holds a public position of any kind, if he draws $10,500 while he is holding that position, it is because the Legislature says his services are worth it; and I do not dispute it. Another man holds a position where he draws $1,500. Why? Because the Legislature says that that sort of talent is worth $1,500. Now, when they retire, when they are not in any position to render public service, why should the Commonwealth of Massachusetts have any more desire to take care of one person than another when they are simply private citizens? I hope this resolution will take another reading, and in the course of ten days I think this Convention can adopt some sort of workable proposition.

Mr. Bodfish of Barnstable: I do not rise to make any extended discussion of this matter but simply to say that I think the amendment offered by Mr. Dutch of Winchester should prevail, for, as I understand it, it is more nearly in accord with the almost unanimous findings of the committee on Social Insurance, which dealt not only with this question but with all kindred questions.

Mr. Bouvé of Hingham: I desire to withdraw my amendment for the purpose of offering it at a subsequent stage, as so many amendments have been offered that I do not believe the Convention will be able to pass upon them intelligently this afternoon.

Mr. Walker of Brookline: It seems to me at the present moment that it is a parliamentary situation that confronts the Convention. I do not know, and I suppose that other members of the Convention do not know, exactly how to vote on these various amendments. I have not studied the amendment of the gentleman from Winchester. Obviously, however, this proposition must take a reading. Now what is the best thing to do under the circumstances? Let us remember that we have the favorable report of the committee here and that is entitled to consideration. It seems to me that the best thing to do is to have those gentlemen who have offered amendments, as has been done in certain cases, withdraw their amendments and ask leave to have them printed to be offered at a later stage. Those amendments which are not withdrawn should be voted down at this stage. It will clear the parliamentary situation if we follow the advice of the committee, pass the resolution as it is and let members give notice of amendments to be offered at the next stage.

Mr. Brown of Brockton: It has come to my notice that here is the only opportunity, so far as I can see the rest of the calendar, to send down to the people of this Commonwealth that broad question: Shall they authorize the Legislature to grant pensions? We have here restrictions on the Legislature that they shall not do certain things, but you have not granted the Legislature the broader power that they may do certain things. I am speaking something after the line of the gentleman in the fourth division from Milton, — if I may call him by name, Mr. Bryant, — who felt that there ought to go down to the people, — and so do I, — this broad question: "Shall the Legislature be empowered to grant non-contributory pensions, — yes or no? Shall the Legislature be empowered to grant contributory pensions, — yes or no?" And you will then have before the people of the Commonwealth that great broad question which has agitated our labor conventions. We are on record; we are opposed to narrowing down pensions so that nobody may have a pension unless he contributes. Now the broad division is "contributory" or "non-contributory"? With all these amendments we are not sending down to the people the basic question: "Do you want any pensions at all, and if so how far shall you have them?" Let us have that go down to the people, — do they want a contributory or a non-contributory system of pensions? Let that go to the people of the Commonwealth, — the details can come later. [Applause.]

Mr. Underhill of Somerville: Following the advice of my old chief I ask unanimous consent to withdraw my amendment at the present time.

Mr. George of Haverhill: I ask unanimous consent to withdraw my amendment.

Mr. WILLIAM H. SULLIVAN of Boston: The gentleman from Winchester has offered an amendment. I have looked it over very carefully because I recall the amendment he proposed to the I. and R. about the power of judges, and I oppose with great pleasure the amendment offered by him. I wonder if he seriously has considered the effect of his amendment. "Pensions shall be granted only by general law." That is the first provision. Then: "and, except in case of persons who have contributed toward said pensions or who have been permanently injured in dangerous or hazardous occupations only when and to the extent that they may be dependent upon them."

What a mockery! And what is the purpose of it?

What is the question here? My distinguished friend from Milton (Mr. Bryant) arose and sagely criticized the delegates because they are seeking to legislate and then he makes a proffer of legislation. What does the resolution of the committee do? It limits legislation in the granting of pensions to $1,000. It does not legislate, it just limits legislation.

The gentleman from Springfield (Mr. Glazier) seeks to establish a system of contributory pensions. That is legislation for the legislator. What is the committee's measure? To limit legislation, not to specify a contributory or non-contributory system. I am an enthusiast for contributory pensions, except old age pensions. What a mockery in an old age pension system which compels a man who never had a decent job, to contribute for twenty-five years! The contributory system is all right for a man who has a soft job; non-contributory is all right for the poor and unfortunate. And if you adopt some of the amendments offered you cannot give a non-contributory pension to the poor and unfortunate. There is a strong sentiment in Massachusetts for non-contributory pensions for the poor and the amendments, if adopted, would invite the bitter opposition of all who so believe.

The delegates who offer amendments seek to impose a specific pension system. They are seeking to legislate here. Why? Because they know it will not be accepted. Your committee on the Bill of Rights has tried to evolve an amendment which not only will meet with the approval of the Convention but which will be ratified by the people.

Now, this amendment of the gentleman from Winchester (Mr. Dutch) antagonizes, in the first place, all the present pensioners, the firemen and policemen, and many of the State employees, who are not contributing to their pensions.

The gentleman from Waltham is concerned about the teachers' retirement system, and well he might be, because that apparently is a good system, but under the committee's resolution that system is not touched. Under the committee's resolution that system really is commended, because if we limit all of the holders of soft jobs to $1,000 pensions they will adopt the retirement system or they will adopt the system of contributory pensions.

What does this substitute of the gentleman from Winchester mean? It means the defeat of all pension legislation. If it is adopted you will submit an amendment to the people which will be opposed by all who believe in a non-contributory old age pension; which will be opposed by all firemen, policemen and members of the State Employees Association, and by every recipient of a pension, and every

possible recipient of a pension in the future. Such is the resolution which some of the drafters, distinguished and skilful drafters though they may be, desire to submit to the people, — one that will be defeated, so that there shall be no limit to the pension system.

Were it not for the fact that there will be another reading of this measure, and that the amendment of the gentleman from Winchester will be printed, I would be glad to acquiesce in a continuance until tomorrow; but undoubtedly his amendment will be offered again, and I will reserve some of my strongest comments for the next reading. As was said by the gentleman from Brookline, this committee, at least the majority of the committee, has given serious thought to this resolution. Perhaps it is not perfect in phraseology, but that is a defect which easily can be remedied by the committee on Form and Phraseology.

Here is a measure which has been thought out carefully by this Bill of Rights Committee, the same committee which rendered acceptable service on the anti-aid amendment. We offer it to you. It has been scrutinized carefully by friends and by enemies, and we look forward with confidence to the action of this Convention. We sincerely hope you will approve of the resolution we have offered you and then perfect its linguistic imperfections at the next reading.

The amendment moved by Mr. William S. Kinney of Boston was rejected, by a vote of 59 to 85.

The amendment moved by Mr. Sullivan of Salem, — inserting after the word "town", in line 12, the words "or any other political subdivision of the Commonwealth", — was rejected.

When the amendments moved by Mr. Glazier of Hudson were stated, Mr. Lomasney of Boston asked for a division of the question.

Mr. Lomasney of Boston: In accordance with Rule 43, any member may call for a division of a question which is in its nature divisible. My view of the situation is this: That the motion to strike out the rate of $1,000 and to substitute such sum as shall be established by the General Court is one proposition and it should be submitted by itself. Further on the amendment starts with another subject-matter. What is the first question? Shall we limit it to $1,000 or shall we let the General Court say what they shall do? With that passed upon, we come to the second question. It seems to me that it is clearly a question that is divisible and we should be allowed to vote on each question separately.

The President: The Chair rules that the amendment is not divisible in the way in which it has been offered.

The amendment was rejected.

The amendment moved by Mr. Sullivan of Salem, — striking out, in lines 14 to 17 inclusive, the words "This amendment shall not apply to war pensions, veterans of the civil war nor to pensions for which such person has contributed according to law," and inserting in place thereof the words "This amendment shall not apply to those who have actively and honorably served in the army or navy of the United States in time of war, nor to pensions for which applicants have contributed according to law.", — was rejected, by a vote of 49 to 88.

The amendment moved by Mr. Dutch was rejected.

The resolution was ordered to a third reading, by a vote of 135 to 12, Thursday, June 20.

Mr. Luce of Waltham moved, Thursday, July 25, that the resolution be discharged from the Orders of the Day.

Mr. Luce: There are sixteen amendments offered to this proposal. The prospect of attempting to sift out those amendments in full Convention is appalling. In the hope that if the committee should take them and confer on the subject again they might secure some common basis which will save the Convention itself perhaps two or three days of deliberation, I am going to move that the matter be recommitted to the committee. This motion I make after consultation with the chairman of the committee on Bill of Rights (Mr. Edwin U. Curtis) and with his approval. The motion is made wholly in the hope of saving time by securing concession and adjustment of the conflicting views.

The motion to discharge from the Orders of the Day prevailed and the resolution thereupon was read a third time. On further motion of Mr. Luce, it was recommitted to the committee on Bill of Rights. That committee reported, Friday, August 9, that the resolution ought not to be adopted; and it was considered by the Convention Wednesday, August 14, in the following form (No. 392), as changed by the committee on Form and Phraseology:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments, and no person upon his retirement from public office, position or employment shall be entitled to receive from the State or any civil division thereof any pension, gratuitous payment or emolument in amount exceeding the rate of one thousand dollars per annum. This amendment shall not apply to those who have actively and honorably served in the army or navy of the United States in time of war, nor to pensions or retirement allowances for which applicants have contributed according to law.

Mr. Underhill of Somerville: I move that the Convention amend the resolution by striking out, in line 14, the words "one thousand", and inserting in place thereof the words "seven hundred and fifty".

This is the same resolution that was substituted by the Convention by almost a unanimous vote two weeks ago. Since that time there have been some occurrences, which I shall explain to the Convention this afternoon, and I assure them they are of a very sensational nature.

The discussion was resumed after the recess.

Mr. Underhill: I understood the gentleman from the Fifth Suffolk district (Mr. Lomasney) had an amendment that he desired to offer, and if so I am willing to yield to him at this time.

Mr. Lomasney of Boston: I intend to prepare an amendment, but the gentleman can go ahead.

Mr. Underhill: I believe when the Roman gladiators marched around the arena in the Colosseum they stopped before the populace

and bowed low and exclaimed: "We who are about to die salute you", and I feel about as they must have felt at that time. Although I know, almost to a certainty, that I am licked before I begin, I remember the expression voiced by the gentleman in the third division (Mr. Lomasney) last year, when he exclaimed: "God hates a quitter", and the Convention arose to him as a man and gave him enthusiastic applause. So my continued fight on this proposition is because I do not believe in quitting, especially when it is a question whether the vigorous political organization in the city of Boston known as the Russell Firemen's Club is going to dominate the whole State or whether it shall confine its activities in the future to the city of Boston.

The members of the Convention remember well that when this question came up at a previous session there was almost a unanimous sentiment in the Convention for the proposition, or for the principle contained in the proposition. It is true many amendments were offered, and in good faith the gentleman from Waltham (Mr. Luce) asked that it might be referred back to the committee, and in spite of the fact that several of the members of the committee spoke for the proposition when it was up before, it comes back now with a unanimous adverse report. Now, why this change?

The gentleman from Boston in this division, from the Roxbury district (Mr. William H. Sullivan), with tears in his voice, ever since the Convention assembled has been telling of the evils of outside, sinister influences on the Legislature. If he had been content to restrain himself for a little while concrete evidence would have been presented to the Convention, and he would realize, as the Convention probably realizes now, that a great deal of legislation is influenced, either adversely or favorably, by personal friendships, or political pressure put upon members of the Legislature. That same influence and that same pressure has been exerted in this body, and no one rises to accuse all of the members of the Constitutional Convention of being susceptible to sinister influences. Why, sir, we hardly had passed favorably upon this measure, when out in the corridors we began to see the blue uniformed men of the Boston Fire Department. They were here every day for two or three weeks, and I knew that they would be here, for I had been approached by one of the members of the Somerville fire department, and warned that if I persisted in my course I should have active political opposition; that they would do what they could to defeat me for public office. They have a right to do that and so I took no issue with them. But I did argue the question, and I found that their opposition was due to a supposition voiced by the officers of the department, that, under this resolution, they would be deprived entirely of their pensions, to which they felt they were entitled. When I explained to them that my amendment called for a maximum of $600 they said that there were very few of the rank and file of the department who would be affected, but that there were some getting $1,400 or $1,500 a year and they thought they were entitled to half of their pay. And so, sir, to-day I have offered an amendment making the maximum amount of a pension $750. I did not do that as a concession to the firemen, but because I wanted to get something, and felt that if I had the active opposition of the firemen and policemen in all the big cities nothing would be done. I went to my friend and

explained my plan and what I intended to do, and he said: "Oh, we don't care anything about that now. We have got it all fixed." He knew what was going to take place; and how did he know? He knew because the political forces, particularly in the big cities, had got busy. He knew that a lot of men who voted for the proposition before were going to reverse their action. He knew that others who did not have the courage to do that were going to be absent. A member from Lynn who has voiced time and again the most virulent attacks upon the Legislature for being susceptible to such influences, I am sorry to say, is not present, and I am willing to bet a good dinner that he will not be here this afternoon. That is not a reflection upon his character, and I have a right to defend the Legislature for succumbing to influences to which he himself is susceptible.

I want to tell you as briefly as I may some of the pension evils, and in order that I may be emphatic, and that you may know I am not talking generalities but facts, I am going to use names.

Capt. Melvin P. Mitchell is a pensioner of the Boston fire department. He is chief of the Hudson fire department and drawing the salary that goes with that position.

Former Chief Coulter has a pension of $1,500, and he earns $7 a day from the Fire Prevention Commission of the metropolitan district.

Capt. Michael J. Nolan, pensioned at $1,000 a year, is now chief of the Fore River fire department, and has a force under him in that plant which is far superior to that which he commanded as captain in the fire department of Boston.

Thomas W. Gowen served in the Malden fire department for fifteen years while he was a pensioner of Boston's fire department.

Martin A. Kenealy was injured in the big fire in the leather district and was retired on a pension of $1,000. He studied law, was admitted to the bar, continued in practice until the Mexican trouble, when he went to the border with the Ninth regiment, commissioned as a Captain. Last August, when the regiment was absorbed in the new 101st, he passed every necessary physical and mental test, and now, to the glory of himself and his country, he is over across. That may gain sympathy against my position, but, sir, while he is a perfect man physically and mentally he is drawing a pension from the pockets of the people of Boston. That is what I object to.

Daniel T. Callahan was a fireman a number of years ago. Ever since, he has been drawing a pension of $600 a year. He served for a long time in the United States secret service, and in more recent years has been at the head of a private detective agency.

Samuel Engler and John C. Holton each draws a pension of $600 from the city, beside his salary as United States customs guard, a position which requires some strength, not only of character but of physical manhood.

Henry F. Brady enjoys a pension of $700 a year. He is special officer at the International Trust Company.

The Commonwealth Trust Company pays a salary to John F. Reynolds, who formerly was pensioned at $800, and to Joseph W. Wood, also, who draws a pension of $700. They are both special officers.

Frederick W. Hayes' pension of $600 does not interfere at all with his duties as guard at the Bay State branch of the Old Colony Trust Company.

Solomon Aaron, pensioned at $700, is vice-president of the S. E. Aaron Company of 60 State Street.

Patrick Garrity, drawing a pension of $650, is connected with a plating concern in Roxbury.

Charles M. Griffin and Edward J. McIntyre each draws a pension of $600 and serves a company at 84 State Street.

William McCarthy gets $600 a year, and is special officer at the Bijou Theatre.

Joseph Silva, with a pension of the same amount, serves as a clerk for the Adams Express Company.

In addition here are a few of the men who are employed in other businesses. I will not take the time of the Convention to state where they are employed.

Daniel J. Coffey, liquor dealer, gets $600.

Thomas F. Carey, real estate dealer, gets $933.

Andrew R. Hines, special officer, and George C. Swift, special officer, each gets $700.

Joseph C. Barrus, superintendent of halls, gets $600.

Coleman E. Clougherty, machinist, $700.

Murdock D. McLean, blacksmith, $750.

John E. Donaghue, elevator operator, $700.

John T. Weston, time keeper, $700.

William P. Colpoys, insurance, $600.

John J. Murphy, insurance, $800.

These are the amounts of their pensions, not the amounts of their salaries. And so I can go through a long list of names.

Here is another peculiar thing about this pension situation. A number of these men call for their pensions when they are due at the city hall and receive them in person. Some of them have an address which they furnish to the city, to which their checks are forwarded. Many of them are not on the voting-list of the city of Boston or the towns where they have their checks sent, nor are they in the directory, and when you inquire at those addresses for those men you cannot get one particle of information as to where they are or who they are or what they do. In some cases the pensioner lives at the house where the pension is sent. In other cases he is supposed to live there, but he never is seen there, the neighbors know nothing about him.

To sum it all up, 72, — those are just in the Boston fire department alone, — are employed at present in gainful occupations, 82 profess to be dependent upon their pensions, while 75 are not listed at the addresses which the city treasurer's pay-roll furnishes. Now they are drawing these pensions, as they feel, in full compliance with their legal rights.

Mr. Flaherty of Boston: May I inquire if the information from which the gentleman has read here came by a personal research as the result of his own efforts, or was it furnished to him by some one?

Mr. Underhill: I cut this from the Boston Herald, published about January 1, 1918. It was taken from the records of the auditor of the city of Boston, so the figures are absolutely authentic, and can be substantiated.

Mr. George of Haverhill: I wanted to suggest to the gentleman from Somerville, with whom I am in sympathy, if he does not think

it would add dignity to that list to call attention to the fact that a Justice of the Supreme Judicial Court was retired on $7,500 a year who afterwards received $15,000 a year, as I understand, for holding another public position.

Mr. UNDERHILL: I was coming to that. It seems that the members who took the most active part in the debate previously on this question wanted to get the judges, and that is all they saw. They wanted to get the judges. But, sir, when it came to a point where they had to jeopardize their political future they had a conversion. Things changed. Or perhaps as I heard my friend the Mahatma (Mr. Lomasney) say with a great deal of emphasis one time when asked why he voted "No" on a question: "I know that the bill is right, I should like to vote for it, but it is too d——d much trouble to explain." So it is with these propositions as they come before the Legislature and before this Convention, it is too much trouble for some members to explain. Now, sir, the gentleman from ward 5 (Mr. Lomasney) is looking after the interests of his people, as he should. He always has done so, and I suppose he always will. He forgot, perhaps, in his early enthusiasm that this reached further than the judges and affected the police and the firemen, the members of the Russell Fire Club of Boston, which I said before was the biggest and most powerful political organization outside of his own Hendricks Club in the city of Boston. [Laughter.]

Now, sir, let me give you something in contrast. Let us drop the gentleman from ward 5 (Mr. Lomasney) and Weeping Willie from Roxbury and politics, and let us turn to something serious. I hold in my hand an act passed by the 65th Congress. On page 8, article 3, it reads "Compensation for Death or Disability." Without going into the details, let me say, as probably all of you know, that those who enlist in the United States service for this great war for democracy are obliged to take out $10,000 worth of insurance. This applies to privates as well as to the officers, and is to be, as I understand it, in lieu of a pension. Ten thousand dollars, and out of their allowance of $30 a month they have to pay approximately $6.50, as a contributory part of that pension.

Now, sir, what does the United States say? That "death or disability resulting from personal injury suffered or disease contracted in the line of duty by any commissioned officer or enlisted man shall be compensated as hereinafter provided, but no compensation shall be paid if the injury or disease has been caused by his own wilful misconduct", something that we eliminated from our law when we passed the Workmen's Compensation Act. Now, these are the amounts. If a man is killed it provides that his widow shall have $25 a month, for a widow and one child $35, for a widow and two children $47.50, and $5 for each additional child. If there be no widow, for one child $20, for two children $30, and so it goes through the families of various sizes. It says in section 302 that, if disability results from the injury, while the disability is total the monthly compensation of the man injured shall be as follows: If he has neither wife nor child living, $30 a month, the same pay he got as private in the army; if he has a wife but no child, $45; if he has a wife and one child living, $55; if he has a wife and two children, $65, and if he has a wife and three or more children, $75 a month. Seventy-five dollars a month is the

maximum. And that man gave up a good job and went to work for the United States government for $30 a month and laid himself liable to death, to pay the last full measure of devotion to his country, and if he is disabled, comes back a care upon his family, he is going to get $75 a month.

Contrast that, if you will, with this proposition. I have been liberal. I have taken the United States Government as my guide, and have allowed $75 a month whether the man is an "old bach" or whether he has a wife and one child, two children, three children. It makes no difference, we put them all on the same basis, — $75 a month. The objection which some raise to that is that "Some time I may be a Lieutenant, I may be a Captain, yes, there is even a possibility that I may be Chief, and I may draw down from the city, — of Boston, or Lynn, or Somerville, — $2,000, $3,000, $4,000 or $5,000 a year, and in that possibility I want half my salary." In other words, he has been getting double what the private has been getting, sometimes treble, sometimes four and five times as much, and yet when he retires, because he has had that big salary, — I do not know any other reason, — he must have an equivalent, half his salary. The private who has not had a chance to save a dollar, because he has a wife and four or five or six children, can retire on $75 a month, according to my proposition, — he has been retired heretofore in many instances at less than $600 a year, — but the man who has received a big salary, who ought to have saved a lot out of his pay, is going to get $1,000, $2,000, $3,000 or $4,000 a year after being retired, and then, because he has held a high position in the department, and made a reputation, he is going to have a chance to go down to the Commonwealth, or the Exchange, or the Metropolitan, or the Old Colony Trust Company, and get a job for $600, $700, $800 or $1,500 a year, or he is going to establish a detective agency, or become chief of the Hudson fire department, or chief of the Fore River fire department, or chief of a police department, or leave the city of Somerville with his pension and get a job as the chief of the police department of the town of Wakefield. Is there any justice, is there any equity, is there any right, in so absolutely wrong, in so absolutely unfair a proposition as this?

I want every member of this Convention to bear in mind that when this matter was up before, the members who advocated some restriction, men who had served in the Legislature and had seen the evil, men who knew of many instances where men who had been pensioned were filling positions which should be filled by others who really need the money, — I want you to remember their words of that day, and their words are just as true to-day as they were when they spoke them. Every word they said was gospel true. And I want to ask you if you are so interested in whether they are elected to Congress, the Senate or whether they are returned to the House, whether you are going to help advance their political ambitions or whether you are going to stand for once with the "peepul". We have heard a lot of talk for the people. You are going to give them a chance to vote. Yes, they want that when they are hungry! When they are hungry or cold it is a great privilege to go and cast a ballot on some initiative and referendum proposition! Oh, it is grand! Are you going to give them a chance to put in an extra loaf of bread? Are you going to give them a chance to have pork chops once a week, or take the last dollar

they have to pay pensions? Because, gentlemen, this thing is becoming so serious, not only in Boston but in every large city and in the Commonwealth, that the poor people, the people for whom I have stood here day after day, and the people whom I have considered in every vote I have cast, the unorganized, those who do not belong to the Russell Club, those who have not the police association of the Commonwealth of Massachusetts back of them, those who have not the close coöperation and organization of the employees of the State, those people are paying the bills, they are paying them to-day out of pockets that do not jingle with the sound of money. They have to go down in what little reserve they have created in the past few years, and spend it for the high cost of living, and this is one of the most unnecessary additions to their burdens that can possibly be allowed to continue.

The gentleman from Boston (Mr. Lomasney) has an amendment. His amendment provides, as I understand it, that this shall not be retroactive, that those who to-day are enjoying pensions shall continue to enjoy them. I will not oppose that amendment. I may have personal objections to it, but what I want is to get a start. I have tried, and tried, and tried again in the Legislature, but I cannot get a start there, for the same reason that so many of you here to-day are going to change your votes because of personal friendship for some one affected. Not for my sake, not to help me, — because success will hurt me politically rather than help me, — but to help my people and to help your people, will you not come across, put this thing over now and stop this abuse right here?

Mr. William H. Sullivan of Boston: Before one o'clock we were promised by the gentleman from Somerville (Mr. Underhill) some sensational disclosures at 2 P.M.; yet it was long after that hour before the delegates reassembled. Then striding to his place like the gladiator that he confesses to be, and "about to die" he saluted us. The fact that he realized he was about to die and that his resolution was dead already, justified his ante mortem statement. I am curious to know what all his ranting was about, because he spoke not about the merits of the measure, he spoke not against free and unlimited pensions, he attacked the Russell Club, and every other organization which was powerless to harm him politically, — this brave, unterrified leader of the people. And then with a tearful voice he besought us not to sacrifice the poor working-man, whom the other day he branded as the greatest profiteer in the world. This consistent leader from the people! A few days ago he offered an amendment for a pension limit of $600, not being aware at that time that any of the firemen in his district received a larger pension than $600. But when one or two firemen, less fearful than the others, approached this superman, this self-confessed leader, this blatant representative of the people, this opponent of all pensions, and set forth their opposition, and that the reason therefor was that they received more than $600, this incorruptible representative of the plain, unorganized people compromised with his incorruptible conscience and raised his limit from $600 to $750, to include all his constituents and escape their wrath. He is very responsive to the wishes of his constituents, this man who would not compromise for a vote, this man who opposed the scrubwomen because they had no votes, this man who has seen fit not to oppose anyone

in his district but seeks a little political capital, a little notoriety in the Boston newspapers, by an attack upon the Russell Club.

I am not here to make political capital, I am not here to appear for newspaper notoriety, but I am here to serve Massachusetts, and, if possible, to save her from a horde of pensioners. Alone, practically, in the committee I conceived and fought for that measure, limiting the non-contributory pensions to $1,000. That resolution would help Massachusetts to the extent of $50,000 to $75,000. That resolution was not designed to reach merely the judges; it was designed to reach all men receiving a salary of more than $2,000. I should like to eliminate all pensions in Massachusetts except old age pensions, but the time has not yet come for such commendable legislation. So the measure which I favored, for which I fought with all the aggressiveness I possess, was a measure simply to admonish the Legislature that hereafter no non-contributory pensions should be given in excess of $1,000. That was not all I wished to do, but that was all I felt could be done, and it received a large majority of the votes in this Convention partly because the gentleman from Brookline (Mr. Walker) had said: "Let us pass this resolution to a second reading and the amendments can be considered at the next reading." Were it not for the fact that our self-appointed leader from Somerville has so many greater cares on his mind, has so many other great things to remember, he would realize that with greater unanimity the resolution was referred back to the committee, because the gentleman from Waltham (Mr. Luce) and the gentleman from Winchester (Mr. Dutch) wished to amend it. The resolution was recommitted and our committee now submits a unanimous report recommending its rejection. I feel that it is no breach of confidence to say that when the vote was first taken on that proposition mine was the only vote cast recommending that it be rejected, and why? You will know when you hear the amendments soon to be offered, amendments which breathe not of solicitude for Massachusetts but for her office holders. This fearless friend of the people from Somerville (Mr. Underhill) says he assents to and accepts the amendment. What of the amendment of the delegate from ward 5 (Mr. Lomasney), — that hereafter no pension legislation from the Legislature shall affect those holding office, appointive office, at the present time? Do you realize what that means? It postpones any relief to Massachusetts from pensions for twenty-five or thirty-five years. The friend of the people, the man who claims to have made so many glorious fights in the Legislature, assents to that amendment, an amendment which offers up Massachusetts as a sacrifice to her present office holders.

In this Convention there are friends of the judges, sincere friends, eloquent men, who will argue to you with great force that the judges accepted their positions under a contract with Massachusetts to receive a stated salary and a substantial pension. There may be addressed to you similar arguments in behalf of the firemen and policemen. As the member in charge of this measure I sought to learn why we should favor the firemen and policemen, and I found by investigation that the average life of a fireman after he receives his pension is about six years and of a policeman about seven years. Many firemen are sent to the psychopathic hospital because of the strain on their nervous systems. Getting out of bed at all hours of the night and

exposed suddenly to all kinds of weather makes them susceptible to such influences as would disturb a man's mental poise and physical vigor.

Mr. UNDERHILL: I ask the gentleman how, if the average life of a fireman or policeman after his retirement is seven years, he reconciles that with the statement that if we accept the amendment of the gentleman from Boston (Mr. Lomasney) Massachusetts will not receive any relief from the pension graft for over twenty-five years.

Mr. SULLIVAN of Boston: The men at present appointed to office receive pensions at the end of fifteen or twenty years' service. There will be no relief from the men in office for fifteen to twenty-five, thirty years, as they retire one by one to receive their pensions. That is my answer. When we stop to think of the wages now paid for unskilled labor, we must concede that the firemen and policemen are inadequately paid, and as one eloquent delegate has said the pension is a sort of a deferred payment for services rendered. Moreover they are picked men. Before being appointed they have to pass a severe mental and a physical test. And if any pensions are to be given, I believe they should be given to firemen and policemen. I represent a district in which many firemen and policemen live. Now, it may be criminal for a man who represents or tries to represent his people to get in touch with them and find out how they feel about the different resolutions. I have been criticized by the gentleman from Somerville because I have conferred with my constituents and find that they are opposed to this resolution. Did I possess the rare intellect, the superhuman astuteness and the sustaining nerve of the gentleman from Somerville (Mr. Underhill) I never would talk with the plain people, and thereby I would escape his denunciation.

If it were possible to pass a resolution here providing that in the future no pensions should be granted, why, notwithstanding that it meant my political death, I would favor it. It would save Massachusetts from the $2,000,000 that she is paying at the present time and the $5,000,000 which she must pay in the very near future.

I am opposed to any action by this Convention, because any amendment submitted by this Convention will be friendly to the men drawing the largest salaries, will be an amendment which will perpetuate pensions for those in power.

Various resolutions were submitted to our committee. What was my duty? I favored a resolution like the one submitted by the gentleman from Somerville (Mr. Underhill), with the limit of $1,000, but that resolution, after favorable action by the Convention, was recommitted to our committee, which had become hostile to it. It was my duty to do the best I could in committee, and if not able to obtain the report of a helpful resolution, to at least kill all hostile recommendations, and so my actions, my arguments and my votes in the committee were inspired by the hope and determination for a unanimous report by our committee that all resolutions be rejected. Such a report was made and there was no dissenter. It is most unfair to the committee and to the member in charge of the committee's report if any member of that committee offers a resolution here to-day which is against the report of that committee, because only the gentleman from Newton (Mr. Anderson) reserved his right in that committee to dissent. Personally I am opposed to all pensions; instead of a pension

at the end of many years' service, I would favor a letter of congratulation to the person who had been fortunate enough to have obtained a good position early in life and to have held it so many years. I compromised with my committee because I felt that our report would bring no harm if it could bring no great good to the people in Massachusetts, and that committee has reported unanimously in favor of a recommendation that no pension measures be submitted.

If the resolution suggested by the gentleman from Somerville (Mr. Underhill) passes unadorned, it is simply a limitation of the power of the Legislature, and it says that hereafter, Mr. Legislator, no money shall be given away in pensions exceeding $800 unless it is a contributory pension; that resolution would help Massachusetts but it is to be qualified by the amendment which soon is to be suggested and was submitted to our committee by various leaders in this Convention, to wit: That the amendment shall not apply to present office holders. So qualified, it takes away from the Legislature the power to limit the pensions. It is inevitable that some day the judges will receive larger salaries, and incidentally larger pensions, it is inevitable that some day the firemen and policemen will get substantial increases in pay, and under the Constitution as at present written the Legislature then can say to the judges, policemen and firemen: "We have entered into a contract with you to serve for a stated salary and a substantial pension. Your salary is about to be raised, and we now make a new contract with you. From this increase in salary you shall contribute to your pension." Then there will be engendered a system of contributory pensions. To those who argue in behalf of the judges, who say protect the judges, I say that all the judges of the municipal court of Boston took their position for $4,500 a year, or $5,000 a year, not more than $5,000, and last year their salaries were raised to $6,000. Was there any outcry then about a contract between Massachusetts and the judges? If no amendment is submitted by this Convention, some day, — some day, — we may get a fearless and an honest and efficient Legislature, which will say to these judges, to the firemen and policemen, to all these pensioners: "You are about to get an increase in your salary. Now is the time to start a contributory pension system, which shall apply to you and all who come after you." I entreat you, for the sake of Massachusetts, to rescue her from the horde of pensioners who are infesting her and will infest her in greater numbers, to pass no resolution here which will affect the power of the Legislature to some day stifle this pension evil.

Mr. Morton of Fall River: I suppose, so far at least as I know, I am the only member of this Convention who at present is in receipt of what would be called, I suppose, by most members of the Convention, a pension from the Commonwealth of Massachusetts, but which the statute under which I receive it describes as a salary. Therefore, I think I may conclude from that statement, I am very specially interested in the resolution which is now before the Convention, and because I am specially and privately interested in it, in the manner in which I have described, I respectfully ask that I may be excused from voting on the resolution or taking any part in its consideration.

Mr. Morton was excused from voting.

Mr. Lomasney of Boston: I am in the same position on the pension question to-day that I was the first day when it arose here, and I

voted in the committee, although I myself do not like to talk about it, in favor of the original amendment. I was the only man in the committee who voted against this report in its present form. I do not need to say to a committee that I reserve my rights. A man never gives up his rights until he votes for or consents to a report. But that was my position in the committee on this question. There was a great difference of opinion there. At times we were evenly divided. There were several different amendments proposed, but alone I voted against referring this matter to the Convention in its present shape.

On July 24 I offered this amendment: "I move to insert after the word 'person', in line 10, the following: 'who shall hereafter be elected or appointed to public office, position or employment.'" I offered that amendment not after talking with any policeman or fireman, but after talking with members of this Convention who convinced me that there were a great many men in the State who had taken their positions while the pension system was considered a part of the salary that went with the office. I felt that, although there was really no written contract with these men, there was a certain moral obligation resting upon the State in this matter, and further, I felt that the adoption of my amendment was the best way to meet the situation which would start the reform and which would affect the next generation in decreasing the amount paid out just as it would affect the present generation in paying out of the treasury what it now does. That was the reason I offered my amendment, and you will find it in the calendar of July 24th.

Coming to this question, I do not believe it is fair to attack the policemen and the firemen of the city of Boston by reading aloud their names. There are many others receiving pensions besides firemen and police officers in Boston. I could call the names of pensioners in Somerville if I wanted to be so unfair, but I do not believe in mentioning men's names in that manner, and particularly the names of men like policemen and firemen who of all those receiving pensions I believe are entitled to them because of what they do. The policemen and the firemen are on duty all the time to protect your life and your property, and they always are ready to die, if necessary, in the discharge of their duty. Now they are singled out and their names mentioned here, I do not know why. If I were not more charitable than those who resort to such tactics I could allude to Somerville and say: "You have police officers in Somerville who were so poorly paid that they were arrested for breaking and entering." I could say further that in Somerville you had a man running for mayor who objected to retiring and taking his pension. But that is not the question here. The question is: Can we do something to benefit Massachusetts? That is the proposition. I believe in the original measure.

I offered my amendment in good faith. No fireman ever spoke to me, no police officer ever spoke to me, or requested me to offer this amendment. A man asked me: "Do you believe that when men have come into the service of the State with the pension law on the books as it is now, they should have the pension taken away from them in this way?" And when you consider it, it is a fair question. It is a debatable question and I have decided that it would not be fair to do so and I desire now to exempt the men who took their positions under those conditions.

If we adopt this amendment, what do we do? We relieve from opposition to this proposition all that large class of people throughout the Commonwealth who will say: "Now, we know just where we are". And then I believe if we do that we will encourage employees throughout the State to get together and join in a contributory pension system. There is not any intention on my part to strike at any special class of pensioners under the Constitution. Judges are just as much entitled to their pensions as anyone else when the pension is provided for them by law, because when the Legislature passes it and they take their positions with that provision in our laws and with that understanding, why should they be excluded any more than any other class in the community? I do not propose to reveal committee secrets. There were a great many different views expressed there. But on the main question in the committee as to the form in which this matter should be referred back to the Convention, my position was just the same, with this exception, — that I was willing to raise the $1,000 to $1,500 in order to get a unanimous report, upon the theory that if there was one decent, deserving old couple in this Commonwealth who had lived, worked hard, and found themselves in the latter days of their life on the verge of suffering because of sickness, if the extra $500 would keep that old couple in happiness I was not going to say that the pension under these circumstances should not be raised from $1,000 to $1,500. With that exception, my position coming out of the committee was the same as it was going in. I think the Convention can make no mistake if they submit such an amendment as this before the people, because there is no doubt that there is a tendency to take the government of this old State of ours away from the people. I mean that certain elements in the community are in favor of creating classes among the people. However, the pension class is one that we never should have in a free country. You will find certain men talking for a pension class, others for an educated class, and if you start any class legislation where are we going to stop?

I hope that my amendment which is in the hands of the Clerk will be adopted by the Convention.

Mr. Lomasney moved to amend the resolution (No. 392) by striking out, in lines 10 and 11, the words "upon his retirement from public office, position or employment", and inserting in place thereof the words "who shall hereafter be elected or appointed to public office, position or employment, upon his retirement therefrom".

Mr. Edwin U. Curtis of Boston: This is an extremely hot day, and the gentlemen who have spoken on this resolution have displayed the fact that they feel it. Now, I am probably as uncomfortable as they, but I do not think there is any necessity of injecting heat into this debate.

When this resolution was reported to the Convention there were six dissenters, and I was one of them. After the resolution had been on the calendar for several days it appeared that there were at that time some three or three and one-half pages of amendments, and the Convention saw fit to refer the matter back to our committee. I can assure every gentleman in this Convention that not one member of that committee wanted the job thrust upon him, and I least of all; but the Convention sent it back to us in the midst of the greatest heat, except this, that we have had this year.

Now, they talk of influence. After it was referred to our committee, a committee of firemen asked to meet me, and I met them, and was glad to do so. I deemed it my duty to meet them or anyone else interested in any matter before a committee of this Convention. I took them into the room of the committee on Rules, and they gave me the reasons why they thought the resolution was not fair to them. One of the reasons was that they considered there was a moral obligation on the part of the Commonwealth to carry out the understanding that they entered into when they took their positions, namely, that if they were injured or disabled in the performance of their duty or reached the retirement age they should receive a pension.

They used no improper methods with me. They stated plainly and frankly what their reasons were, and went away. I then talked with policemen whom I saw in the same room, openly and publicly, and listened to their story, and think they had a right to express their views, and I am glad I heard them, as by so doing I saved the committee the trouble of giving a hearing when we met as a whole. The judges did not appear before us, and I am sorry they did not; because I do not believe that because a man is a judge in this Commonwealth he gives up all his rights, as a great many people seem to think he should. As the judges did not appear before me, or before the committee, I considered it my duty to do as well by them (although they had only three or four hundred votes in this Commonwealth) as I would do for the firemen or policemen, who have thousands of votes, and I think, gentlemen, it is your duty here to give the judges as fair a treatment as anybody else, notwithstanding the fact that they have not the voting power.

We held a meeting of the committee. It was a hot day. I said: "Gentlemen, this Convention wants you to agree on something." We talked the matter over and adjourned for a week. During that week several very good lawyers in the Convention undertook to draft a measure which they thought might meet the approval of the committee. Several members of the committee drew resolutions. I attempted one myself. When the committee met we talked over all those different forms.

The pension business, gentlemen, is a large subject. It is no subject to consider in a few minutes, or in a few hours, or in the time allotted to this committee in the middle of a heated period. There are conflicting laws. The gentleman who drew the original resolution (Mr. Sullivan), and the gentleman from Somerville (Mr. Underhill), who now offers a resolution himself along the same lines see no loopholes in them, but I will point one out to you. "This amendment shall not apply", etc., "to soldiers and sailors, nor to pensions or retirement allowances for which applicants have contributed according to law."

Now, gentlemen, I do not know what it means by "retirement allowances." There is a retirement board, and the statute says that the payments derived from money contributed by the employee is an annuity. I presume therefore by the words "retirement allowance" he means an annuity. The statute further says that the part contributed by the Commonwealth shall be called a pension. Under the provisions of this resolution, if a man contributes a reasonable amount, we will say $50 or $500, there is nothing to prevent the Legislature

from giving him $10,000 as a pension on the part of the Commonwealth, and that is one of the defects in that resolution.

There was some defect in almost every resolution that was put before us.

Let us go back to the pension business as it was first understood. I presume that originally a pension was granted to a policeman or a fireman because of the danger, or supposed danger, of his employment. There is no doubt that there have been abuses, but do you say that a soldier who returns from the war because he gets a pension from the country shall not try to do anything else? I do not doubt that some of those men mentioned may have been retired wrongly. That is the business of the man who was at the head of the department, who allowed a doctor's certificate to pass when he should not have done it, but do you want those retired firemen or policemen who draw $600 or $800 and possibly have large families to support, to do nothing? Some have gone ahead and secured other jobs. I do not think they should have them in the public service, but the civil service laws do not prevent it. When I was connected with the Port of Boston, a retired fireman came before me, and under the civil service laws I was obliged to appoint him to a position against my wishes. When the committee met the last time and discussed all these resolutions after sitting in the heat and having vote after vote on different propositions, it was said by one that if we put in the amendment offered by the gentleman in the third division (Mr. Lomasney) no saving would be made. Another said: "We do not want contributory pensions." Another said: "We want all pensions contributory." Now, before you hurry too much stop to think of the condition the police department would be in to-day in this great city of Boston, if we did not have any pension law at all. In a few years men would arrive at the age of 62, 63 or 64. They would be decrepit. They would not be able to do a day's work. Yet not a man who has been in the police commissioner's place, or who has been mayor of Boston, and I include my friend here (Mr. Quincy) and myself, would put those men out on the street without any pay. The result to the police force would be that it would consist of a body of old men incapable of performing the work required. The same way with the firemen; they should have a pension, and they should have one that is reasonable and proper. If they do not, the fire department in a few years will be made up of old men, who could not climb a ladder or who could not slide down a rope. You want to think of those things.

I have not time here to bring attention to every little detail. There were a great many resolutions before the committee on which it voted time and time again. I will not discuss who voted this way or that way, because I do not think those matters are proper to bring before the Convention, but the committee disagreed. I could have broken the tie, and I would not break it. Why? Because this Convention said we were to bring back something, just as we did on the anti-aid amendment. We stayed there, and we perspired, and we thought, and finally we agreed to the best thing. We asked you to reject the whole subject and let the Legislature take it up in its own time. Of course, there are abuses, but before you write a legislative act into the Constitution that will be as long as the one in my hand which

we do not want and which we do not think is right, before you write that into the Constitution I advise you to reject the resolution and all substitutes and just put this whole subject aside or else you will be here three or four more days discussing this proposition and end up with a poorly drawn bad piece of legislation.

Mr. CREAMER of Lynn: It is not my purpose to debate this question. It seems to me that it has been debated enough. I do not believe the mind of a single delegate now here can be changed by anything more that may be said upon the subject. I do not rise, therefore, because I want to debate the question, but because I understand that during my absence in the early part of the Convention I was highly honored by my absence being noticed by the delegate from Somerville (Mr. Underhill).

Mr. UNDERHILL: Following parliamentary custom I did not name anyone in my remarks. I referred to the gentleman from Lynn "who had so *frequently attacked* the Legislature of Massachusetts." Had I been referring to the gentleman who comes from Lynn, who now is upon his feet, I should have said the gentleman from Lynn who *sometimes criticizes* the Legislature. [Laughter.]

Mr. CREAMER: Apparently there is nothing for me to do except to accept the very humble apology of the delegate from Somerville (Mr. Underhill).

Mr. PILLSBURY of Wellesley: I offer an amendment which I send to the desk, and after the reading of it I desire to make some comments upon the resolution.

Mr. Pillsbury moved to amend the resolution (No. 392) by striking out, in lines 13 and 14, the words "in amount exceeding the rate of one thousand dollars per annum."

Mr. PILLSBURY: I have felt constrained to offer this amendment, as I cannot vote for the resolution, even as otherwise proposed to be amended, because it puts into the Constitution a civil pension system, which I do not think should be done, nor can I with any satisfaction vote to reject it, because I think if properly amended it affords the Convention an opportunity to do what ought to be done upon this subject. In general I regard any system of civil pensions, payable out of public moneys raised by taxation, as vicious and mischievous, for various reasons some of which lie deeper than any money reason. I do not think the system ought to be extended, and I think it ought now to be put an end to except so far as the Commonwealth is already committed to it.

In my view of the matter, the only public pension which rests on justifiable grounds is the military pension, the grounds of which are, first, that the service is in the highest degree hazardous and liable, if not likely, to be disabling; second, that the soldier's pay is hardly more than nominal, never having any necessary relation to his earning power, and third, the only ground, in my opinion, upon which any public pension can justifiably stand, that the service is *compulsory*, or at least is rendered under a power of compulsion, and of course you cannot confine the military pension to the actually conscripted man, since every volunteer, to say nothing of his merit, fills a place which might otherwise have to be filled by compulsion. For these reasons the soldier has a claim to be pensioned which no other man

or citizen can ever maintain, at least unless and until other governmental service is made compulsory. No man in this country is compelled to hold office, even as a policeman or fireman.

But we are confronted here with a practical difficulty, which must be met and which, if I understand the amendment offered by my friend in the third division (Mr. Lomasney), is taken care of by it. There is now a substantial number of men, — I have in mind more particularly the judges but it is not confined to them, — who are already in the receipt of pensions promised them by laws in force at the time of their appointment. If I may say a word about the judicial pension, it rests, I suppose, upon the theory that judicial experience is so increasingly valuable that a man who goes upon the bench ought to stay there so long as he is fit to serve, and that a man fit for the judicial duty cannot be expected to turn his back upon all prospect of private gain and devote himself to that service for life without some reasonable provision for disability or old age in addition to the salary.

I have always doubted the soundness of that theory, and to my mind it goes pretty far toward proving its unsoundness that neither Massachusetts nor any other State, so far as I know, has ever had better judges than those who took office without the inducement of any pension or retiring allowance. The best judges go upon the bench from a sense of public duty and in view of the permanence and distinction of judicial position.

Mr. W. H. Sullivan of Boston: I should like to ask the gentleman a question. If I understand his amendment, it says that hereafter no pensions shall be given to anybody upon retirement from public life. Now I should like to ask the gentleman this question: If his amendment does not prevail, would he then be in favor of recommending no legislation upon the pension question?

Mr. Pillsbury: What action I shall hereafter be in favor of I am at this moment unable to say, but we must keep our promises already made, even if made unwisely. To finish what I was about to say, — judges have gone upon the bench, and other men may have entered public employment, with the States' promise of provision for disability or old age. And to cut off or greatly cut down these pensions already established and existing would be a breach of the pledged faith of the Commonwealth that is not to be thought of for a moment.

Now let me answer, so far as I can, the question of my friend in the fourth division (Mr. Sullivan) by saying that I do not think the principle that the people may be taxed without limit to pay civil service pensions or disability or old age pensions ought to find a place in our Constitution. The effect of my amendment in connection with the amendment of the gentleman in the third division (Mr. Lomasney) as I understand it, would be this: It leaves the existing civil pensions as they now are but puts an end to other civil pensions hereafter, and it leaves the military pension where it finds it; in other words, it does not operate at all upon any person actively serving in, and honorably discharged from, the army or navy of the United States in time of war. Perhaps the door might properly be left open for some cases of emergency or disaster, but if we make public pensions at the public expense an established feature of our governmental or social system, we have gone far toward making our Constitution a socialistic Constitution and Massachusetts a socialistic State.

I think the occasion calls for something more to be said here. If civil pensions in any form get into the Constitution they will be made the entering wedge for a general system of disability or old age pensions, social insurance, or what not, the floodgates of State socialism will be opened, and we shall have to meet, in one form or another, the whole brood of socialistic schemes hatched out of the vicious principles that those who take care of themselves shall be made to take care of everybody else. We all agree that charity is a virtue, but charity does not put her hand in her neighbor's pocket. There is no such thing as compulsory charity. It is no virtue for one man to give away another man's money, or for a majority at the polls to indulge their benevolent impulses at the expense of the minority. Professor Sumner once observed that organized philanthropy usually consists in A, B and C getting together to decide what D shall do for E. There is no element of charity or benevolence in this process. It is spoliation, pure and simple, in which good impulses are perverted to an end that is economically unsound and morally wrong. There is so much confusion of thought and feelings and motives on this subject, so much socialistic sentiment masquerading as philanthropy abroad in Massachusetts, and so many socialistic schemes now taking shape here, that it is time to interpose against them a few unpleasant but inexorable facts.

In the common struggle for existence every man has a natural right to employ his own faculties for his own benefit and enjoy the fruits of his labor, subject only to such laws as the State has to impose for its own security. So long as one man is wiser, stronger, more prudent, or more industrious than another, men can never be made equal in condition by law, or if made equal they could not be kept so for a day. Every man must stand upon his own feet and take the consequences of his own conduct. The only aid the State can afford him is to help him to help himself by seeing that he has a fair chance in the race; in other words, to provide just and equal laws under which he may work out his own welfare in his own way, without unjust interference by any other man or men and enjoy the proceeds undespoiled by any other man or men. The moment a free government attempts to go beyond this, and to favor one man or class of men at the expense of another, it is sowing the seeds of its own destruction, for no government can permanently stand, except by despotic force, on any other ground than every man's freedom to work and security in the product, and this excludes the idea that the product can be taken from him and given to another.

The fatal flaw in all the socialistic schemes is that they ignore the distinction between the natural ills which are inseparable from the natural inequality of men, and the artificial ills which are due to the imperfection of the laws or the government, in short, of human institutions. These can be regulated and corrected by law, and of course they ought to be, from time to time, so far as they can be. The natural inequalities among men cannot be, and the attempt to correct them will destroy any government which undertakes it, for the reason, if no other, that society cannot exist upon any basis that involves the general and permanent suspension or reversal of natural laws. The general law of nature that every man shall take care of himself can no more be permanently interfered with by Constitutions

or statutes than the law of gravitation. The people must be made to understand this, and to accept the fundamental fact that government cannot be maintained on the principle that some men or classes shall be compelled to take care of other men or classes. This would make government a mere device for robbing one man to give to another, and no such government can stand unless the favored class is powerful enough to maintain it by force. The victims of such a system would flee the robber State as they would flee any other robber.

More vicious and destructive even than the legal spoliation of one man to provide for another is the tendency of every pension system to pauperize the pensioner. It saps the fundamental virtue of self-reliance, which lies at the center of character. Free institutions can stand upon nothing but the character and independence of the individual citizen and the constant effort of every man to improve his own condition. They must be shaped so as to stimulate this effort, not to suppress it. Let the average man understand that he is bound to be taken care of and he will no longer take care of himself. He will cease to be a contributing member of the community and become a burden upon it, a mere drone in the hive. This is not the stuff of which democracy is made. The whole socialistic philosophy has been summed up, by the clearest thinker on these subjects ever produced in this country or perhaps in any country, in the new maxim that "poverty is the best policy", since if you get anything you will be made to take care of somebody else, while if you get nothing somebody will be made to take care of you.

It is fashionable and popular to denounce the rich, and appeal to sympathy with the poor. There are no classes in this Commonwealth of ours between which such a line can be drawn. Barring a few plutocrats at one end of the scale and a few paupers at the other, the people of Massachusetts are neither rich nor poor. The vast majority of them are indeed capitalists, for they have some property, even if but little, and all property is capital. The socialistic schemes cannot be executed at the expense of the rich. They can be executed only at the expense of all who have anything which the hand of the tax-gatherer can reach, that is to say, at the expense of all the contributing members of the State. This is not merely a penalty imposed upon industry and prudence; it is a bounty directly offered to sloth and improvidence, upsetting and reversing all the elemental precepts for the conduct of life that every child is taught from infancy.

We hear much in these times about making the world safe for democracy, but not so much about making democracy safe for itself. We have heard a good deal in this Convention about social unrest, which is said to threaten democracy. The danger to democracy is popular ignorance, under the arts of the demagogue who plays upon it for his own purposes. Among all demagogues the most mischievous is the one who deceives the people by false theories of their condition and false promises of relief, impossible of fulfillment. The people are told and made to believe that if they are not so well off as some of their neighbors it is the fault of the government and the laws, which need only to be changed. The demagogue has undermined and destroyed every democracy in the past history of the world. He is always at work undermining our own, and it will never be secure until the people realize that they must depend upon themselves, and not

upon the State, for the welfare and happiness which come to every man in proportion to his own efforts, to which the State can contribute nothing but the equal opportunity and equal protection which it must extend alike to all.

Mr. Clark of Brockton: I desire to ask your indulgence just for a few minutes, for the reason that I feel very strongly on this matter, and I believe that in these closing days of our work, after sitting here more than a year, the test is presented in this resolution of our ability for constructive work in the line of Constitution making. I believe, gentlemen, that the manner in which we handle this proposition and the condition in which we leave it when we have taken our final vote upon it, will be in a measure the acid test of the ability of this Convention to grapple with great and troublesome questions.

What do I believe in in regard to pensions? The evils of our multiform systems, with their multiplicity of pensions, have been pointed out, and the graft that has been engrafted upon some of them has been noted. I am not going to regale you with any oratory along those lines. But I wish to say, I believe we should do something, — I believe we *must* do something, — if it takes another 24 hours beyond what we anticipated.

What do I believe in regard to pensions? I would have a policy established and incorporated into the organic and fundamental law of this Commonwealth, on which any and all pension systems hereafter shall be based and to which they shall be made to conform.

Now there should not be, in my judgment, more than two systems of pensions, — civil pensions, I refer to. I would not object to a pension system for persons injured while engaged in specially hazardous work for the Commonwealth or any of its subdivisions; for instance, firemen and policemen. That would be one pension system.

Another pension system, if we are to have it, would be a retirement system, and I would make that dependent upon a contribution by every beneficiary. What does the Commonwealth do in regard to the teachers, a large number of whom are receiving salaries hardly commensurable with the demands upon them to-day, who are hardly able to feed and dress themselves, and many of them have dependents, — aged mothers; some of them children, — and we compel them to contribute to a pension fund. For long years every teacher who enters our schools now must contribute each year to a pension fund. If this Convention is to work out anything in this direction in which it may take pride hereafter, it must mobilize thought, it must concentrate constructive action, and do it rapidly. We have only a few hours in which to do it. I am most heartily in favor of the amendment of the gentleman who used to be known as the gentleman from ward 8, — I think he has come down to ward 5 now (Mr. Lomasney). I believe the Commonwealth should keep faith with its public servants. It has an implied contract to pay a certain pension to every man in its service at the present time who retires from an office to which there is attached a pension. We should keep faith with those men. But beginning with 1918, or on the first of January, perchance, of 1919, we should begin a new system based on an established policy, established and engrafted upon the Constitution by this assembly, and we shall have something to our dying days that we

shall be proud of, something that our children and our childrens' children will honor us for, I believe.

Now, gentlemen, I want you to remember, — pardon me if I call him by name, — I want you to remember Mr. Lomasney's amendment. I hope you will adopt it, because I believe it is the right thing. It enables the Commonwealth to keep faith with its employees. Then I hope that you will fix up the remainder of the resolution so that we will at least cut down the amount of the annual pension bill. I would wipe it out entirely except by contribution. There should be a contributory element in every one.

Mr. Walcott of Cambridge moved to amend the resolution by striking out the article of amendment and inserting in place thereof the following:

Except to soldiers and sailors honorably discharged from active service in the army and navy in time of war, and to their dependents, to those persons now in receipt of pensions and those persons holding offices for which pensions are provided, no pension or gratuity shall be granted to any employee or official of the Commonwealth or any political division thereof except by general law upon a contributory basis.

Mr. Walcott: I feel strongly in sympathy with the remarks of the last speaker (Mr. Clark of Brockton), that the Convention expected the committee to report some action that the Convention could agree upon, limiting the pension scandal; for it seems to me that we are almost all agreed here that at present it has become a scandal in the Commonwealth. The purpose of this amendment which I have asked to substitute is to stop that. If adopted it does not stop it immediately, and the objection taken to it by the gentleman in the fourth division (Mr. Underhill), as I understand, on that ground, is fully justified. But, gentlemen, it is almost impossible to cut off long-standing abuses in a minute or a day or a year, or sometimes even in a few years, without doing more damage to the unfortunate people who immediately will be hurt than the good which eventually will result. At least, that is my personal opinion, and I believe the opinion of all members of the committee to whom this matter was referred.

Now those having actual rights, in receipt of a pension, and those having moral rights, as you might say, by the expectations which were aroused by the pending laws when they took office, are protected in this proposed substitute amendment, but it is not intended in this substitute amendment to make any money limitation. I think nearly all the members of our committee are opposed to a money limitation. One member said at our last meeting that he would be opposed to any amendment which carried a money limitation. There is no money limitation in the Constitution, either as drawn or as at present amended. It would be a silly thing at this stage to put a money limitation into our Constitution. A dollar now may mean twenty cents in two years or it may mean twenty dollars. It depends entirely on developments which we have no means of judging at the present time. It is a trivial, transient, passing matter, which has no business in a State Constitution anywhere in any of the United States. Furthermore, the amendment I propose is a step in what I believe to be the right direction: It puts pensions on a contributory basis. That is what the commission appointed by the Governor in 1914 recommended as a means of doing away with the system which has received such harsh and, in my opinion, entirely justifiable criticism in this

Convention. It was a commission of experts, men who gave their time to it and had a competent secretary to help them. Mr. Henry S. Dennison was the chairman of the commission. They tabulated all the pension laws of other States and the names of all persons receiving pensions in this State, and their report of 1914 is the charter of information on this subject in this Commonwealth.

This amendment would allow the passage of a bill which that commission strongly recommended and which I believe should have been adopted. From their bill judges were exempted. The judges of the Supreme Judicial Court were not to be put upon a contributory basis. That was because their tenure was established by the Constitution. No need of that exception, however, exists under this proposal, which is a constitutional amendment that would override the present provision in regard to the judges of the Supreme Judicial Court. Accordingly a simpler bill could be drawn now under this amendment than the one proposed by the commission of 1914.

I sincerely hope that instead of trying to patch this leaky, mouldy, worn out hulk of an amendment [that introduced by William H. Sullivan and referred to the committee on the Bill of Rights] which never was well drawn in the beginning, we can take something new and short which is more suitable for a constitutional amendment and not all plugged up with amendments which cannot possibly make a good amendment.

Mr. Curtis of Revere: I have no desire in what I have to say to cut off the rights of any gentleman to offer an amendment, but I do not know as there are any more to be offered. And, as it is a very warm day, the temperature has been rising gradually, we have had a great influx of "hot air" and we are all anxious to finish up next week, and I believe it is possible to do it, I move the previous question.

Mr. Anderson of Newton: When this matter was first reported to the Convention I with some others was a dissenter, because I did not believe in putting a specific amount in the Constitution, and I hold to that at the present time.

When the resolution and its proposed amendments were recommitted to the committee on Bill of Rights we faithfully attempted to agree on some proposition to report to the Convention, and many of us were very sorry that we were unable to agree or to get a majority for any one of the very numerous amendments which were put to vote in the committee. In the end we despaired of doing anything in the committee and consequently made the report which is before the Convention. The only member who voted against it was the gentleman in this division from Boston (Mr. Lomasney). I felt a great deal as he did, that something ought to be done, and consequently I reserved my rights to dissent from this report. I do feel that something ought to be done if the Convention can possibly do it.

Since the time that the report was made the gentleman from Cambridge (Mr. Walcott) has drawn this amendment, which is brief, which makes the exception of all those who are now drawing pensions, which makes the exception of all those who have served actively in the army or navy of the United States, and which demands merely a general law and a contributory pension. Now if we are not willing to go as far as the gentleman from Wellesley, abolishing all pensions, I think

that this amendment of the gentleman from Cambridge is a very reasonable proposition.

Mr. Boucher of New Bedford: I am sorry the gentleman in the fourth division (Mr. Curtis of Revere) has moved the previous question in this Convention, for the simple reason that I have an amendment in the hands of the Secretary which I should like to have the Convention act upon. I rose several times, but was not recognized, and I ask the gentleman from Revere if he will withdraw his motion. I ask unanimous consent to move my amendment.

Mr. Boucher moved to amend the resolution by striking out the words "one thousand dollars", and inserting in place thereof the words "fifteen hundred dollars".

Mr. Harriman of New Bedford: Until the Commonwealth of Massachusetts is willing to adopt some scientific plan for pensions, I am opposed to any action. I realize there have been abuses; I realize there are abuses. I realize that where one man can get $7,500 a year pension from the Commonwealth when right beside him may live a man and his wife who have brought up a family and through misfortune those two people must go to the poorhouse, there is injustice, and there will continue to be injustice until some equitable system of pensions comes in vogue. But I do not feel that any measure offered before this Convention in this debate meets those conditions. Something ought to be done, but I believe the wiser way is to vote the whole business out and leave it until some scientific method can be arranged so that the pensions can be upon an equitable basis and follow somewhat the scheme that has been adopted in England, Australia and New Zealand, working far better than anything that we have proposed will work in Massachusetts and until this or some future Convention is willing to consider and adopt a universal non-contributing pension system it is much better left as it stands to-day.

Mr. Benton of Belmont: The previous question has been moved; I will take only a few moments of your time. But this is one subject with which in some ways I have been familiar, because my life work has been thrown in connection with the firemen and the police. I can say I am associated with one of the largest insurance concerns in America and am familiar with the fire department of Boston and with the fire departments of all of our suburban towns and cities and with those throughout the Commonwealth. The judges always can be defended, and properly so, by distinguished representatives. Some of them are the most able and eminent men who have served in any capacity in the Commonwealth. I would not wish to say one thing against the pensions that go to our judges. But mind you, they can adjourn their courts at four o'clock and go to their hammock or their shady nook if they wish. But the firemen and the policemen cannot do that. When there is a strike or a fire they must be ready. When there is a strike in Lawrence or Westfield you send out the metropolitan park policemen to aid in protecting the community and sharing in the dangers with the local policemen; and will you say that those men should not be pensioned?

Now you who are familiar with the subject, vote on it; you who are not familiar with it, do not vote at all. You had better reject all these amendments and go with the committee. [Applause.]

The main question was ordered.

Mr. Underhill of Somerville: We have heard the siren song this afternoon:

> Some day! Some day I shall meet you,
> Love, I know not when or how.

That is the way with this pension proposition. Unless we act upon it now it still will be "Some day," — some day 25 years from now. If 15 years ago some action had been taken it would not take 25 years to eradicate the pension evil. Regarding the amendment to raise the limit to $1,500, if you adopt that every man who retires, instead of retiring on half pay, if his salary is over $1,500, will have a pension of $1,500.

Regarding the amendment of the gentleman from Cambridge, it is better than nothing; but, sir, the amendment I offered does away with practically every objection raised here this afternoon, for it gives, — mind this, — it gives $75 a month at least to those who are getting over $1,500 a year. It gives to others half the salary they are getting below that figure, and $75 a month is the amount which has been placed by the United States government as adequate pay or pension for a man who, in the performance of his duty, his patriotic duty, a duty which he is obliged to perform because he has been drafted, has lost a leg, both arms or is totally blind, helpless, a man who, to a certain extent, outside of the love the people bear him, would be a burden to his people financially. It gives him $75 a month for the maintenance of himself and family.

Now, sir, perhaps that is not adequate, but we will make a start. We are not singing the old song "Some Day," but we are acting, trying to do something which will relieve us eventually from the evil which threatens to overwhelm us unless something is done right soon.

Mr. Walker of Brookline: I will say just one word. I have been asked my opinion in regard to the proposition that has been offered by the gentleman from Cambridge (Mr. Walcott). I simply wish to express my opinion that that is the proper solution of this question and I trust that it will be adopted, for it provides especially that pensions can be granted only by general law, which in itself is a good thing, and then only on a contributory basis, which is the sound way to do it.

Mr. Edwin U. Curtis of Boston: I should like to call attention to what I said before. All these amendments have been offered, and some of them by members of the committee. I myself drew a resolution that I thought might pass, — a long legislative act. I did not deem it fair to the committee, having agreed unanimously to recommend rejection, to offer anything afterwards, and I do not think it is right for other members of the committee to do so.

I want to call attention to the amendment offered by the gentleman from Cambridge. He says this provision shall not affect any pensions now in existence. It shows right off an error. He should have said: "in existence or payable at the time of the acceptance of this amendment by the people." Are you going to stop the people from receiving pensions who are appointed to office between the day of the passage of the amendment by the Convention and the day of its acceptance by the people? This is an example of the careless way of drawing these amendments. Gentlemen have offered amendments that will have to be corrected hereafter. I should like to ask you what you

think of the condition of affairs under this amendment. You are living in a house. A burglar enters it. This amendment does not make any allowance to the family of a policeman who is killed in the performance of his duty. The burglar is in your house with a gun and the policeman (with a wife and eight or ten children) is called to arrest him. Is he going to take the same chances with his life if he does not get a pension or if there is no provision for his family in case of his death, that he would if there were such pension? I think you had better reject the whole proposition.

Mr. WILLIAM H. SULLIVAN of Boston: Does the member in charge of the committee report have any time?

The PRESIDENT: The member is entitled to ten minutes.

Mr. SULLIVAN: This ten minutes would afford me opportunity to have much fun with the gentleman from Somerville (Mr. Underhill), but I prefer to use the time seriously and point out to the Convention defects in the many amendments presented. I am permitted to address you because I have charge of the Committee's report, which was unanimous, with the exception of the gentleman from ward 5 (Mr. Lomasney) and to which no member of that committee of fifteen dissented; yet several members of the committee attacked the report and only one, the chairman (Mr. Curtis), has assisted me in its defence. However, the merit of the report is such that I expect the good sense of this Convention will appeal convincingly for its indorsement.

One member of the committee, a judge from Cambridge (Mr. Walcott), submits an amendment, a new work of art, after voting with the majority that all resolutions be rejected. He brought an amendment to our committee over which he had worked for about two weeks, and some of our members who were not versed in the law read it over with rare enthusiasm. One look at it was enough, and I suggested that there was no provision against special laws, and the judge, who is a very fair man, admitted that it was defective and no longer pressed it. We had numberless propositions before our committee, in print or in writing, in which we discovered many defects, and because we could not suggest a perfect measure we made this recommendation.

Now the conscientious judge from Cambridge, and the gentleman from Brockton (Mr. Brown), who is equally conscientious, want us to do something. They say the people want something done, and for that reason they are in favor of any old thing, perhaps, in order to have something submitted. However, I am one of the delegates who believes if we cannot do a thing right, if we cannot submit a proper resolution, we should do nothing and face our constituents with this explanation.

An amendment is offered by the gentleman from Somerville (Mr. Underhill) which puts the question squarely up whether you will recommend non-contributory pensions with a limit of $750 or not. That is his proposition. He accepts the amendment of the gentleman from ward 5 (Mr. Lomasney) which reads: "No person who shall hereafter be elected or appointed to public office, position or employment, shall receive a pension," etc., so you see that his resolution, so amended, offers the State no relief; it protects all the present office-holders. What is the defect in the amendment offered by the astute

statesman from ward 5, — "No one hereafter appointed to public office"? How would this affect the judge in the municipal court who is promoted to the Superior Court; the judge of the Superior Court who is promoted to the Supreme Judicial Court, the fireman who is promoted to Chief; the policeman promoted to sergeant; sergeant promoted to Captain? Each promotion would entail such substantial contribution as to deter one from accepting the appointment. The difficulty is, our mentors have tried to devise a legislative act. They have tried to provide a system of pensions. As I have said, and as our chairman has said, our committee considered all these amendments, — they all were defective, — and, rather than submit a defective amendment to the Convention, voted to report that no action should be taken.

The gentleman from Somerville who concedes that he is the people's champion contends that he has given the pensioner $75 a month when he offers a yearly pension of $750. This glaring inaccuracy must lead us to the conclusion that the delegate is so intoxicated with his own eloquence that, in his delirium, he defies the immutable law of mathematics.

The gentleman from Wellesley (Mr. Pillsbury) who never has posed as a friend of the plain people, who never has come in contact with the plain people, offers the most helpful amendment of all, because the gentleman from Wellesley suggests that hereafter no pensions shall be granted. He eliminates the $1,000 exception and the resolution would read, — if it was not read in conjunction with the amendment of the gentleman in the third division (Mr. Lomasney): "Hereafter no pensions shall be granted." Fine! But he does not want it passed save in conjunction with the amendment of the gentleman from ward 5. He wants his resolution to affect only those "hereafter appointed." The gentleman from Wellesley is in favor of the amendment offered by the gentleman from ward 5 which, as I have said, is fatally defective, because under it the judge promoted, the policeman promoted, the fireman promoted, would forfeit his old pension and must contribute substantially to the new one.

The gentleman from Belmont (Mr. Benton), expert in insurance, has well said that we have not any real resolution here to offer to the people. We do not want a hodgepodge resolution in which, just as soon as it is submitted to the voters, we would find defects. No matter how able or gifted he may be, the man who can pass upon a resolution by hearing it read in a low tone by the Secretary, and indorse it without having looked it over, is possessed of an ability which few can hope ever to possess and an assurance which ought to condemn him in the minds of all the thinking people of the Commonwealth.

We are voting in the dark on these amendments. One member suggests a limit of $1,500. That limit undoubtedly would be more popular, because it would discriminate only against the judges. If we make the limit $1,500 nobody suffers but the judiciary. I seek to make no attack upon the judges; they are my good friends. As I explained to one judge: "Your contribution toward a pension will be taken care of by a raise in your salary."

Now I want to reiterate, — I want to say for the last time here, — I want to make this point, that our committee originally reported a resolution which limited the power of the Legislature only to give

away money. It sought to protect the Commonwealth. There has developed now in this Convention a desire to save, not the Commonwealth but the office-holders, because instead of limiting the amount of a non-contributory pension to $1,000 some now seek to take away from the Legislature the right it now has, to change the status of these pensioners, the right to enact a contributory pension system for those who hereafter may profit by an increase in salary. And it seems to me that the common sense of this Convention ought to advise the delegates to accept the committee's report, which was practically unanimous, and which is the best solution of this problem. Let, as I say, an intelligent and a fearless Legislature in the future enact a system of contributory pensions which will be acceptable to all the people.

I give the rest of my time to the Convention.

Mr. Pillsbury asked unanimous consent to withdraw his amendment; but objection was made.

The amendment moved by Mr. Lomasney of Boston was adopted, by a vote of 100 to 26.

The amendment moved by Mr. Boucher of New Bedford was rejected.

The amendment moved by Mr. Underhill of Somerville was rejected.

The amendment moved by Mr. Pillsbury of Wellesley was rejected.

The amendment moved by Mr. Walcott of Cambridge was adopted, by a vote of 97 to 55.

The resolution (No. 392), as amended, was rejected Wednesday, August 14, 1918, by a vote of 99 to 67.

On the following day, Thursday, August 15, Mr. Walcott moved that the Convention reconsider the vote by which the resolution had been rejected.

Mr. Walcott of Cambridge: I trust that the vote we have just had [on another proposal] will not be considered a precedent for preventing any reconsideration. This is rather a different situation from that on which reconsideration has just been refused. That was a question which was debated at three stages very fully and has another stage, on the submission to the people, before it, when the question may be raised again. The resolution proposed and voted by this Convention to be substituted for resolution No. 333 yesterday, however, had only a matter of some fifteen or twenty minutes debate. Unless reconsideration prevails at this stage any dealing with the pension system by this Convention is at an end. It seems to me, and to a number of gentlemen here present, that it would be a pity if this important subject were not treated by this Convention. It is for that reason that I move reconsideration.

Mr. McAnarney of Quincy: When the Convention yesterday decided not to further amend the Constitution by adding an amendment giving civil pensions I believe it did the proper thing. In the first place, I do not believe that is a proper subject for a constitutional amendment. It is purely a legislative proposition, and should be so dealt with. In the second place, if this Convention is to have a constitutional amendment dealing with that matter it should be an amendment which would reflect the sound and careful consideration by the Convention of the subject.

I am of the opinion that there has not been offered to this Convention any proposed amendment dealing with this matter worthy of being written into the organic law of this Commonwealth as a part of our Constitution. The very amendment that the gentleman proposes that we now reconsider the rejection of in itself bears upon its face sufficient earmarks of haste and lack of careful thought. It provides for the exemption of all persons now holding a public office to which is attached a pension from the operation of that constitutional amendment. What does that mean? A policeman to-day is a policeman. He holds his office, and that office has attached to it a provision for a pension under certain conditions. If he ceases to be a policeman and becomes a fireman would he still have an exemption guaranteed to him by this constitutional amendment? A strict construction of the amendment would provide that he is exempt from its provisions, even though he changes the class of his employment or enters another branch of our public service, but beyond that it probably is merely a matter of wording. There is at the base of this amendment a fundamental objection. In the future it says that Massachusetts shall grant only such pensions as are on a contributory basis. Now, that may be all right for the judges, it may be all right for clerks, it may be all right for department heads and officials, but do we want to write that into the law as a prohibition against granting pensions to our firemen and our policemen, who daily face risks, not equal perhaps but sometimes almost on an equality with the soldier on the battlefield? What lies back of the thought that the fireman should receive a pension? It means that the firemen, when they go into the discharge of their duties, should not be deterred in performing those duties by any thought of what may happen to themselves or those who may be dependent upon them from any injury which may come to their person. Shall you say that the Commonwealth shall not be able to grant a pension to firemen, save upon a contributory basis? The same is true of a policeman. All those classes of pensions stand upon a different basis, or should stand upon a different basis, from the pension to the clerk, to the man who is doing the work of a judge or many of the other occupations to which pensions are now attached.

This amendment, if adopted, would tie the hands of the Commonwealth. This proposition should be left where it belongs, to the Legislature. I am astonished that there has been heard from the lips of men in this Convention the charge against the Legislature of this Commonwealth, that we cannot trust the Legislature to deal with this proposition. You cannot trust the Legislature of Massachusetts to deal with a simple civil pension proposition, and yet you men last year exhausted months of our time and gave us hours of your eloquence to prove that representative government was not a failure in Massachusetts. You told us that Massachusetts representative government was not a failure, and to vote against the initiative and referendum, and now you say it is a failure because you cannot trust representative government to give you a proper civil pension law. What an absurdity! What an argument you are advancing from your own lips to-day and furnishing to those men who are going out to fight you on your initiative and referendum proposition next fall. Let us be consistent on this. If we cannot trust Massachusetts to give us a

proper and a reasonable civil service pension, then let us abolish Massachusetts representative government entirely and have a wide open straight government by the people under a broad and comprehensive initiative and referendum. I do not believe in that, though. I voted for the initiative and referendum because I believe it will serve a useful purpose in this Commonwealth, but I believe also in the representative form of government. I believe that when there comes to the Legislature the voice of the intelligent, thinking people of this Commonwealth, in the form of a strong public sentiment, that sentiment will be heard in the halls of our Legislature, and it will be feared and it will be followed. Let us leave this proposition where the Convention left it yesterday.

Mr. Lowell of Newton: I hope the motion to reconsider will prevail. It was not until the very end of the debate yesterday that the amendment proposed by the gentleman from Cambridge (Mr. Walcott) was offered, and that amendment has not had proper consideration from this Convention. The question is a very important one, and one which is eminently proper, in my opinion, to be put up to the people. We started with pensions to the judges. In my opinion it is all wrong that the judges should be singled out from other classes of the community to be given a pension without contribution. The only objection which is made, which at least has been mentioned, is regarding the pensions to firemen and to policemen. There is no question in my mind that they should be on a contributory basis also. You cannot draw the line and say policemen and firemen should not contribute to their pensions while everyone else should contribute. It is a great big question. The gentleman from Quincy (Mr. McAnarney) says that they shall be encouraged to do their duty because they know that they will be taken care of if anything happens to them during a fire or a riot. Almost all of the policemen and firemen are or easily can be included in the workmen's compensation system, which covers just that, which gives them just that very thing of which the gentleman speaks. It is not that we distrust the Legislature, that we wish to put this thing through and have it put on the ballot, it is to bring up before the people of this Commonwealth at the next State election the thing which in my mind is one of the most important matters which we possibly could bring before them. There is no end to pensions if contribution is not made necessary. England has gone into it with a proposition which was calculated seven or eight years ago, whenever they started it, to cost them two million pounds, I believe the figure was, — to cost them two million pounds. The last time I saw the figures, they had risen to twelve million pounds. The argument there made was that it would decrease the rates, as they call it, in other words, it would decrease the amount spent for poor relief. It has not decreased it at all. Now, that is one of the most important questions which has been before this Convention, and I submit that reconsideration should prevail, so that we may pass this thing and let the people vote on it.

Mr. Underhill: I appreciate the effort of the gentleman from Cambridge (Mr. Walcott) and the gentleman from Newton (Mr. Lowell) in behalf of the principle which is involved in this question, but, sir, they do not know what they are up against. They have not a Chinaman's chance. We heard labor through the voice of its

representatives here a few weeks ago demand this proposition, and yesterday saw every one of them vote against it. We heard Boston's representatives with tears and sobs in their voices pleading for this thing in behalf of the people, and Massachusetts and the city of Boston, and yesterday saw the representatives of the city of Boston fighting it tooth and nail. The organized firemen and policemen of the city of Boston are stronger, — and you have got to acknowledge it right here, — than this Convention. They are stronger than the Commonwealth of Massachusetts. They are stronger than the Legislature. It is not a question of whether you can trust the Legislature or not; it is a question of political expediency, and it is followed by the members of this Convention just the same as that is followed by the members of the Legislature. That is all there is to it. We might just as well save our time right here and vote down this attempt at a useless reconsideration.

Mr. William H. Sullivan of Boston: Yesterday the gentleman from Somerville (Mr. Underhill) addressed us as a dying gladiator; to-day he addresses us as a "dead one." The delegate has insulted the members of this Convention, but while the gentleman has brains enough to conceive the insult, he really has not brains enough to realize what he has done. He says, gentlemen, that you are not considering the propositions which are submitted to you, from the common-sense viewpoint, that you are not listening to argument. We will eliminate from the discussion the Boston representatives; the majority of you are from outside of Boston; yet the Convention's vote yesterday was against this proposition. Insult will not induce reconsideration. In the later days I have conceived a great admiration for this Convention. In this second session, this year, the members have listened to argument, the members have not followed the self-appointed leaders, and it is delightful to follow the roll-call now because one cannot foretell, as he could in the days of the I. and R., how anybody will vote. I believe all the delegates vote conscientiously.

Now let us consider the resolution calmly, let us not decide hastily, let us not amend it thoughtlessly. Yesterday the gentleman from Wellesley (Mr. Pillsbury), an able man, submitted a resolution somewhat hurriedly and before the vote was taken he had changed his mind, he wanted to withdraw it. The gentleman from Cambridge, the judge (Mr. Walcott), as I said yesterday, brought to the committee a resolution over which he had worked two or three weeks, and then he needed an hour more in which to prepare it properly; on one of the hottest days we have had this summer, we waited for him to bring in his resolution; one look at it was enough to show that it was a joke resolution which he readily admitted when its imperfections were pointed out. He voted to recommend that no further action be taken on this question and I was chosen to take charge of the committee's report, to which there was no dissenter, as I have said; yet the chairman and I are the only ones who stood by our report. The judge (Mr. Walcott) comes in with his hodgepodge resolution. Has the gentleman from Newton (Mr. Lowell) read it over? Has anybody read it over? No. It provides that anybody who has a pension now shall keep his pension undisturbed, and anybody hereafter appointed to a position for which a pension is provided shall not contribute. Now the real thing here, as I said yesterday, — and

it can bear repetition, because to my mind it is important, — is this: That at the beginning of this discussion we sought to save the Commonwealth, and now my friend from Newton and my friend the judge from Cambridge are solicitous about saving the office-holders. The incorruptible and the fearless advocate from Somerville, too, at first sought to make a greater saving for the Commonwealth by making the limit $600 for non-contributory pensions. He now accepts an amendment which would save all those at present appointed to office and who may be appointed to office before the Constitution is changed, and would increase the pension burden. We have had numerous hodgepodge resolutions and some would prefer to submit them to the people rather than do nothing, reasoning, perhaps, that the people will not criticize and will not appreciate the meaning of the resolution any more than does the gentleman from Somerville.

The question is: Shall we be intelligent enough and fearless enough to say to the people that we do not here seek to legislate, we do not here seek to present to the people a pension bill? We have shown how we feel about pensions, because everybody who has spoken has said that our present system is the source of great discontent. Nobody feels that more keenly than I do. Two million dollars is the burden under which we are struggling now. Nobody is more strongly in favor of the resolution offered by the gentleman from Somerville unadulterated than I am. But as he says, knowing that it is about to be killed, he presents it. What is the use of presenting something that we know cannot pass? At the present time the Legislature has the power, if at any time it possesses sufficient fearlessness and intelligence, — and the gentleman from Somerville is in the Legislature and has been for a number of years, and he never has made a struggle, — and can so revise our pension system as to make it the fairest flower in our legislative exhibit.

Mr. Lomasney of Boston: If the members from Boston were here attending to their duties and listening to the criticism of their city by the gentleman from Somerville, their presence would have prevented the present situation. Coming down to the question before us, what are the facts? A minority of the committee on Bill of Rights opposed this pension amendment. The gentleman from Cambridge was on this committee and in the minority. When the members of the committee were trying to do something to restrict the payment of pensions throughout the Commonwealth he was opposed to doing anything in the matter. What did he do? He dissented from the report of the committee and fought it bitterly in the Convention; and then when it was recommitted by the Convention and many of the committee were in favor of doing something for the State through the pension system, was he in favor of doing anything of a constructive nature on this measure? No. He was against the committee all the time. After being against the original amendment he now springs his substitute at the last minute. I do not want to take up too much time, but it seems to me that the most reasonable offer of compromise was the one suggested by the committee in the first place with the amendment that the Convention adopted yesterday at my suggestion. Then we had a good amendment. It gave you a sound basis to start with. It limited the amount to be paid out and affected only persons entering the government service after its adoption by the people. You

cannot stop it all at once. You have got to begin at a certain point. When the gentleman from Wellesley desired to withdraw his amendment, he was refused the necessary unanimous consent. Thereupon the Convention killed the whole proposition. It is better to kill the whole proposition than take the substitute of the gentleman from Cambridge. There is nothing in it at all. It will not work and it never was presented in proper shape to the committee.

You must recognize that the men in the service of the Commonwealth and the cities and towns have certain rights, because certain conditions existed when they took their positions, and I yielded to the justice of the argument in their behalf because it seemed to me that it would be unfair not to protect those persons who took office with the present pension laws on the books. But, sir, when you start to go before the people with this substitute for the original amendment, in my opinion it would have no chance of being adopted by the people. Consequently, if you are going to reconsider this matter at all, — which I do not favor, — I shall insist upon the passage of the original amendment. I hope, however, that we shall kill reconsideration and proceed with other business of the Convention.

Mr. Bodfish of Barnstable: I think there is no man in the Convention who is more deeply interested in pensions than I am. I doubt if any have given more attention to this question in every phase than I have. When the Convention refused to give any relief to the situation which now prevails, as the committee on Social Insurance recommended, when the Convention refused to allow the Legislature to have power to make compulsory workmen's compensation bills, — when they refused to allow the Legislature power to deal with the question of relief by substituting a proposition of old age pensions for the present method of pauper relief, — I thought the Convention had determined then that they would leave things where they were. When this matter of pensions for the purpose of preventing special privileges and class distinction was recommitted to the committee I thought the matter was ended. When the report from that committee came back recommending rejection I felt sure that the matter was disposed of. And yesterday I remained silent during the debate, because I felt that the Convention already had passed upon this matter. But, if this matter is to be reopened I propose to reopen it along the entire line, and I have prepared an amendment for that purpose. I do not believe, however, that it is going to be reopened on this, which is simply a trivial and transient proposition, a matter which will cure itself in the Legislature itself. What an attack it is upon the Legislature that the gentleman from Somerville made! — a man who rose here in heat because some one had attacked the General Court, because some one had said that the people should have a right to correct and supplement the work of that august body; and now he comes before us and says that the Legislature cannot be trusted to deal with this trivial, transient matter. Comparatively speaking, it is trivial, it is transient. It has nowhere near the far-reaching effect and the far-reaching necessity for action that we find along many lines which the Convention has refused to consider. And I trust that the matter will not be reopened in these latter days of the Convention but that it may be allowed to die.

Mr. Benton of Belmont: I desire just for a moment to call the

attention of the Convention to the fact that although this subject may not have been debated to the great length to which some other subjects have been debated, it apparently was debated intelligently enough so that the members of the Convention understood what they were voting upon. It had a fair vote yesterday in a full Convention and when the gentleman from Cambridge who offered his amendment asked for a roll-call he could not secure 40 votes for a roll-call.

Now these insinuations that have been thrown out are all right enough, but they have no effect upon me or on any other delegate to this Convention. The Convention desires that this subject be left as it is now and this whole subject be defeated. I hope that reconsideration will not prevail and that we will go on with the calendar.

Mr. UNDERHILL: I cannot let pass without a reply the charge of the gentleman from Roxbury (Mr. W. H. Sullivan) that I never tried in the Legislature to correct this abuse. I want to repeat, I want to reiterate, I want to emphasize the fact that for many, many years I have struggled for legislation along various lines; but, sir, a part of the people, who have the sympathy of many of the rest of the people, — the firemen and the policemen, — believe that my efforts are directed against them. They are very much mistaken. I am not directing my efforts against the rank and file of those men, but against the officers who obtain large pensions to which they are not entitled. Yes, Mr. President, I am willing to acknowledge defeat when I meet it. I do the best I can and I am not afraid to make a good fight, but when I am a "dead one" politically I should prefer to remain dead than try to break into public life again, when my constituency does not want me, through favors to firemen or policemen. [Laughter.] The gentleman from Roxbury reminds me of a story about a couple of Irishmen who had come over from that green isle where they have no reptiles, and who found a turtle going along a country road. They were very much surprised at the attitude of the turtle when disturbed in drawing its head and feet into its shell, and when let alone, putting them out and starting on again. They could not understand it. One of them took a knife out of his pocket and the next time the turtle poked his head out he jabbed the knife down so quickly that he cut the turtle's head off. His companion said: "The poor beastie! Ye've kilt him." Just then the turtle stuck out his feet and started to paddle along, and the other man said: "No, I haven't at all." "Yes, ye have; he has no head; shure he's dead." "Go on," said his friend, "how could he walk if he was dead?" So they argued over it and were about to come to blows, when along came a Yankee and they said they would leave the question to him. He sized up the two fellows (they were pretty good sized scrappers), and as he did not want to get into any trouble, he said: "Well, boys, you see it's this way: "He's dead, all right, but the durn fool don't know it." [Laughter.]

The motion to reconsider was negatived.

XXXVII.

SOCIAL INSURANCE.

The committee on Social Insurance submitted the following report (No. 327) July 17, 1917:

The committee on Social Insurance has had referred to it twenty-five resolutions and petitions, as follows: —

Doc. No.
12. Resolution relative to the providing of non-contributory health insurance.
13. Resolution relative to the providing of non-contributory old age pensions.
35. Resolution relative to providing for contributory old age insurance.
36. Resolution relative to providing for contributory unemployment insurance.
37. Resolution relative to providing for non-contributory accident, sickness and invalid insurance.
38. Resolution relative to State pensions.
39. Resolution authorizing the Commonwealth to insure persons or property.
52. Resolution for a special tax to provide pensions for the aged and needy.
54. Resolution providing for a State fund for workmen's compensation.
107. Resolution to provide for social insurance by the Commonwealth.
108. Resolution relative to creating a State fire insurance fund.
109. Resolution authorizing compulsory insurance of employees.
110. Resolution authorizing State insurance of workers against accidents, sickness, invalidity, old age and unemployment.
111. Resolution providing for compulsory death benefits for dependents of persons engaged in the public service in times of war and National or State emergency and of persons engaged in hazardous employments at all times.
112. Resolution giving the General Court power to enact laws for the protection of the lives, health or safety of workers.
113. Resolution relative to creating a State fund for workmen's compensation insurance.
251. Resolution relative to the establishment of a system of non-contributory health insurance.
252. Resolution relative to the establishment of health insurance for working-men.
253. Resolution relative to establishing a system of non-contributory old age pensions.
254. Resolution relative to the establishment of a system of old age pensions.
255. Petition of the Massachusetts State Branch of the American Federation of Labor, accompanied by resolution providing for the establishment and maintenance of a system of old age pensions.
256. Resolution to empower the General Court to make absolute the liabilities of casualty insurance companies to persons injured by accident.
257. Resolution relative to pensions to dependents of those suffering from cancer or tuberculosis.
258. Petition of the Massachusetts State Branch of the American Federation of Labor, accompanied by resolution providing that employers shall insure in a public fund for the benefit of injured employees.
259. Resolution relative to the establishment of a State fund for workmen's compensation.

Of these, twenty-two may be described generally as dealing with some kind of social insurance or the machinery incident to its administration. One resolution, No. 52, providing for a system of taxation to provide pensions for the aged and needy, would more appropriately be referred to the committee on Taxation, and this committee has been discharged from its further consideration. Another resolution, No. 108, relative to creating a State Fire Insurance Fund, would more appropriately be referred to the committee on Public Affairs, and this committee has been discharged from its further consideration. Another resolution, No. 256, will be the subject of a separate report. This report deals with the twenty-two remaining resolutions upon the general subject of Social Insurance. The committee does not consider that it is in any way charged with the duty of considering these propositions upon their merits but rather to determine if there is any doubt as to the constitutional power of the General Court to legislate upon all or any of them, and, if so, to consider the

expediency of conferring such power upon the General Court, and if that question be decided in the affirmative, then to suggest such amendment or amendments to the Constitution as may be necessary to effect the purpose.

First. — As to the power of the General Court under the Constitution to legislate upon any of these propositions.

The committee is not disposed to argue this question; indeed, any conclusion it might reach would, of necessity, be inconclusive. The committee, however, is unanimous in believing that doubt does exist and contents itself, upon this point, with quoting from Bulletin No. 18, pp. 22, 25, prepared by the Commission of the Convention, as follows:

> Without inquiring too curiously whether the Massachusetts Supreme Court would uphold the constitutionality of a compulsory Workmen's Compensation Act in the absence of a constitutional amendment, it seems proper to state that social insurance legislation, if compulsory, would be best safeguarded by an express constitutional amendment.
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> . . . . . .
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> In view of the recent Federal decisions referred to in this Bulletin it is obvious that "constitutional rigorism" is at an end and that the Fourteenth Amendment to the Constitution of the United States does not stand in the way of State legislation respecting health, unemployment and old age insurance. Of course the question still remains as to whether such measures are in violation of the provisions of the Constitution of Massachusetts.
>
> That doubt could be removed by the adoption of an amendment expressly conferring upon the Legislature authority to provide for the several forms of social insurance herein considered.

Second. — The committee is unanimously of the opinion that the Legislature should have the power to deal with these subjects in such manner as, in its wisdom, it may see fit.

> The "police power" has in recent years been greatly enlarged to meet changing conditions. As the Supreme Court has said:
>
> "Of course, it is impossible to forecast the character and extent of these changes, but in view of the fact that, from the day Magna Carta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to the new condition of society, and, particularly to new relations between employers and employees, as they arise."

The Legislature has for many years shown a disposition to deal with the questions involved in the resolutions that are before us. In 1887 it passed the Employers Liability Law, the first to be enacted in the United States. In 1903 a commission was appointed to investigate the relations between employer and employee. The commission reported in 1904 with a draft of a compensation act which was not enacted into law. In 1907 a joint special committee was appointed to sit during the recess of the General Court to consider workmen's compensation among other questions. As a consequence, a voluntary law was enacted in 1908 and amended in 1909. In 1910, a commission was created "to determine upon a plan of compensating employees for injuries received in the course of their employment." This resulted in further legislation.

Chapter 127 of the Resolves of 1907 provided for a commission to investigate and consider the various systems of old age insurance or old age pensions or annuities proposed or in operation in this Commonwealth, or elsewhere, and to report upon the advisability of establishing an old age insurance or pension system in the Commonwealth. This commission made its final report on January 15, 1910. It is very voluminous and is House Document No. 1400.

Chapter 106 of the Resolves of 1913 provided for the appointment of a committee to investigate the subject of pensions. The commission was known as the Commission on Pensions, and was to report in detail on the various systems under which pensions were then paid by the Commonwealth and by the counties, cities and towns therein, and to what persons and the amounts thereof. The commission recommended, among other things, the advisability of a service pension plan under which the persons to whom pensions should be granted should make payments from their salaries or wages, and should consent to deductions therefrom as contributions to the fund from which pensions should be paid, and made a very voluminous report under date of March 16, 1914, House Document No. 2450.

Chapter 120 of the Resolves of 1914 provided that, for the purpose of securing information for the General Court for a proper consideration of the subject of old age pensions, the Director of the Bureau of Statistics be required in connection with the taking of the decennial census in the year 1915 to transmit certain statistical information to the General Court including the number of persons 65 years of age and over within the Commonwealth, and their length of residence, the number of

dependent persons of all ages being supported in the various public and private institutions throughout the Commonwealth, the number of persons of all ages in the various cities and towns of the Commonwealth who are receiving aid from any public source; also the number of persons aided from private sources, and any other information which, in his opinion, might promote the purpose of the inquiry. This report was made December 15, 1916, and is full of detailed information on this subject.

Chapter 157 of the Resolves of 1916 provided for the appointment of Special Recess Commission on Social Insurance, to study the effects of sickness, unemployment and old age in Massachusetts, to collect facts as to actual experience with the several forms of insurance therefor, and to recommend to the General Court such legislation as it might deem practicable and expedient to protect the wage-earners of the Commonwealth from the burdens of sickness, unemployment and old age, or any one or more of these. Subsequently, the duty of making a further special investigation was laid upon the commission by Chapter 164 of the Resolves, approved June 2, 1916; namely, the subject of reasonable restrictions in the hours of labor in industries operated continuously for twenty-four hours, and to make such recommendations and drafts of proposed legislation as it might deem practicable. The report of this commission, which was very voluminous, was presented to the General Court in January, 1917, and is known as House Document No. 1850.

A Joint Special Committee on Workmen's Compensation Insurance Rates and Accident Prevention was appointed under joint order of the Senate and House of Representatives, adopted June 2, 1916.

The purpose of the Legislature in providing for the appointment of the committee was outlined in its order as follows: —

> . . . to investigate the subject-matter contained in the message of His Excellency the Governor, printed as Senate Document No. 444, with special reference to the problems of rate making and accident prevention under provisions of chapter 751 of the Acts of the year 1911, known as the Workmen's Compensation Act, and acts in amendment thereof and in addition thereto.

The committee made its report in February, 1917, Senate Document No. 370.

We next come to the address of His Excellency the Governor, of January, 1917, in which he urged upon the Legislature the consideration of certain forms of social insurance, and specifically recommended the establishment of a compulsory system of health insurance which should include members of the family and also urged that an annuity should be paid by the State and its subordinate governments without contribution to its deserving citizens seventy or more years of age who do not have children able to support them nor an income of more than $200 a year, and who have been residents of the Commonwealth at least ten years.

Under Chapter 130, May 25, 1917, a special commission was appointed, which is now sitting, known as the "Commission on Social Insurance," for the purpose of further investigating the extent to which poverty occasioned by sickness may be alleviated, medical care for wage-earners and others of limited means may be provided, and measures to prevent disease may be promoted, by insurance. The commission is to undertake such investigations as to the health of wage-earners and the conditions under which they work, and as to existing systems of mutual, stock, fraternal, State, and other forms of insurance in this Commonwealth and elsewhere as may be necessary to provide a sound basis for its recommendations, and is to submit a report, including drafts of any legislation which it may recommend, to the next General Court, not later than the fifteenth day of January next.

The committee has referred, perhaps, at too great length, and perhaps inadequately, to the investigations, past and present, of these subjects by the Legislature, not for the purpose of proposing any inquiry into the merits of these propositions, but to make it clear that through many years and at great expense, the General Court has provided for a careful study of the many intricate questions involved in the general subject of social insurance. It would, therefore, seem highly inexpedient that the suggestion of unconstitutionality should be permitted to attach to any measure the General Court may see fit to pass as a result of its prolonged and repeated investigations of the subject.

In Chapter I, the Legislative Power, Section I, The General Court, Art. IV, is found the following language:

> And further, full power and authority are hereby given and granted to the said General Court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, . . .

This article has been amended as follows:

In 1821, Art. 2, by giving the General Court power to create municipal government.

In 1912, Art. 41, giving the General Court the power to prescribe certain methods of taxation for wild lands. In 1915, Art. 44, giving the General Court the right to impose a tax on incomes at different rates on different kinds of property.

It is not easy, and perhaps is not wise, in the absence of knowledge of what may be done with other parts of the Constitution, to attempt more than to follow, in a general way, the form of the amendments above referred to. The committee submits to the Convention, first, a general amendment which is believed to cover the various propositions referred to it; and, second, different amendments, each dealing with a specific subject.

GENERAL AMENDMENT.

The General Court shall have power to establish systems of social insurance including old age pensions or insurance, pensions for physical disability arising from any cause, health insurance, maternity benefits, insurance against unemployment and compensation to workmen or their dependents for injuries incurred by workmen in the course of or arising out of their employment. It may provide for medical care as well as a money payment and may require that the cost of any such system or systems shall be borne in whole or in part by the State or any civil division thereof or by the insured or by the employer. It may provide that claims may be adjudicated with or without a jury and that employers contributing to the compensation of injured workmen or their dependents shall not be liable to any other claims for loss or injury.

WORKMEN'S COMPENSATION.

The General Court shall have power to establish a system of compensation to workmen or their dependents for injuries incurred by workmen in the course of or arising out of their employment. It may provide for medical care as well as a money payment and may require that the cost of such compensation shall be borne in whole or in part by the State or any civil division thereof or by the employer. It may provide that a contributing employer shall not be liable to any other claim for loss or injury and that claims may be adjudicated with or without a jury.

HEALTH INSURANCE.

The General Court shall have power to establish systems of health insurance, including maternity benefits. It may require that the cost of such pension or insurance shall be borne in whole or in part by the State or any civil division thereof or by the insured or by the employer.

INSURANCE AGAINST UNEMPLOYMENT.

The General Court shall have power to establish systems of insurance against unemployment, and may require that the cost of any such insurance shall be borne in whole or in part by the State or any civil division thereof or by the insured or by the employer.

OLD AGE PENSIONS AND PENSIONS FOR PHYSICAL DISABILITY.

The General Court shall have power to establish systems of old age pensions and of pensions for physical disability arising from any cause, and may require that the cost of any such system shall be borne in whole or in part by the State or any civil division or by the beneficiary or by the employee.

CHARLES G. WASHBURN,
For the Committee.

Mr. John D. W. Bodfish of Barnstable submitted the following minority report:

While I concur with the majority of the committee in all other respects, I feel bound to dissent from its recommendations and so it becomes my duty to state my reasons therefor.

The members of our committee were unanimous in the conclusion that if there is any doubt about the present power of the Legislature to act fully and freely in the field of social insurance, then we ought to recommend an amendment or amendments which would remove such doubt. We were also unanimous in the opinion that we should not include in such amendment or amendments any detail or specific matter which changing conditions might render of temporary application only. The power of Congress to deal as broadly as it has with interstate questions under the Federal

Constitution is found in the absence of such detail and specific matter, and in the broad, general language of that instrument. Changing needs are most easily met under such a Constitution.

Therefore concurring as I do with the expressed opinions of the majority of the committee on these points, I must be consistent and make my recommendations accordingly, so I recommend the adoption of the following amendment to the Constitution: —

AMENDMENT.

Full power and authority is hereby vested in the legislative department to establish any system or systems of pensions, compensation or insurance for the reward, relief or protection of any person or persons and to make any provision for such fund or funds as may be required therefor.

Respectfully submitted,

JOHN D. W. BODFISH.

The report of the committee was considered by the Convention Thursday, June 20, 1918.

Mr. Charles G. Washburn of Worcester moved that the report be amended by substituting the following resolution (No. 382):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to establish systems of social insurance, including old age pensions or insurance, pensions for physical disability arising from any cause, health insurance, maternity benefits, insurance against unemployment and compensation to workmen or their dependents for injuries incurred by workmen in the course of or arising out of their employment. It may provide for medical care as well as a money payment, and may require that the cost of any such system or systems shall be borne in whole or in part by the Commonwealth or any civil division thereof, or by the insured or by the employer. It may provide that claims may be adjudicated with or without a jury, and that employers contributing to the compensation of injured workmen or their dependents shall not be liable to any other claims for loss or injury.

This amendment was adopted, by a vote of 98 to 41; and, accordingly, the resolution was substituted; and it was ordered to a second reading Friday, June 21.

Mr. E. Gerry Brown of Brockton moved that the above amendment be amended by striking out, in line 4, the words "social insurance, including".

This amendment was rejected.

Mr. Frank F. Dresser of Worcester moved that the report be amended (in part) by substituting the following resolution (No. 383):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Full power and authority are hereby granted to the General Court to provide, through money payments, pensions, medical and surgical attention or otherwise, for losses caused by personal injuries or death arising out of and in the course of employment, for losses caused by unemployment, for losses otherwise arising and caused by accident, maternity, sickness, invalidity, old age or death, to any portion or all of the residents of the Commonwealth or alien dependents, payable from or provided by a fund or funds or system or systems of insurance created and administered by public or by private agencies, and

consisting of contributions or premiums paid by the Commonwealth, by any civil division thereof, by employers, by the persons to be benefited or insured, or by any combination thereof.

Contributions or premiums shall not be required from employers to meet losses arising otherwise than out of the employment and employers contributing to the compensation of injured workmen or their dependents shall not be liable to any other claims for personal injury to them.

Any remedy so provided hereunder may be compulsory upon the persons affected by it and claims thereunder may be adjudicated with or without trial by jury.

This amendment was rejected.

Mr. E. Gerry Brown moved that the above amendment be amended by striking out, in lines 11 to 17, inclusive, the words ", payable from or provided by a fund or funds or system or systems of insurance created and administered by public or by private agencies, and consisting of contributions or premiums paid by the Commonwealth, by any civil division thereof, by employers, by the persons to be benefited or insured, or by any combination thereof."

This amendment was withdrawn.

Mr. William H. Sullivan moved that the amendment moved by Mr. Dresser be amended by striking out, in line 7, the word "and", and inserting in place thereof the word "or".

This amendment was rejected, by a vote of 51 to 74.

Mr. John D. W. Bodfish moved that the report be amended (in part) by the substitution of the following resolution (No. 378):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Full power and authority is hereby vested in the legislative department to establish any system or systems of pensions, compensation or insurance for the reward, relief or protection of any person or persons, and to make any provision for such fund or funds as may be required therefor.

This amendment was rejected, by a vote of 42 to 100.

The resolution (No. 382) was read a second time Friday, July 26.

Mr. John D. W. Bodfish of Barnstable moved that the resolution be amended by striking out lines 3 to 18, inclusive, and inserting in place thereof the following:

The General Court shall have power to establish by general law any system or systems of pensions, compensation or insurance of persons for the benefit of any of the inhabitants of the Commonwealth.

This amendment was rejected, by a vote of 28 to 109.

Mr. Francis N. Balch of Boston moved that the resolution be amended by striking out, in lines 4 and 5, the words "old age pensions or insurance,".

This amendment was rejected.

Mr. Charles G. Washburn of Worcester moved that the resolution be amended by striking out, in line 8, the word "incurred", and inserting in place thereof the word "received"; and by striking out, in line 10, the words "medical care", and inserting in place thereof the words "curative treatment".

These amendments were adopted.

Mr. Ralph L. Theller of New Bedford moved that the resolution be amended

by striking out, in line 10, the words "a money payment", and inserting in place thereof the words "money payments".

This amendment was adopted.

The resolution (No. 382), as amended, was rejected Tuesday, July 30, 1918, by a vote of 43 to 107.

THE DEBATE.

Mr. Washburn of Worcester: The report of the committee on Social Insurance, document No. 327, is in the hands of the members of the Convention. It considers in some detail the conclusions reached by the committee and the reasons that led to them. It will be noticed that this report deals with twenty-two resolutions, suggested to the committee, covering almost every phase of this question of social insurance.

It seems to me that a good deal of time may be saved in the consideration of this somewhat complex subject if we confine our attention to the points which are involved, and they really are only two. First, is there any doubt as to the constitutional right of the Legislature to legislate upon this class of questions? And, second, if any doubt exists, should it be removed?

It was to these two points that the committee confined itself in its deliberations, and it is to these two points that I shall confine myself in my opening statement. Upon the first point the committee reached the conclusion that doubt exists. I do not mean to enter too minutely into a discussion of each branch of this subject, as to some of which it may be conceded that the Legislature now has the right to legislate, and as to others of which it may be contended that there is doubt. But, broadly speaking, the committee reached the conclusion that there is doubt, and also the conclusion that such doubt should be removed.

It may be somewhat surprising to the members of this Convention, — it certainly was to me, — that this subject has received such exhaustive consideration at the hands of the General Court, extending over many years. Without wearying you with the details, let me briefly state the facts that, as to the subject of workmen's compensation, there was legislation in 1887, in 1903, in 1907, in 1908, in 1909 and in 1910. In 1907 a commission was appointed on old age insurance and kindred matters. The conclusions of that commission may be found in House Document No. 1400. In 1913 a commission on pensions was created. The conclusions reached may be found in House Document No. 2450. In 1914 the director of the Bureau of Statistics was required, in connection with the decennial census of 1915, to gather certain statistical information, in order that the subject of old age pensions might be considered intelligently. In 1916 a recess commission on social insurance was appointed, which reported in House Document No. 1850. In 1916 a joint special committee on workmen's compensation, insurance rates and accident prevention was appointed, whose conclusions may be found in Senate Document No. 370. In 1917 His Excellency the Governor in his Address to the Legislature urged certain forms of social insurance and recommended compulsory health insurance. And, finally, in 1917, a commission on social insurance was appointed, which confined its deliberations to problems of ill health. Its report is found in Senate Document No. 244.

I mention these various investigations for the purpose of impressing upon your minds the fact that the subject is one that frequently and seriously has engaged the attention of the Legislature and, at least in one instance, has challenged recommendations from the Governor of the Commonwealth for legislation. It seemed to the committee that it would be in the highest degree unfortunate if any conclusions reached by the General Court upon this subject, after so many years of deliberation, should be clouded by any suggestion of unconstitutionality.

The committee was not in entire accord as to the best way of expressing that conclusion in the form of an amendment to the Constitution. Some of the committee, with whom I found myself in accord, believe that one amendment, general in its scope, should be adopted, — the amendment which I have just moved and which has been read to the Convention. Others of the committee thought it would be wiser to have a separate amendment for each branch of the subject; and those of you who care to read the report will find the comprehensive single amendment which has been read from the desk, and the separate amendments, there printed. In this way the committee is able, as comprehensively as possible, to present the results of its deliberations to the Convention.

In Chapter 1 of the Constitution, dealing with the legislative power, Section 1 of Article 4, certain general powers are given to the General Court. That article was amended in 1821, Article 2, giving the General Court power to create municipal government; in 1912, giving the General Court the power to prescribe certain methods of taxation for wild lands; and it is more properly to this part of the Constitution that the amendment proposed by this committee would attach.

This is as concise a statement as I am able to make of the results of the deliberations of the committee, and its reasons for reaching them; I at this time refrain from any further comment.

Mr. Dresser of Worcester: I should like to give notice of two amendments and ask that they may be printed. They deal, one with the general authority which is referred to in the resolution, and one is addressed to the special authorities; and as it is a matter of phraseology perhaps it will be convenient if they might be printed.

The only amendment moved by Mr. Dresser is cited at the beginning of the chapter.

The debate was continued Friday, June 21.

Mr. John D. W. Bodfish of Barnstable moved the amendment cited at the beginning of the chapter.

Mr. Bodfish: I would not rise to discuss this question if I did not feel that I could contribute some information to help you in determining what should be done. Yesterday we listened to the discussion of pensions under a report submitted by the committee on the Bill of Rights. That committee was concerned primarily with the anti-aid or sectarian amendment, and such attention as it gave to the question of pensions was given from the single angle of the effect of pensions upon creating special privileges and class distinction. The discussion showed that there were many phases of the question which that committee had not considered, and rightly so, because that committee was

not charged with inquiring into this subject in the broad way, as has been done by the committee on Social Insurance.

As the chairman of the committee on Social Insurance pointed out to you yesterday, our committee considered the question of pensions, insurance and compensation, covering the whole field, and the result of our examination of the question ought to be of interest to you. I assume that most of you have been busy about the matters of your own committees, just as I have, and that you have not given much attention to this matter; and I trust that in the discussion I may have your attention to the end that you may get what information I am able to give. I shall not waste your time; I simply shall discuss the facts as I understand them.

Our committee came immediately to the conclusion that it was not necessary for us to consider these different propositions upon their merits. The very fact that there have been so many investigations by special commissions and recess committees of the Legislature at a great expense to the Commonwealth, and the further fact that there is more or less satisfactory legislation upon our statute-books along these lines, we took to be conclusive that legislation of this character was desirable. The first question, therefore, that we took up was whether or not the Legislature now has sufficient authority under the Constitution, as it now is, to deal with these questions in the broad way that it may deem expedient for them to be dealt with. We decided that the Legislature has not now that authority; that there is doubt as to whether such legislation, especially if compulsory, is constitutional. Accordingly we decided there was need of an amendment. You all are familiar with the constitutional argument of the right to contract freely, of taking property without due process and of exercising the taxing power for private ends. Because of the attitude of our courts and the judgments rendered by some of them and the discussions which we find in the opinions of our judges, it seems certain that there is grave doubt as to whether the Legislature can deal with these questions as changing conditions may seem to require.

Then on the question, Is it proper, is it desirable to give to the General Court, to the legislative body, this full power? our committee decided that it was; that the General Court should have full power to deal with these questions as in its wisdom it might see fit. You will find the exact language of the committee on which we were all agreed on page 3 of document No. 327. We have more confidence in the General Court than some of the members of that body who are present with us. It may be that the General Court has not done what it should have done in the past, but we are willing to trust the General Court of the future. We cannot understand the intimation made, I think by the gentleman from Somerville (Mr. Underhill), that members of the Legislature who are also members of the bar would allow themselves to be unduly influenced by our judges who but a few days ago were paragons of virtue and now are making cowards of the lawyers who happen to be in the Legislature.

So our committee came to the question of what manner or form of amendment we should offer. There were those in the committee who believed that we should offer a single amendment. There were others who believed we should offer separate amendments dealing with the various phases of this subject. I am one of those who do not believe

we should submit several amendments to the people dealing with four different groups of social insurance which we now know about. Within the life of the amendments there may be a score, and why should we attempt now to limit the constitutional amendments to what we know at the present time? Besides, it seems to me that this is legislative detail, and perhaps I may be pardoned at this point if I say that I do not believe that this Constitutional Convention has been called together for the purpose of enacting or writing into the body of our fundamental law legislative matter which has failed to get by the General Court. It seems to me that that is not a constitutional function.

I call your attention now, as I have on one previous occasion, to the definition of a Constitution as laid down by Chief Justice Marshall in the opinion in the case of McCulloch *v.* State of Maryland, reported in 4 Wheaton, 316, which opinion is reckoned as one of the great State papers of America. In that opinion Chief Justice Marshall said in substance:

> A Constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. (4 Wheaton, 316, 407.)

Keeping that in our minds let us come to the consideration of the different propositions of our committee.

You will notice that in making our report we came to no definite conclusion. We reported that we ought to do this thing or that thing, but we did not report that anything specific should be done. It was partly because of the way that the report was left by the committee that I filed a minority report recommending something definite; recommending the resolution that you find in document No. 378.

Let us consider the resolution that was moved yesterday afternoon by the delegate from Worcester, the chairman of our committee (Mr. Washburn). I call your attention to it:

> The General Court shall have power to establish systems of social insurance, including old age pensions or insurance, pensions for physical disability arising from any cause, health insurance, maternity benefits, insurance against unemployment and compensation to workmen or their dependents for injuries incurred by workmen in the course of or arising out of their employment. It may provide for medical care as well as a money payment, and may require that the cost of any such system or systems shall be borne in whole or in part by the Commonwealth or any civil division thereof, or by the insured or by the employer. It may provide that claims may be adjudicated with or without a jury, and that employers contributing to the compensation of injured workmen or their dependents shall not be liable to any other claims for loss or injury.

What is social insurance? Who knows? Why invite litigation by using a term that has not been defined when a broader term will do? Why should we specify six kinds of social insurance when in the lifetime of the amendment there may be, as I have said, a score? It seems to me, that this is going into legislative detail.

On this point I call your attention to the Federal Constitution, Article 1, section 8, the commerce clause: "The Congress shall have power" (among other things) "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes;" — just a few short words, and yet see what has been accomplished under

that commerce clause; everything from regulation of the railways to the white slave traffic. Suppose the men who drafted the Federal Constitution had undertaken at that time to define the term "commerce among the States," how far short the most far sighted of them must have fallen of what actually has developed. The very strength of the Federal Constitution lies in its simplicity and brevity. Why, then, should we, in amending the Constitution of Massachusetts, write it full of legislative detail, write it full of definitions which to-day may be correct and to-morrow not? Why should we talk about medical attendance as well as money payments in a constitutional amendment? Why should we attempt to say that claims may be adjudicated with or without a jury in an amendment dealing with social insurance? That is essentially a question of judicial procedure. Why do we deal with it here? It seems to me that that amendment cannot prevail; it seems to me that it ought not to.

Now I call your attention to the amendment which I have offered, — only a few words:

> Full power and authority are hereby vested in the legislative department to establish any system or systems of pensions, compensation or insurance for the reward, relief or protection of any person or persons, and to make any provision for such fund or funds as may be required therefor.

It seems to me that something like that is what we want. It clearly will be evident to you that in drafting this resolution I have taken my committee at its word when they say in almost exact language on page 3: "We believe that full power should be given to the General Court to deal with these questions as in its wisdom it may see fit." I have taken them at their word. It is my conclusion, it is the conclusion of the full committee. Why not, then, draft a resolution as broad as that conclusion? That is what I have aimed to do, and the form is the form which is followed in article 4 of section 1 of chapter 1 of part second of our Constitution, where powers are conferred upon the General Court, and the same form that is followed in the amendments of that article, amendments 2, 41 and 44. I have used the words "legislative department" tentatively because I did not know whether the term "General Court" was the proper one at the present time with the initiative and referendum amendment pending as we have reported it. I have used the terms "pensions," "insurance," "compensation," for those cover every phase of the question. And I have used those terms without qualification or restriction.

You will notice that I have used the words "reward, relief or protection." Protection is of course the object of compensation, such as is provided in the Workmen's Compensation Act. Relief is of course the primary object of pensions.

Mr. Washburn: I notice that the resolution reported by the committee is limited in terms to some form of social insurance, whereas, as he says, the amendment which the gentleman is now advocating is unrestricted. It provides for any system of pension or compensation. Does he not think that his resolution is repugnant to the resolution which was passed yesterday to its third reading, the resolution reported by the committee on the Bill of Rights?

Mr. Bodfish: It was my intention to deal with that point in a few moments. If I fail I wish the gentleman would call my attention to it again. I was discussing the terms used in Convention Document No.

378, in the resolution which I have moved as an amendment, and I had got as far as the words "reward, relief or protection." I had stated that the purpose of the Workmen's Compensation Act was protection. The purpose of a pension primarily is relief.

It may be well for us to consider at this time a matter which was raised yesterday when we were discussing document No. 308 and the amendments to it. It was evident that the purpose, the primary purpose, of pensions, has been exceeded by the General Court, and they have gone beyond the province of relief into the province of gift. In the case of Lowell *v.* Boston, reported in the 111th Massachusetts Reports 454, the statement is made that "an appropriation of money raised by taxation by way of gifts to an individual for his own private use exclusively is clearly an excess of legislative power." If that be so it may well be that the pensions which we now are paying to our judges, and perhaps to some others, would be found to be unconstitutional, if the cases ever were tried out. But it is well for us to remember that pensions are given primarily for relief, and that is the reason why, I take it, the committee on Bill of Rights in its report has attempted to limit pensions, — because they have gone beyond the province of relief.

I favored the amendment suggested by the gentleman from Winchester (Mr. Dutch) because it recognizes this character of pensions, just as did the report of the committee on Bill of Rights. It seemed to me, however, that one of the provisions in his amendment was better than the provision in the amendment of the committee on Bill of Rights, namely, leaving the amount of such relief, by way of pension to which the beneficiary had not contributed, to be fixed according to the needs of the person, and not attempting to name an arbitrary figure, which to-day might be adequate and to-morrow inadequate. But I concede that there is some danger in this; and I am ready to concede that pensions which the beneficiary gets without any contribution on his part, whether he has been a careful and thrifty man or whether he has been a spendthrift, — should be limited. I am willing to concede perhaps that he ought not to receive anything more than the necessaries of life, while the man who, perhaps, has been more thrifty, and who has provided for the future by way of contributing to some sort of insurance, ought to be allowed to have more. I can conceive that it would be a tremendous burden upon the Commonwealth if pensions were given to everybody in excess of his actual needs.

I call your attention to the fact that now society is charged with giving to all of its unfortunates, and those who may be in need, sufficient for their needs. That is a duty which society long has recognized. That is not a duty which we can avoid in this Convention. It is a duty which every Christian Nation, and every other nation that is at all humane, recognized long ago, not only because it is a duty to do it for the persons who need it, but it is the best safeguard for society itself; for so long as any in our society receive less than their needs they to that extent are less efficient, and can contribute less to the public than they otherwise could. So it is a matter of self-preservation for the public to give to those in need and see that they have their needs met.

I am quite ready to concede also that the Convention may think

that it is wise to fix an arbitrary sum and not leave it to the General Court; and if that seems wise to the Convention I submit that we can do that easily by taking this great general proposition which is embodied in my amendment and attaching to it a limitation to that extent. For instance, something like this: But no such system shall be established providing for the payment of more than $1,000, if you choose to fix the amount, or more than what may be needed to meet the necessities of the beneficiary, if you choose to leave it open, to any person who is in the public employment, except perhaps your war veterans and those who have contributed. That is what the gentleman from Boston in charge of the report of document No. 308 (Mr. W. H. Sullivan), had in mind, and that could be effected without repeating nine or ten lines from the Constitution. There is no need for that. We know the purpose of our constitutional amendments, and of our Constitution. It is to get justice between man and man and to prevent class distinctions, and we do not need to repeat it more than once in our Constitution. It seems to me that could be handled easily by attaching a limitation of that kind, if the Convention sees fit, to the proposition which I have put before you.

The only limitation which appears in the resolution which I have offered is simply this: . . . "of any person or persons." It excludes property, and insurance of property is not in the province of social insurance, and should be excluded. It leaves the provision for establishing a fund entirely to the Legislature. What is the use for us to say that the Legislature may do it in this way or that way or the other way? Why not leave it to them to do it in any one of the ways they see fit, without naming those ways?

Last of all, I avoid any reference to the adjudication of the claims, with or without a jury. It does not seem to me that it is wise to deal with this question here.

One other word I wish to call to your attention, and that is the word "reward," — "for the reward, relief or protection." It seems to me that it is important that we give the General Court power to reward those who have given good service, either on the bench, in time of war, or in conflagration, or in any other dangerous position. If they have given good service to the Commonwealth it seems to me that we ought to leave the question open as to whether or not they have been fully paid. It may be that such people, as they advance in years, may be without the means of support, or they may be in need of more than they have. It seems to me only fair and proper that the Commonwealth should continue in the future, as it has in the past, in rewarding those who have rendered good service to it.

So I trust that the amendment, worded as I have worded it, in the main may be substituted for the report of the committee, which recommends nothing, as you will notice; and then changes may be made to make it meet our desires. I do not for a moment consider it to be perfect; but I submit to you it is a hundred times more perfect than the other proposition, — the other general proposition, submitted by the chairman of our committee. I do not think we want to go into all that detail. But it seems to me that we must adopt some amendment of this kind.

It would be exceedingly unfortunate if the Convention failed to recommend some broad and simple amendment for adoption by the

people, covering this great field of social insurance, which daily is becoming more and more complex and as to which more and more problems are being raised every hour because of the conditions incident to our industrial centers. It seems to me, when we consider that our population is moving rapidly into the cities and rapidly leaving the farms, rapidly becoming dwellers in tenements rather than in their own homes, that we ought to leave the Legislature free to act upon these questions as changing conditions from time to time may show is wise and expedient.

I am deeply interested in every subject before this Convention, but naturally enough perhaps, this is one of those subjects which lie nearest to my heart; for I know by personal experience and actual contact something of the suffering and the sorrow of the unfortunate and the poor. I know many times they are not to blame, as some contend. I know there are those among us who contend that every man is the architect of his own fortune or misfortune. That is not true, and we ought to give our General Court the necessary power to help those who need help, so they may save their self-respect. I recall the words of the gentleman from Quincy (Mr. Blackmur) who, speaking on another question, said that not one in ten could meet the added burden of sickness and pay the expenses. He said they would promise to do so to keep off the poor books, but they could not do it.

Therefore it seems to me, if not one in ten can look out for the future, that we ought to leave the General Court with power enough to meet any such situation. Therefore I hope the substitute I have offered will prevail. I thank you. [Applause].

Mr. Dresser of Worcester: The chairman of the committee on Social Insurance and the member who last spoke have outlined very clearly the subject which is before us for discussion. This is not a matter of legislation or discussion of the details of any of these supposed insurance matters. The report of the committee shows how vast that subject is. It has been in the minds of the Legislature and of special committees for some years, and neither in Massachusetts nor in any other State of the Union have any of these proposals as yet been adopted.

There are two questions, as the chairman has said. In the first place, is there any doubt as to the constitutionality of any of the proposed schemes? And, if there be doubt as to any of them, should that doubt be removed? I should like to address myself, if I may, to each of those questions.

In the first place, we have under our system a written guarantee, protected by the courts that we have established, of security to life and liberty and property; but the man's liberty is controlled, and his property is held at the disposal of the State for its public uses, and of the State for its public welfare, under the police power. The constitutional doubt concerning any one of these questions is found in the midway, if I may say so, — the balance to be preserved, — between a valid exercise of the police power, or of the taxing power, on the one hand, and the security in the private rights of freedom of action and of property, on the other.

We have seen, very rapidly in the last few years, an extension in the view of what is a public use and what is a proper exercise of the police power. This power has been defined and its flexibility stated, perhaps as broadly as possible, by Mr. Justice Holmes, in the Noble State Bank

case, and I should like to call that to your attention, because that definition seems to me to lie at the basis of the constitutionality of all of these proposals. He said:

> It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

Now, adopting that idea as an existing and proper constitutional basis, I should like to test the validity of these different forms of insurance, which cover all the vicissitudes of a reasonably active life, from a few weeks before the cradle to a few days after the funeral. They are these: Maternity benefits, sickness insurance, accident insurance, invalidity insurance, old age pensions and death benefits. I leave out in that enumeration two other things which are not social insurance. Workmen's compensation is not social insurance, and unemployment is not social insurance. Those are systems of law or of regulation applying solely to rights attaching to a status in a community, — the status of employer and employee.

Mr. BODFISH: Will the gentleman tell me where there is any authoritative definition of social insurance?

Mr. DRESSER: There is no such definition, and that is one reason why I object both to the member's amendment and to the amendment proposed by the committee. We must not enact here so vague a phrase as "social insurance," which varies in all our minds.

Mr. BODFISH: I should like to ask the gentleman where he finds any reference to "social insurance" in my amendment.

Mr. DRESSER: Perhaps I am misinformed; I have not the amendment before me. I beg the member's pardon; he did not use "social insurance." He used "systems of pensions, compensation or insurance." The committee, however, did so.

Now, perhaps it will be necessary to describe a little bit what have been thought to be the proper schemes under these different insurances. Let us take the first one, of maternity insurance. The proposal there has been generally that a woman should receive proper medical care before and after childbirth, and that if she is of small financial resources some payment should be made to her for a few weeks, to allow her to take the rest necessary, and to give her and to give the child a fair start in the world. At present we have adopted two statutes which are along that line. One is the provision that no woman shall work, — be employed, — for a period before and after childbirth. The other, which is along the line, is our system of mothers' pensions. We have declared as the policy of the State, so far as we can, that a child shall come into the world under proper conditions and shall be protected. I have very little doubt that if it were desirable to provide that the woman in such condition should have medical attention, and should have a payment which would allow her to give up her occupation, it may be done now as incidental to the protection of the public health and of the children who are the wards of the State. So far as maternity insurance, payable by the State or by the municipality, as widows' pensions now are payable, is concerned, it is incidental, I think, to the protection of the public health and does not require an amendment to the Constitution to permit it.

Next is the vexed subject of health insurance, or sickness insurance,

which has been debated before two recess committees, in 1917 and 1918, and which has been argued vigorously in California and in New York and some other States. That proposition, as it has appeared in this country, is this: That employees suffering or disabled by any illness or by any accident, for a limited period of time, — twenty-six weeks, I think, — shall be compensated, or, rather, not compensated, but shall receive a proportion of their wages, and shall receive medical care. That has been proposed generally through the means of a fund made up of contributions by the State, by the employers and by the workers. It has been adopted in England, with a little different proportion of contributions. It took its rise in Germany, where the State contributed nothing. The cost of that, as it has been proposed in Massachusetts, is $24,000,000 a year.

The effect of it is to provide care and payment for illness, however caused, or accident however caused. The man whose illness is caused or increased by venereal disease, whose injury is caused by slipping or by a trolley car or by falling down the cellar stairs, draws upon the fund. That proposal has not been adopted anywhere in this country. Some of those losses can be compensated to-day; some of them cannot. Losses through illness or accident which occur in an employment and which arise out of the employment can be compensated; and in Massachusetts alone, of all the States in this country, — with the exception I believe of California, which lately has passed an act, — such illness losses to-day are compensated. So that whatever illness, sickness or accident is due in any traceable degree to the employment is now compensated here.

But the proponents of health insurance wish to go further, and provide not only that whatever loss is due to the employment of a cook or a farmer or a machinist or a bank clerk shall be compensated, but that all their losses shall be. Now, when you pass beyond the connection between cause and result, when you say that a payment shall be made by anybody, State or city or employer, for a loss for which there is not a responsibility traceable to him, you are then offering the property of the individual and the property of the State, as it is collected from the individual, by way of vicarious atonement for all the ills of the community. That cannot be done, in my opinion, under our present Constitution. And therefore so far as health insurance is concerned, or accident insurance is concerned, for which an employer now is not responsible in some degree, as he now is responsible in some degree, — so far as that is concerned, there must be, to permit it in this State, a constitutional amendment.

One form of health insurance is called invalidity insurance, and the same considerations apply to it that I have just stated as to health insurance. The distinction is simply between the acute and the chronic disease. A man who is suffering from an incurable disease would go on the invalidity pension fund. A man with cancer or crippled with rheumatism, from whatever cause, would go to this other fund for invalidity. But the constitutional considerations are the same. If that invalidity was occasioned by his employment, or occasioned by any cause, any traceable cause, it is compensated now; but if it is not traceable to any cause for which an individual or a municipality is responsible, it is not compensated now, and if it should be, an amendment is necessary.

There is one consideration about these proposals: The attempt, of course, is to distribute the losses which are common to all persons, high or low, rich or poor, employed or unemployed, through the community. All losses are not so distributed under any proposal, because they say that is impracticable, and therefore a limit of earning power, a class of wage-earners must be created, who shall be so protected. They select wage-earners, — by "they" I speak generally of persons who advise the English scheme or the German scheme or the scheme proposed here, — they select wage-earners because no other group can be reached and regulated and checked up. People in the same economic condition who do not happen to be employed, the small farmer, the shopkeeper, the truck man, the charwoman, anybody who is running his own business and is not an employee, is not protected; with the result that in England, where 65 per cent of the population are in the same economic condition, only 30 per cent have the benefits of health insurance. The number in Germany is a little over 30 per cent. In Denmark it is 30.5 per cent, in France it is 10 per cent, and in Belgium it is 6 per cent, who have the benefit.

Who pays the cost? Any one of these insurances comes back in taxes, either direct taxes or indirect taxes, to the individual consumer.

Mr. HARRIMAN of New Bedford: I should like to ask the gentleman from Worcester if, in giving these figures of the percentage of people who benefit, it is compulsory in those countries or whether they go into it of their own volition? Is it compulsory for the workers or those who are beneficiaries, or can they go into it of their own will? If it is not compulsory a smaller number might participate in the benefits.

Mr. DRESSER: It is not compulsory in France, where there is 10 per cent, though there are some funds which I understand are aided by the government. In Belgium it is not compulsory, where the proportion is 6 per cent, where also there is some outside aid. In England and in Germany and in Austria, and, if I recollect at the moment, in Denmark, though I am not quite certain about Denmark, where the proportion of the people benefited is 30 per cent, it is compulsory, but it is limited to wage-earners.

Now, the attempt is made, in the proposals in this country, to allow also voluntary insurance, so that the small farmer or the self-employed or the worker of high earnings can come under the scheme; but the administrative difficulties of that are very great, and whether it would result in a larger proportion or not cannot be told.

The point, however, is this: That in attempting to relieve or to distribute the loss of one group in the community you are making, through the indirect cost, another group in the same economic condition pay the bill. If the farmer, under health insurance or under invalidity insurance, is required, as he would be required, to contribute two-fifths of the cost for his two or three employees, that is bound to reflect itself in the price of milk. He passes it on, as any industry passes on such costs as it may; with the result that the quart of milk, which thus costs a bit more, is purchased both by the insured and by the uninsured, and you have one section of the community bearing the burdens of the other, so that the total amount of poverty or loss is not relieved. It is not primarily a question of reaching the rich man.

Death benefits stand also on the same constitutional basis as health insurance or invalidity insurance. So far as death is due to any trace-

able cause, responsible cause, it can be paid for now. So far as it comes from natural conditions it cannot be paid for. And there, again, is the change in the social viewpoint which must be reflected in a constitutional amendment if that change is desired.

Mr. HERBERT A. KENNY of Boston: Does not the community now, in the way of pauper institutions and almshouses, — in that form are they not indirectly taxed, and do they not already pay for the infirmities of this group of which you speak, and would not this system of insurance make it less humiliating to them, to hand them that money, rather than put them into pauper institutions and almshouses?

Mr. DRESSER: That is a rather difficult question to answer. If I remember, in Arizona two or three years ago there was presented and carried by the people an initiative petition establishing a system of old age pensions, based on the theory that thereby the almshouses would be emptied, and the initiative petition accordingly provided that the almshouses should be sold. That was carried by the kind-hearted people of Arizona, and as a result they started to sell the almshouses, when they discovered that the almshouses were not filled by the old people who were going to be benefited under the pensions. They were filled by deserted children, they were filled by incompetents, and, the question being tested under the Arizona Constitution, the court held the law was invalid. That, I believe, is the only attempt to pass an old age pension in the country, so far as I am aware.

But it is not true, I think, that there is any substitution of the people now cared for. We always have got to care for our poor. We do. We always have got to make certain that the person whose resources are such that he cannot carry his own weight shall be cared for. We must give him medical care through our hospitals. We must provide for his existence.

But the question is not a question of pauper legislation. Pauper legislation is constitutional. We do not treat this as pauper legislation. It is aiding the person who does not have perhaps quite enough, but who is not a pauper, and thus is a redistribution of property, and that is, I think, the real question.

Now, with reference to the old age pension, that is an entirely distinct subject from what was under debate yesterday. The questions that we debated yesterday were service pensions.

Mr. BROWN of Brockton: Will the gentleman, before he passes to the topic which he now is taking up, enlarge a little bit upon what he means by redistribution of property?

Mr. DRESSER: I mean this: That if one penny is taken from me, or if my liberty of action is controlled in any degree, for a cause for which I am not measurably responsible, traceably responsible, then that is distributing my property to somebody else.

Now, it becomes a question of responsibility. Perhaps we all are our brother's keepers. If that is the principle of our social system, then it follows that there is no distribution of property because it is not mine. If we are not, if it is our theory that we shall be permitted to guide our own lives, to acquire if we can a competence and to pass it on, so long as we interfere with the rights of no other, so long as we pay for what we cause, then I think there is a distribution.

Mr. BROWN: I should like to ask the gentleman if the opposite of the proposition is true, in this way: If society has taken something from

somebody without rendering an equivalent, has that somebody a claim on society to be reimbursed?

Mr. DRESSER: Well, that is an assumption which I am not sure that I follow, — whether society has taken anything from anybody. It seems to me that the view is that society has given things to people. It has given the individual a chance to make his way, it has given him a chance to live his life. That is a very great boon; and thus it seems to me to be perhaps that the grantor is not the individual.

The service pension may be desirable in order to attract men to the employment, in order to keep them, and in order to retire them. That is a purely business proposition. The old age pension is not that. It is either a pauper measure or, as the gentleman who last spoke would say, a restoring to the man of something that during his life had been taken from him. Or it may be a third thing, a reward. I will not take the time to follow out those theories, but any one of them it seems to me requires a constitutional amendment to make possible, unless it be the pure question of pauper relief.

What I have tried to set out is that to-day, so far as these systems of so-called social insurance are concerned, there is a need for a constitutional amendment if the theory of personal responsibility is to be forsaken, and if instead there is to be a community fund collected from all sources and distributed to a portion of the people.

The workmen's compensation system and the system of unemployment insurance, however, have a definite basis of responsibility and affect a certain legal relation, and that is why they have been held valid. I think some time ago I stated to the Convention my belief that under the Constitution of Massachusetts as it stands to-day a compulsory workmen's compensation act is valid, and I will not go into that argument further. If it is constitutional, and if the payments which are made under it are, as I believe them to be, a license or a tax, then the agency which shall distribute those payments, whether it be the employer himself, whether it be a private insurance company or whether it be a State fund, is at the will of the Legislature. It can direct what shall be done with that tax. Therefore there is in my opinion no reason and no need for a constitutional amendment to make a compulsory workmen's compensation act, or even a State fund under it, valid to-day in Massachusetts.

Mr. BODFISH: If the compulsory workmen's compensation acts would not be constitutional under the Constitution at present, would not the pending amendment permit them to be made compulsory?

Mr. DRESSER: It would, but that suggests one of the virtues of our system of government. I believe that the fairest way and the best way to get any law is to try to work it out, retaining and within our constitutional guarantees, until we find we cannot. It may delay, it cannot be done in a year, it may not be done in three years, but if one tries and tries again perhaps it may be done. Take the income tax legislation, for example. It went, if I recall at the moment, three times in different forms to the court before it was certain that a constitutional amendment was necessary. Now, let us work this out, and if we can we shall be as sure as possible that all rights are protected. If we find it cannot be done then is the time to ask for constitutional change. We never have tested a compulsory workmen's compensation act in Massachusetts, but a compulsory workmen's com-

pensation act has been held valid in some other States and by the United States Supreme Court.

There was one other insurance, that of unemployment. It is a loss to the community when business conditions close down mills and throw workmen out of employment. It is a thing which comes without the fault of the workman, which comes without the fault of the employer. It has in it the basis upon which insurance can be built, and being purely a master and servant hazard I see no difficulty, no constitutional difficulty, in adopting a plan if it could be worked out practically, which should distribute or insure that loss which both parties to the relation suffer. I speak simply of the constitutional question. That limits the need, if my reasoning is sound, of constitutional change to a grant of power to provide for losses for which there is no definite responsibility; that is, where all property theoretically is turned into a fund to be distributed to a part of the community. Now, we must preserve the theory of responsibility, for this reason: You cannot cure an evil unless you find who is responsible for it. Preventive work in health or in accident or in any other way is not accomplished unless you first find the human agency that is doing harm and then assess it, and that is the theory on which we have proceeded hitherto. The mass of health regulations, of safety regulations in Massachusetts are all directed toward the person who, in violating them, may be responsible for the loss, and that has been one of the reasons why our death rates, our sickness, even our accident rates in well-conducted mills, have been decreased. So that there is the practical objection in this community insurance, if I may so phrase it, that it does not work as a matter of prevention, because responsibility is obscured.

Mr. HARRIMAN: Before the gentleman leaves the question of unemployment, I should like to ask if he has any particular theory as to the cause of unemployment. What is the cause of unemployment?

Mr. DRESSER: I have no theory about it. I have tried to show in what respects the proposed amendment is unnecessary and in what respect it changes our principles. It is said frequently in the Convention here: "Well, let us pass the resolution and leave it to be acted upon or not in the wisdom of the Legislature." I protest against that attitude. These amendments are enacting a new social theory. They should be adopted only if we understand the theory and are willing ourselves to adopt it. We might just as well present a resolution that the Ten Commandments be abrogated, altered or repealed, in the judgment of the Legislature. We might say: "Why, the Legislature won't do it, and perhaps the people won't pass it," but we certainly have attacked one of the cornerstones nevertheless. Therefore the suggestion of the committee, that there may be doubt and that possibly that doubt should be removed, is, it seems to me, of critical importance and danger in dealing with this type of question, which changes so substantially our social theory.

I have moved an amendment which is document No. 383 in substitution of the amendment of Mr. Washburn of Worcester, which is No. 382. The differences are very slight, but I think they are important. In document No. 382 the draft is to establish "systems of social insurance," including various things. I have left out the phrase "systems of social insurance," which seems to me to be too vague for constitutional action, and have tried to list the losses, all the losses, that

have been suggested that we should care for. It seems also to be desirable that there should be open in the amendment the possibility or suggestion that public or private agencies may conduct these funds. Undoubtedly some of this business can be done better by a private agency, by mutual insurance or stock insurance, than by city insurance or by State insurance. I do not know. Let the field be open.

I think, for the sake of clearness, it ought to appear, as in the 16th and 17th lines of my suggestion, that there shall be possible a combination of contributors, so that the Legislature shall be free there. Also it ought to be made certain that the cause, that I have spoken of so frequently, should be defined, and therefore there is a change between the chairman's draft and my draft in this respect. Instead of saying "accidents arising out of *or* in the course of employment" I have adopted what is now the law and what hereafter should be the law: "arising out of *and* in the course of employment." In Japan their compensation act allows recovery for a person who may have felt the pains of approaching illness outside the mill gates but actually became sick when he got within the employment. To adopt the words "arising out of *or*" instead of "arising out of *and*" uses the fact of employment merely as a pretense on which to hang liability where the employment as such has nothing to do with it, — has no responsibility for the loss.

Those I think are the only changes; but it seems to me that in so serious a matter as this, if any amendment is to be adopted, — and perhaps I need hardly say that from my view of the law and of what we ought to do no amendment should be adopted, but if any amendment is to be adopted, — it should be as clear, perhaps, as possible. [Applause.]

Mr. Lynch of Milford: I should like to ask the delegate from Worcester if, following the explanation he already has given, he will not go on and explain from line 23 to line 25. As I understood you, it was your opinion that there was no need of any further delegation of authority to the Legislature for the compelling of the workmen's compensation law; that the Legislature now has that power. I want to know whether or not there is anything of that nature in your last three lines.

Mr. Dresser: It is my opinion that the Legislature has now that power, but those last three lines are put in to give it the power in case my opinion should be wrong. That is, document No. 383 is an attempt to wipe away every barrier to working out systems for the various insurances, but to preserve the suggestion that they may be carried by public or by private agencies, and that employment as such shall not be a pretense for payment.

Mr. Walker of Brookline: I should like to have the gentleman elucidate a little more fully just what effect the change of the word "or" to "and" has. What class of accidents would be eliminated by putting the word "and" in that would not be eliminated if the word "or" were left in, in line 7?

Mr. Dresser: The "course of employment" means simply the period during which a contract of hiring exists. I go to work at seven o'clock in the morning and get through at six o'clock at night, and during those hours I am in "the course of the employment." Now, anything may happen to me during that time! I am struck by lightning. I am stabbed by an employee with whom I have a quarrel. In Massa-

chusetts, where disease is compensated, I drop from heart failure. Each one of those things has happened in "the course of the employment," and therefore, if the law so read, would be compensated. But no one of those things "arose out of the employment." The employment did not send the lightning. The employment did not weaken my heart. The employment did not cause the fellow I was struggling with to stab me. Therefore those particular things, not arising out of the employment, are not compensated to-day, — I speak broadly, — and of course ought not to be. Industry did not bring the lightning. And therefore it is necessary, in order to fix responsibility, that the thing to be paid for, whether it be disease or accident, be something that industry has had a part in causing; that it happened, not only during the period of the employment, but that to a measurable degree it was caused by the employment. That is the reason for the change from "or" to "and", and it is an important reason.

Mr. MANSFIELD of Boston: The gentleman from Worcester (Mr. Dresser) appears to have been very careful in the choice of his phraseology. I should like to ask him to address his attention to lines 20, 21 and 22 in Convention Document No. 383, and to suggest this possible example to him as bearing upon the meaning of the language which he so carefully has chosen. Suppose that an employer either during business hours or after business hours should be making his way home through the streets of the city in his automobile, and should run over and cause personal injury to an employee or to a minor child, a dependent child of an employee. Or suppose that during any time, during a strike or otherwise, or during working hours or out of working hours, an employee should enter into a personal altercation with an employee, or the dependent wife or child of an employee, and during the course of it should cause personal injury to that employee. Is not the language contained in those three lines so comprehensive that it would debar and prevent a workman, or the dependent of a workman, from making any claim on account of the personal injury caused in that manner?

Mr. DRESSER: It would not. The employment ceases, the responsibility of the industry ceases when the hour of work is over. To take one of the examples, because I think they all rest on the same basis, if the employer driving from his mill runs over his employee in the street, the relationship at that moment of employer and employee does not in law exist. It is the act of one individual as against the other.

Mr. MANSFIELD: My suggestion, or possibly my criticism, if it may be so regarded, is based upon the fact that nothing is contained in line 22 which refers to the matter of employment or which necessarily is correlated to the relationship of employment stated in the earlier part of this resolution, but the language is so broad that it might include a claim for personal injury of any nature. The language is: "shall not be liable to any other claims for personal injuries". It does not say "arising out of the employment", and it seems to me that that inference is not necessarily attached to that phrase.

Mr. DRESSER: I hardly think it would be so construed. The word "workman" is there, but if there were any chance of such construction it certainly should be corrected. That is not the intention, and any amendment which would save the point which has been raised certainly should be made. I have not assumed that there was any doubt

about it, and do not now, but it should be taken care of if there be a doubt.

Mr. COLEMAN of Boston: I think we all understand that this whole subject of social insurance is one that is relatively new to legislators, and to the people as well, and that this is a matter on which no one as yet is very much of an expert, because the conditions already are intricate and complex and they are changing constantly. When we look over the field of thought and activity in relation to this subject concerning the last ten years, we see how public opinion has developed with reference to it and how the machinery and methods for meeting the necessities also have been developing. Certainly one looking into the future in the light of the great changes that are taking place in the world to-day must realize that during the next ten years a great many more changes will take place in the development of public opinion and in the invention of machinery for meeting these needs that are coming more and more clearly to light. It seems to me that it would be a very great mistake to attempt to write into the Constitution at the present time the details that are attempted in the amendment which is reported by the committee. It evidently is not altogether satisfactory to themselves, for they already are making amendments to it. The proposition presented in the minority report by the delegate on my left (Mr. Bodfish) is so simple, so comprehensive, so sound and so definite that it provides for the situation as it is to-day and for the situation as it may become in the next ten or fifteen years. It seems to be wholly in line with the general principle that should govern us in all our deliberations with reference to amending the Constitution, namely, to stick as closely as possible to broad and general principles and to avoid as much as possible details and intricacies. It seems to me that we would be on very much safer ground if we stuck to the simple, broad, general principle outlined by the delegate from Barnstable (Mr. Bodfish).

Mr. COX of Boston: In the resolution moved by the chairman of the committee I find the words "to establish systems of social insurance", and also the word "insurance" is used in other places in the resolution. At the same time the resolution provides for the establishment of pensions, old age pensions and pensions for physical disability from any cause and pensions on account of health, covering, it seems to me, all cases for which pensions can be conceived. In the minority amendment offered by the member in this division (Mr. Bodfish) we find the words "any system or systems of pension compensation or insurance for reward, relief or protection of any person or persons." Relief or protection! I call attention to those words. I think at least one of the amendments offered by the member in the third division (Mr. Dresser), — I refer to Convention Document No. 383, — strangely enough has the caption "To establish systems of social insurance", although I understood the author to protest when he was upon his feet that he objected to writing into the Constitution so broad a phrase as the term "social insurance."

The point which I wish to call to the attention of the Convention at this time is that we have here in all these propositions inextricably involved the idea of pensions and of insurance. Now, it occurs to me that they are subjects which should be kept apart. Insurance involves a totally different set of principles and ideas than do pensions. In

furtherance of that point, I submit for your attention Convention Document No. 319. I do not know whether or not all the members here are familiar with that. I presume the members of the committee on Public Affairs are familiar with it. But no attention has been called yet to that document, although it is on our calendar for to-day under the number 150. The member who has in charge No. 319 is not present, and I presume is not likely to be present during our deliberations on this matter, and I do not know, — I did not know, — to what other member of that committee to apply to obtain their opinion with reference to that document. But by referring to that document you will see that it is a constitutional amendment to provide for the State taking up any system of insurance, and it is very broad and very comprehensive and would cover, except for the limitation which is provided therein, anything which possibly could be provided by the resolution offered by the majority of the committee or the minority of the committee on Social Welfare with regard to insurance, for it says definitely that, the sharing or equalization of risks by means of insurance being a matter of public interest, the General Court may provide for insurance of any and all kinds by the Commonwealth; but the liability of the Commonwealth for risks and losses shall be limited to the funds derived from such insurance.

Without taking up the time of the Convention this morning to urge the Convention to adopt any ideas of mine with reference to insurance or with reference to pensions, it seems to me that the Convention should have in mind when acting upon this matter the resolution to which I have called your attention, No. 319, and there should be some consideration paid to the question of pensions on the one hand and of insurance on the other, and the views of the members should be ascertained as to whether you are going to permit at this time the State to go into any and all kinds of insurance without any limitations at all as to how the funds for that insurance shall be demanded and collected by the Commonwealth or its subdivisions, or whether you are going to leave that wide open so that insurance may become a gratuity in every sense to any particular class or division or group of people whom you may select for your gratuity, as you may for a pension. Pensions, as we understand it, usually are given for some reason closely allied with the police power or the social welfare power of the State, and not with merely business and economic reasons, upon which insurance can depend wholly for its function.

Mr. Brown of Brockton: I desire to offer an amendment to document No. 383, to strike out the words "payable from or provided by", and also lines 13, 14, 15, 16, 17, and 18; in document No. 382, offered by Mr. Washburn of Worcester, to strike out, in the fourth line, the words "social insurance, including", and in document No. 384, offered by Mr. Dresser, to insert after the word "may", in line 9, "or may not."

The Presiding Officer: The Chair does not understand that document No. 384 has been moved yet.

Mr. Brown: Very well, sir, then I cannot attempt to amend something that is not before the Convention. But there are two documents which I assume are before the Convention, Nos. 382 and 383, and I would say the effect of the amendment is to strike out the suggestion that pensions or gratuities or rewards are to come through a system of contribution. The amendment opens that whole question as to

whether we shall provide that pensions may be given either with or without contributions.

As an explanation of my stating yesterday or the day before that the only opportunity you would have to introduce this question was in the matter then pending, I would say that I did not discover anything about pensions on the calendar. I was misled by this word "social" insurance.

I want, in what little time before adjournment I have got, to address myself to this question which I asked the gentleman from Worcester (Mr. Dresser): Is a pension a gratuity? Does it take something from the wealthy and bestow it upon the working-man as a gratuity? I think I speak for the working-men that in that case they do not want it; it is undemocratic, it is contrary to the spirit of our institutions. Pensions must be granted on some other theory than that, and I think the theory of labor men is plain. I ask anybody in this Convention, — all are conversant with the history of Massachusetts, — was there not a time in this Commonwealth when there were no millionaires and no paupers? Was there not a time when the suggestion of a poorhouse carried with it unmistakably, — and it did all through the old New England days, — that if a man went to a poorhouse it was a direct reflection upon him; that he himself had been responsible for his condition? I say that period extended over quite a number of years, and what we ought to discover here is: Has there been such a distinct change in conditions that we have got to engraft something new on our system? And, secondly, if there is a change, who is responsible for that change? Is it the individual working-man, or is it society? My contention would be that it is society, and that society, having committed an injury, is called upon to make good in the shape of a pension.

Now for some authority. Adam Smith, writing in 1776, said that only three men out of a hundred men failed to make a success in business. That is in his "Wealth of Nations." He goes so far as to explain that at least two of these three were in some way responsible for their failure, and brings down to the very small minority of one in one hundred who failed in business. Well, if you examine the records, which any one can do, you will find that a certain amount of industry and frugality led to the certainty that a man could pass from being an employee to being an employer. Statistics show that 75 per cent of our American people up to the time of the civil war were their own employers; they were so far independent of others that they were not obliged to bend the knee in any way in order to get a living. Examine to-day and you will find the situation is reversed. The number of our American people who are their own employers, who are free and independent, who have got that freedom which undoubtedly is contemplated in our institutions, the freedom which was contemplated by the founders of our government, is not 25 per cent of the whole.

Now, something has happened, and it is because that something has happened that you have the prevailing unrest; the possibility of remedying that seats us in this Convention. Let us suppose, for instance, that all the people are employed in the old-fashioned way. Each man is practically a producer and his own distributor. He manufactures his article and he carries it to the consumer, and he obtains the product of his toil. Under such a system, which once obtained in our Commonwealth, the able lawyer, the respected squire, was a man

who not only studied the law but he also was obliged to labor on his farm. It was the same with the good old minister; he often was farming; and it was so with the village doctor, who would saddle the horse and with medicine bags ride out to minister to those who had called him. You might enlarge that picture. But I am presenting an example of the social democracy which once prevailed in this country, especially in Massachusetts. It was the outgrowth of such a direct expression of the institutions which our forefathers sought to found. All the way from the beginning down to 1820, 1830, 1840, down through to 1845, and almost up to the time of the civil war, — there was depression, of course, — but all through that period you saw coming out of our system of government such a system of social welfare, such a system of distribution of wealth in proportion to its production that the producer who earned it received the proceeds of his creation. It certainly was socially beautiful. It is worthy of study. A man can have a peaceful few minutes if, in passing through the roadways of our good old Massachusetts, he can turn back, and in fancy see the conditions under which a summer afternoon like this would be passed by the great number of the people of this Commonwealth. Why, even our mill towns had no such conditions as you have now. Our mill towns and our mills were made up largely of sons and daughters of New England families coming to earn their living in the mills. While there the evening lyceums and other educational institutions and lectures found them in attendance. The conditions contributed to their uplift. It was not in the slightest degree contrary to their dignity of position. Why, some of the good old names in this Commonwealth, which now are found by the initials on the most expensive autos of their sometimes recreant descendants, belonged to plain tradesmen and artisans, — and honorable men at that! They were not aping aristocratic ideas which now are used to dissipate the wealth they created.

My assumption is this: That while this peaceful system was in progress there came forward a new system of production; we will say, for instance, a labor-saving invention. Well, now, if society adopts a labor-saving invention and thereby secures a large benefit in the way of a cheaper production, and as an incident to the use of it people who otherwise had had a peaceful course of employment are thrown to the scrap-heap, is society under any obligation to reimburse those people who thus have been thrown out? If we accept that as a question we commence to get somewhere near the basis upon which labor can claim that because of certain benefits which society has obtained by the sacrifice of hand labor it is called upon to restore a portion of the loss to certain individuals who have not received the large benefit from the new invention which society as a whole has received. That is a proposition that can be laid down as a basis upon which pensions should be granted. I am not speaking, of course, of the working-men's compensation; but I am speaking of this idea that an old age pension is necessarily a gratuity if the beneficiary has not contributed.

And again comes another theory. If society is going to be interested in the individual, if we are going to build up a new democracy, is not society justified in creating a system whereby a large amount of selfishness is eliminated from the individual and thereby the best efforts of that individual are given to the common good? That is to say, by

establishing a system of old age pensions the individual may know that, no matter how much of his life he may give to the welfare of humanity in one way or another, when old age or want comes he will not want. Will any one contend here that an individual would not make then a larger distribution of his personal efforts in behalf of the brotherhood than he does at the present time? Cannot we assume that the individual's human nature is all right, but confronted as it is with the conditions which surround it under our present social system a man becomes selfish? Without intending it, we have established a social system where men walk on others because they fear if they do not that they may at some time come to want. Now, it is along those lines that I think we should act here for the common welfare, and we should act for nothing else. It certainly is along those lines that you will find that persons are writing and speaking and trying to exercise influence in our labor-unions. First, that men should associate and pay their money into the labor-unions, for the purpose of helping those who are so unfortunate that they cannot help themselves. By banding together as a union they raise their wages. By investigation, and a close investigation at that, they commence to discover that the wealth production of the individual is such that he does not receive in exchange for it the purchasing power which he ought to receive. The cost of distribution and the various costs which society has thought advisable to impose by our social system are such that the man does not receive the full product of his toil. He does not receive it in wages nor does he receive it in his share of the benefits of the system under which he is living compared with what the distributors receive. He sees others receiving larger benefits than he receives. He sees others, because of this social system, receiving a large amount of profit for a small amount of endeavor compared with him. Do you need any better example than that of our farmers? Is it not true that the most honorable employment should be that of our farmers for farm products or for the dairy industry? Is it not beyond denial that the farmers and farms have been falling into the discard because there is little or no profit? Distribution absorbs it. It is wholly because of the social system, — a mushroom growth, — that the farmers do not receive the remuneration which will induce them to remain farmers.

On this question you either must declare that the cause is in the social system or in the deterioration of the individual; and because he does not measure up mentally or physically with the forefathers he is where he is. It is only by taking that side that you estop the possibility of claiming that it is something beyond him; otherwise the deteriorating cause is in the system, and that the system is so contrived that the wealth that the farmer creates flows elsewhere than into his own pocket. The farmer once had a profit. There came a time when the productive and distributive system changed. It was at the time it was beginning that Webster used that memorable phrase that that Nation cannot long endure where the tendency is to accumulate all wealth in the hands of the few. That was the phrase he used, and the truth of it is unquestionable. Seeing that danger, that the danger was in the accumulation of wealth in the hands of the few, he naturally would undertake in every way that he could to establish some system whereby that tendency would be stopped; and hence you find Webster in the Massachusetts Convention of 1820, and in his acts

and words through his life, holding as a cardinal principle the danger of permitting all wealth to accumulate in the hands of a few. Upon that he based his actions.

The debate was continued after the noon recess.

Mr. Brown of Brockton: At the time that the Convention adjourned I had moved several amendments to the substitute resolutions that are pending, and the effect of those amendments was to provide that pensions could be granted without contributions being essential for them. Those resolutions, as I see them, are limited and are governed by their title, — insurance; in other words, a pension after a man has put something in for it, but he gets no pension unless he has put something in. The amendment offered by the gentleman from Barnstable (Mr. Bodfish), a member of the committee, to my mind is what should be adopted. It deals with the subject as a broad principle and gives to the Legislature power to do anything in the matter of pensions, rewards, gratuities, insurance that it might see fit. I endeavored to make it clear that the whole subject is in a formulative stage; that at the time the Constitution was founded it is doubtful if anybody could have been found who would have suggested the idea of an old age pension, because the social conditions which then prevailed made it unthinkable. I endeavored to demonstrate that the reason pensions are called for now is not because the individual is inefficient compared to what he was in the days when the Constitution was founded, but because his efficiency for a profit is destroyed by a system which has grown up, known as our social system; that our social system is at fault in so far that by the privileges exercised by the distributing agencies it permits wealth to be taken from those who create it without rendering an equivalent; and society having permitted this for purposes of its own convenience, it leaves some individuals so far stranded at the age of sixty-five that an increasing number of them are coming constantly to the point where they are obliged to be supported. My argument was that inasmuch as society has created these conditions society should remedy them. If that argument is not sound, why, then I have little ground upon which I would champion a pension system. As a gratuity I would not. I have held also that by providing a pension, society could guarantee to a man that if he led a proper life he need have no fear of old age; that he may help his brother by the wayside as often as he pleases and feel that because he has helped him he will have at least enough to support himself in his closing days. I have gone that far. If we take up the one question whether or not the Legislature should have the power to create a pension system, we can make more rapid progress.

I think the address of the gentleman from Worcester (Mr. Dresser) was able and one listened to with close attention. There was much instruction in it. But in it is the fear that there is to be a redistribution of property. He used that phrase and I asked him what thought he intended to convey by it. This Convention, a portion of it, has that fear. There is no doubt that those who fear to give the Legislature power fear that wealth which has been accumulated and is in the hands of certain individuals is to be taxed for the purpose of paying it to somebody who has been imprudent; that that is an unjust tax; that

there is no claim there and therefore that the Legislature ought not to have any such powers. I think if time could be given they might be made to see that such a danger is not there. The fear of an unjust distribution of property is no new fear. All through our government from the beginning some people have had the idea that if the majority are given a chance they immediately will walk in and take away the wealth of those who have it. But we have got along thus far without any such exhibition of unjust force.

I hope, therefore, that when we come to vote we shall be enabled in some way to get before us in a few lines the subject of pensions, insurance, compensation, and similar matters, giving the Legislature power to act constitutionally. The subject is in a formulative stage and always will be; you cannot prevent the changes.

Mr. SAUNDERS of Clinton: Before we vote on these various substitutes I think there are one or two points of difference between the proposals which have not been touched upon and which we should have clearly in mind at the time we decide which one is best for us to adopt. Without expressing any great preference for one over the other I do wish to point out to this Convention some of the differences which hitherto have not been clearly stated. In the first place, in reference to the substitute offered by the gentleman from Barnstable (Mr. Bodfish), the difference between that substitute and the proposal offered by the committee, and the substitute offered by the gentleman from Worcester (Mr. Washburn) and also that offered by the other gentleman from Worcester (Mr. Dresser) is that the resolution of the gentleman from Barnstable opens the subject of gratuities, — I might say wide open. Under his language "for the reward . . . of any person or persons," I think there would be left little restriction upon the Legislature in regard to gratuities which it might see fit to extend to citizens of the Commonwealth for one cause or another. It does not seem to me that, under the guise of health insurance or social insurance or old age pensions, any of us, or many of us, want to go to the extent of giving authority to the Legislature to grant gratuities to all persons whenever they may see fit.

Mr. BODFISH: I should like to ask the delegate if I should insert the words "by general law" after the word "establish," whether that would meet his objection. It has occurred to me that that should be done and I had in mind to do it at the proper time.

Mr. SAUNDERS: That would minimize to some extent, I think, the danger which exists in the resolution, but it would not take it all away, because I do not think we want to open the subject of gratuities to certain classes even by general law. The question of gratuities should not be left wholly in the Legislature.

I was very much interested and followed very closely, as every one else did in this chamber, the very lucid explanation of this subject and of the proposed resolution from the gentleman from Worcester (Mr. Dresser). I was waiting for him to explain the language which is included in lines 8 to 20, and unfortunately in his discussion his attention was not addressed to those lines. They are to me the chief difference between his substitute and the resolution as offered by the other gentleman from Worcester (Mr. Washburn), and except for these lines I will say that the language seems to me preferable to the language of the resolution offered by the gentleman from Worcester (Mr. Wash-

burn). But beginning with line 18, provision is made that "Contributions or premiums shall not be required from employers to meet losses arising otherwise than out of the employment." I think I am correct in the statement that in most of the bills which have been presented to the Legislature in this State for health insurance and for old age pensions there has been a provision that the employers should make certain contributions toward the fund which was to be provided for the payment of those pensions, and I think that most or many of the laws in foreign countries are based upon the relationship of the employer and the employee in so far as to provide that certain percentages of the fund raised shall be contributed by the employers as employers.

Now the difference in this respect between the resolutions presented by the gentleman from Worcester (Mr. Washburn), and by his colleague in the third division (Mr. Dresser) is that the resolution as presented by the chairman of the committee (Mr. Washburn) leaves the question of contribution, by whom made and in what manner, open for legislative action; and I think without doubt those various bills which have been presented in this State upon these subjects would be constitutional under the resolution as presented by the chairman of this committee. On the other hand, if I construe the language of these lines correctly, no old age pension bill, or health insurance bill, would be constitutional, after the adoption of this resolution, if it had in it any provision for contribution to those funds by the employers of this State.

Now I am one who does not follow to the full extent the lucid reasoning of the gentleman in the third division (Mr. Dresser) in regard to the constitutionality of the proposed measures along these lines. It is my opinion, — and I shall not enter into any lengthy discussion for the reasons, — that under our present Constitution bills properly and carefully drawn for the provision of old age pensions and health insurance will be found to be constitutional. I am very certain, — and I think in that I shall be upheld by the gentleman who presents the resolution, — that any measure which might be enacted, after the adoption of this resolution in its present form, providing for contributions by employers to the funds from which these pensions and insurance moneys should be paid, would be unconstitutional, and for that reason I hope this substitute in its present form will not be adopted.

It seems to me that without discussing, — and I shall carefully avoid it, — the merits of the proposed measures, which have received more or less discussion for several years in this State, for health insurance and for old age pensions, it would be unwise when the time comes, if it does come, that it seems best for the people of this Commonwealth that there shall be established systems of old age pensions and health insurance, — that after that period has been reached and that conclusion has been formed, it would be unfortunate if the matters should be held up upon any question of constitutionality.

It seems to me it would be unfortunate for the Commonwealth of Massachusetts, with its liberal history upon legislation for the social welfare, to find that after most of the foreign countries had enacted systems of that nature, and, after a thorough discussion and consideration by the people of this Commonwealth, they had decided to enact

the same, their Constitution was so limited in scope that it could not be done. And for that reason, while believing that properly drawn bills would be held constitutional now, I am in favor of the report of the committee, which will remove from the minds of those gentlemen who do not agree with me the doubt as to the constitutionality of such an act. But I am vitally opposed, if any amendment is to be adopted, to the passage of such an amendment as shall restrict further the action of our Legislature and of our people upon these questions of social insurance. [Applause.]

Mr. Bauer: I have listened with a great deal of interest to the argument of the gentleman from Worcester (Mr. Dresser) on this matter and the argument of the gentleman from Barnstable (Mr. Bodfish) on this matter, and I am inclined to favor the amendment of the gentleman from Barnstable for this reason: I believe that he approaches the entire subject in a more humane way. I believe he takes into his amendment the vision that few men have of what is likely to happen in this country in the next twenty-five years. I believe he takes into consideration also the fact that these problems of social insurance that have not been solved yet by the large States as a community can be solved only in a humane and a liberal way. I am absolutely opposed to the amendment of the gentleman from Worcester. It is complicated, it lacks simplicity, it provokes litigation and to my mind it is cold blooded. I believe the delegate from Brockton (Mr. Brown) was perfectly right when he said that many of these ills have been caused by our social institutions as they now exist, and our social community, and that it is up to them to do the contributing that will remedy a great many of them.

Take, for example, the maternity benefits for mothers in employment during times of pregnancy. The State Department of Health statistics show that in the mills in New Bedford, Fall River, Lawrence and Lowell there are a thousand children born every year from mothers employed in time of pregnancy, in spite of our laws, first, because of the indifference of the employer to such laws, and, second, because of the fact that the mother gets no financial return if she stays away from employment. This proposition is well known to us. Every medical man in Massachusetts is familiar with it. And what is the result? Statistics show that nearly four out of every ten babies born under those conditions are either born dead or die within four weeks of their birth, and we permit that to go on without any let or hindrance. We are absolutely indifferent to any remedy for that great social injustice.

Can it be that the contribution necessary to remedy those conditions shall be limited to acts resulting from the employment of the person or anything contingent thereon? I think not. I think society as a whole is absolutely responsible, and whatever contribution is not made otherwise to remedy those conditions should be made by society. I do not know of any more awful waste of human life in any one part of our industrial existence than the statistics show here, — that four hundred out of every thousand babies so born either are born dead or die within four weeks after birth, and because of the fact that the mothers, on account of some home tragedy or calamity, are forced to seek employment and be in employment at a time when their whole attention and whole life should be given to bringing the new citizen into this world.

I think that the delegate from Barnstable in his amendment offers an opportunity to this Commonwealth to correct abuses of that kind as they may happen in the future. It offers an opportunity to this Commonwealth to go through its social evils and reform and remedy the defects that society itself has been responsible for; and I believe, as men sit here and regard this proposition from a human point of view, and throw out entirely the profit-making part of the proposition, that they can vote for no other amendment except that offered by the delegate from Barnstable. [Applause.]

Mr. William H. Sullivan of Boston moved that the amendment moved by Mr. Dresser be amended by striking out, in line 8, the word "and", and inserting in place thereof the word "or".

Mr. W. H. SULLIVAN: These words, "arising out of and in the course of employment," are copied from a Massachusetts act, and that word "and" has been the cause of all the bitter controversy in the Workmen's Compensation Act. Many efforts have been made in the Legislature to change that word "and," and substitute therefor the word "or." The present Workmen's Compensation Act could be changed if the appeal is strong enough to the Legislature; but if this amendment to the Constitution is ratified, this power is taken from the Legislature, and never, until the Constitution is amended again, can the workman get his rights.

This amendment, changing the word "and" to "or", is not a simple amendment, as was pointed out by the gentleman from Worcester in the third division. Under the law at present great injustice is done to the working-man, as is illustrated by Harbroe's case, the case of the night watchman, who in protecting his employer's property was killed, and his dependents could obtain no compensation because, under the critical interpretation of the law, it was held it did not arise "out of" his employment, while it did occur "in the course of his employment." Another case was where a man was driving a team home to the stable.

Mr. DRESSER of Worcester: I wonder if the delegate is mistaken in his remembrance of that case, or if I am. As I remember, the night watchman was allowed to recover because he was protecting his master's property.

Mr. SULLIVAN: As I remember the case, it was decided exactly the opposite to what my brother contends. Another case was the Milliken case. The teamster was driving his team home, and, overcome by a fit, he drove into a morass and died as a result of the exposure. It was held that although driving the team was his duty, and the accident occurred in the course of his employment, his employment did not carry him into this morass and he was not entitled to recover, because the injury did not arise "out of" his employment.

All the cases he has cited to my mind show the injustice of this law. But that is not the question. If the amendment suggested by the gentleman from Worcester is adopted the Legislature never can change that law, or remove the hardships of the Workmen's Compensation Act. Now, my amendment, I hope, does not convey the impression that I am friendly to his amendment, but there is no certainty as to what might happen. His amendment might be adopted. If that is so, it would be productive of greater good to the working-man if this amendment suggested by me were adopted.

Mr. HARRIMAN of New Bedford: While our people have two views as to health insurance and old age pensions, there are no differences upon accident insurance and compensation that affects the laborers of this State. While the law so far has done well, there have been vital defects. It is because it has been placed in the hands of private insurance companies instead of being administered by the State, as it should be, and there has been allowed to creep into it the making of money out of the crushed bones and sufferings of the workers of this Commonwealth. While I have no doubt that the gentleman from Worcester is absolutely sincere, I want to say that we rather look with suspicion upon the Greeks bearing gifts upon this great question which is so agitated among the working classes of this Commonwealth.

The attention of the Convention should be called to the fact that probably nothing has caused as much unrest and bitterness in this Commonwealth as has the attitude of the courts upon this very same question. I want to call attention to one or two particular phases of it which cannot be controverted and which I think ought to be in mind when you vote upon this question. For instance, take the decisions of the courts in the matter of fellow-servant, assumption of risk and contributory negligence, the obstacles that have been placed in the way by the courts; then contrast, if you will, and see what they have done when the stockholders and the other men who have violated, and openly violated it, by criminal negligence, get by without any liability at all. It caused this entire burden to be placed upon the shoulders of the working people and their families. The Massachusetts Legislature sought to pass an act which would prevent this. It has been said, and I think it is perfectly fair to say, that there was a determined lobby and effort made to prevent it from becoming a State company, and there was spent, so far as we know, a large amount of money to make it possible for private insurance companies to do business under this act.

After that was passed, and after these three, — the assumption of risk, fellow-servant and contributory negligence, — were supposed to be done away with, we were thrown on the courts of the Commonwealth, who ruled again in favor of the corporation in their interpretation of the law against the true meaning of the bill, again throwing the burden upon the working class.

I refer to the case in the Supreme Judicial Court of Ashton *v.* the Boston & Maine Railroad, which tells us that:

> It is well settled that where one is employed to perform manifestly dangerous work, there is no liability where the risks growing out of the work are assumed by the laborer by his contract of employment.

Thus the Supreme Judicial Court in 1915 ignores the law of 1911 which abolished the doctrine of assumption of risk, and it assumes the existence and force of that doctrine, as though the Legislature never had spoken. Again:

> The removal of such defence has no application to a case of this kind where the evidence shows that the deceased assumed the risk by virtue of his contract of employment.

And the reason for the enactment of the compensation bill was to do away with that, and practically it has been nullified and put back into the law, and again become the law of this Commonwealth. The gentleman who just preceded me struck the keynote of the entire

situation. The attitude of the people of this Commonwealth ten or fifteen years hence is going to be entirely different as to what constitutes police power and reward for merit from what it is to-day; and this Convention, in my opinion, ought to adopt some resolution which will give to the Legislature unquestioned authority upon this matter, and not tie it down either to contributory or non-contributory, but simply make a clear and plain proposition that is within the reach of the people, as a means whereby they, when they so desire, can administer their internal affairs in regard to old age pensions, insurance, and protection in industry, as they at that time see fit; and let us not do anything that will prevent it. And our duty here is simply to arrange so they can do it when and in such a manner as they may see fit; and they will do it in the interest of humanity, and not in the interest of property.

Mr. WASHBURN of Worcester: It seems to me that I may perhaps appropriately say at this time a few words in regard to this pending matter. There were twenty-two or more propositions submitted to the committee, touching all phases of this question. I am violating no confidence, nor am I reflecting upon any member of the committee, when I say that upon the merits of these propositions we held widely divergent views. But we were able, after some weeks of communion, to reach a unanimous judgment as to the wisdom of removing any doubt as to the right of the General Court to legislate upon this class of subjects. There are fifteen members of that committee, and they are unanimous in this conclusion.

It is true that there is a minority report, signed by my friend in the fourth division (Mr. Bodfish), in which he proposes an amendment considerably broader in its scope than that agreed upon by the other fourteen members of the committee.

Mr. BODFISH: I should like to ask the member if the proposal submitted by me is any broader in its scope than the conclusion reached by the committee that we ought to leave the Legislature free to act as in its wisdom it may see fit?

Mr. WASHBURN: I will answer the question of my friend in due course; and as I have but a few moments at my disposal I will ask to be allowed to finish my statement, and then if there is any time left I shall be glad to answer any questions.

I carefully abstained yesterday, in opening this matter, from making any remarks whatever upon the merits of these various propositions for social insurance. My friend from Worcester (Mr. Dresser) this morning read some observation made by Mr. Justice Holmes upon the police power. Let me read to you a statement on the same subject, made by the Supreme Judicial Court not many years ago, that I think ought to be kept in the mind of every man who wishes to keep abreast of the times. This great court said:

> Of course, it is impossible to forecast the character and extent of these changes, but in view of the fact that, from the day Magna Carta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to the new condition of society, and particularly to new relations between employers and employees, as they arise.

It was with this conception of public policy that this committee has acted in presenting its report to you. It is true that we have not

presented in our report a recommendation of a specific measure in terms, because of the fact that part of the committee believed it would be better to cover this subject-matter in four or five amendments rather than in one; but it is true, also, that fourteen out of the fifteen members of that committee agreed that if we were to have any amendment in general form it would be the one that I have here presented under my name; so that in considering this matter you must understand that so far as this amendment of mine is concerned it is practically the unanimous judgment of that committee.

Mr. DONOVAN of Springfield: As one of the members of that committee, I should like to make just a word of explanation before the impression goes out that I did not agree, or that I among others did not agree, with the broad amendment as submitted in the minority report of the gentleman from Barnstable (Mr. Bodfish). It was on the understanding that the report of this committee was sufficiently broad to cover all contingencies that I agreed with the fourteen or thirteen other members upon that committee. If I felt that there were any restrictions made by this report, as submitted by the fourteen members, under our chairman, I would have signed a report with the gentleman from Barnstable.

Mr. WASHBURN of Worcester: I will read to the Convention the amendment proposed in the minority report of the gentleman from Barnstable (Mr. Bodfish). It is this:

> Full power and authority is hereby vested in the legislative department to establish any system or systems of pensions, compensation or insurance for the reward, relief or protection of any person or persons, and to make any provision for such fund or funds as may be required therefor.

You see the enormous breadth of this proposed amendment, an amendment too confessedly imperfect, and stated to be so by my friend who proposed it this morning.

Now, coming to the amendment which I have proposed, and which, subject to the limitations suggested by my friend in the first division, a member of the committee, is practically the unanimous judgment of the committee, I want to say that it is the result of prolonged consideration. It was the contribution of many minds. Certainly I disclaim any credit for its draftsmanship. It stands as nearly as possible as expressing the judgment of this committee. We did not rely exclusively upon counsel and advice from those in the committee and immediately related to it, but we sought advice elsewhere among those whom we thought capable of giving it. I think I may be in some measure responsible, perhaps, for the speech made this morning by my friend and colleague from Worcester in the third division (Mr. Dresser), to which we all listened with so much profit and pleasure, because at a very early day I consulted him in regard to these measures, and was very glad to seek his advice upon a subject on which he is so well informed. I have no apology to make to this Convention for having talked freely about this important matter with a great many people, and I have been glad to receive from any quarter any suggestion which I thought contained a contribution of value in the investigation of so important a subject.

I have but one or two words to say in closing, because I hope that this matter may be brought to a vote to-day. I trust that all amendments will be rejected at this stage, that the amendment proposed by

the minority member of the committee will be rejected, and that document No. 382, representing the general amendment submitted by the committee, will be adopted by the Convention.

Mr. SAWYER of Ware: We have spent all of to-day and much of yesterday afternoon in the discussion of this matter; we never can vote so intelligently upon it as we can to-night; it would be disastrous for the matter to go over to next week. And as under the rules it may be a full hour from the time of moving the previous question to the end of the roll-call, it is to be seen that unless we move the previous question now, and order it, why, we cannot get a vote to-night. Therefore, I move the previous question.

Mr. FERRY of Northbridge: I have tried to follow the arguments of the different members of the Convention in reference to the different amendments proposed, and while I could understand some of them, yet not being a lawyer of course I could not understand a great deal of the arguments that each one has in favor of a special pet scheme; but it seems to me that the wisest thing we can do at this time is to defeat all of them. I am opposed, — I presume you can understand that form of statement, — I am opposed to this scheme of social insurance. I do not believe it is American. I do not believe we ever can make it work. I do not believe that it ever will improve the position of the working people, and it certainly would not make the condition of the manufacturer any better.

Now, this scheme must be debated and investigated from a German standpoint. Especially up to the war all of the argument in favor of social insurance was taken from Germany. We were referred to Germany, and told what a beautiful success this scheme had there; that it was a paradise for the working people, and they were having everything; that the government was giving them everything, and that everything was working so nicely, that the working-men were in a very comfortable and happy condition. Also, the claim was made that the health of the people was conserved, and that the time lost by sickness was reduced. As far as Germany is concerned, that has been just the opposite.

Mr. THELLER of New Bedford: I should like to ask the gentleman from Worcester (Mr. Washburn) if, in moving this as an amendment to the report of the committee, he is moving the general amendment on pages 7 and 8 of document No. 327, or whether this is an original amendment by the member from Worcester?

Mr. WASHBURN of Worcester: The amendment that I have proposed under my name is the amendment printed on pages 7 and 8 of the report of the committee, marked "general amendment."

Mr. THELLER: In that case I would suggest that in document No. 382 one sentence has been omitted from the general committee's draft of the amendment. I refer to page 8, lines 6 to 10 inclusive.

Mr. WASHBURN: If so, that was a mistake of the draftsman, because the amendment which I intended to move, and did move, is the one on the pages of the report of the committee, and it will be found upon referring to the secretary's files that I cut that amendment out of the report of the committee and presented it to him as my amendment. I am very much obliged to the gentleman for calling attention to the matter.

The PRESIDENT: If there is no objection the amendment as offered

by Mr. Washburn will be considered the amendment which is printed beginning at the bottom of page 7 of the committee's report, being Convention document No. 327.

Mr. CREAMER of Lynn: Do I not understand that the amendment offered by Mr. Washburn of Worcester, under No. 382, is the same as the one in No. 327, at the top of page 8, the report of the committee? I can see no difference in the language at all in the copy I have; I find nothing omitted.

Mr. WASHBURN: All difference of opinion on this point can be avoided by considering as my amendment the amendment as it is stated in the report of the committee.

Mr. BIGNEY of Boston: As a member of that committee, my understanding is that the report of the committee takes in the general amendment, and also the four other amendments on page 8 of document No. 327. I wish to inquire of the chairman of the committee, the gentleman from Worcester, if he does not mean, when he says that the committee report is practically unanimously agreed to by the committee, the general report covering those five headings?

Mr. WASHBURN: The gentleman is in error if he thinks that any amendment in the report is now before the Convention excepting the general amendment, beginning on page 7 and running over on to page 8. There are four remaining suggested amendments on page 8, one headed "Workmen's Compensation," the next "Health Insurance," the next "Insurance Against Unemployment," and the next "Old Age Pensions and Pension for Physical Disability"; but no one of them has been moved as yet by any one.

Mr. BIGNEY: I wish to inquire of the chairman, the gentleman from Worcester, if those four subjects: Workmen's compensation, health insurance, insurance against unemployment, and old age pensions and pension for physical disability, were not a part of the report which was accepted practically unanimously by the committee on Social Insurance?

Mr. WASHBURN: The exact point is this, as I stated it to the Convention yesterday. The committee reached this conclusion: That it would include in its report a general form of amendment which the Convention, if it chose, might adopt, and that is the amendment that I have moved. The committee also included in its report four separate amendments, intended to be suggestive to the Convention, if the Convention should prefer to deal with the matter through four separate amendments rather than in one omnibus amendment.

Mr. W. H. SULLIVAN of Boston: I should like to inquire if it is not the fact that the whole of document No. 327 is before this Convention for consideration, on the report of the committee, without the separate items being separately moved?

The PRESIDENT: The entire report is before the Convention; but the committee does not recommend the adoption of any resolution of amendment to the Constitution. It merely suggests the form of amendments. Therefore those resolutions of amendment must be moved if they are to be acted on by the Convention.

Mr. W. H. SULLIVAN: I did not understand the last statement. Is it the fact that they must be moved, — these different subheads?

The PRESIDENT: The Chair so rules.

Mr. SULLIVAN: Must be moved?

The PRESIDENT: The Chair so rules.

Mr. BODFISH of Barnstable: I think I have a few minutes of time left. I do not want to intrude unduly upon the Convention. It seems to me that the discussion which has taken place this afternoon and this morning shows clearly the futility of the members of this Convention attempting to write into the Constitution of Massachusetts their preference for any specific kind of pensions, insurance or compensation. We are all at sea on those points. The committee was at sea on those points. We reached a unanimous decision on certain points, but when it came to the question of what we would submit to the Convention we said we did not know what was best; we would leave that perhaps to the Committee of the Whole, or the Convention itself, to decide; we simply would make suggestions. So there is nothing before you except our suggestions, and when it comes to the form we were not agreed, as you can see plainly. I hope that at this stage you will not adopt that omnibus amendment setting forth a half dozen kinds of different insurance, dealing with the jury question and with detail all the way through. Let us have the simple amendment that I have suggested, which is in keeping not only with the report of the committee, that we should leave this matter to the Legislature to enact legislation which in its wisdom it sees fit, but which is in keeping also with the constitutional character. On the question of leaving it to the Legislature, I call your attention to the statement by the gentleman from Worcester, the member of the Senate, made the other day when we were discussing the question of natural resources. He told you that you could trust the Legislature, for in his long experience it always had been conservative. I think you safely can leave these details to the Legislature. Who knows whether we want private companies to do the insuring or the State to do it? We might want private companies to-day and the State to-morrow. Let us leave all that to the Legislature. Let us adopt the simple amendment, and then modify it wherever it may need to be modified. I do admit that my amendment is not perfect. I do not claim it is perfect, and I do not think that is anything against it. The gentleman from Worcester, the chairman of the committee, also admits that his is not perfect. I do not think there is anything in that argument. I am willing to have the amendment corrected, but I do not want to see the Convention writing into the Constitution of Massachusetts a lot of legislative details.

Mr. WASHBURN of Middleborough: I wish very briefly to devote myself to a single phase of this discussion. The gentleman from Barnstable (Mr. Bodfish) claims for his amendment the virtue of simplicity. If I understood the gentleman from Lynn who spoke in the second division (Mr. Bauer), he objects to the committee report because, as he says, it is too complicated.

Some years ago the State of New York passed a compulsory Workmen's Compensation Act. That act was held, in the celebrated Ives case, which was so much criticized and which was, I believe, an issue in the campaign of 1912, to be unconstitutional. Subsequently, New York amended its Constitution. I hold this amendment in my hand. It was adopted in the election of 1913; and under this amendment, another case arose which was sustained by the Court of Appeals of New York. The case I think is "In the Matter of Jensen," and it

was upheld subsequently by the Supreme Court of the United States in another case. In other words, a case arising under the existing New York amendment has been held neither repugnant to the State Constitution nor to the fourteenth amendment of the Federal Constitution.

That amendment is much more complicated than the pending committee amendment. I think we safely can follow the committee in this instance. I find, too, on examining the committee's report, that the objection raised by the gentleman from Boston in the fourth division is obviated, because this language occurs: "In the course of *or* arising out of their employment." I shall support the amendment as reported by the committee.

Mr. SAWYER of Ware: If we accept the so-called Washburn amendment it will go to the foot of the calendar, and perhaps we shall have two months, certainly it will be a long while; and our radical friends who are dissatisfied with it may labor with us in the meantime and point out where it can be improved. We are not in a position this afternoon to approve it intelligently. So I hope we may accept the Washburn amendment, vote down the others, and those who are interested in the others, then having something to work upon, in the six weeks before we come to it again, may point out where it can be improved.

The amendment moved by Mr. Brown of Brockton to the substitute resolution (No. 382) proposed by Mr. Washburn of Worcester was rejected.

The amendment moved by Mr. Bodfish was rejected, by a vote of 42 to 100.

Mr. Brown of Brockton withdrew the pending amendment to the substitute resolution proposed by Mr. Dresser of Worcester.

The pending amendment of the same resolution (No. 383) moved by Mr. William H. Sullivan of Boston was rejected, by a vote of 51 to 74.

The proposed substitute, moved by Mr. Dresser, was rejected.

The amendment moved by Mr. Washburn of Worcester was adopted, by a vote of 98 to 41; and, accordingly, the resolution (No. 382) was substituted for the report of the committee and was ordered to a second reading Friday, June 21.

The resolution (No. 382) was read a second time Friday, July 26.

Mr. JOHN W. DALY of Lowell: The chairman of the committee on Social Insurance, the gentleman from Worcester (Mr. Washburn), in his opening remarks upon a former stage of this resolution said that certain things had to be considered, among them whether or not the General Court had the right under the Constitution to legislate upon these various propositions, and whether such a power should be granted. My interpretation of his second query is that if it be determined in the negative, that is, that the General Court has not such power, then the question comes: Does the necessity exist, or is it likely to arise even in the remote future, that would warrant granting such a power? It is upon this phase of the question that I should like to present my views.

It seems to me quite proper at this point to say that I have been identified with the insurance business for the past eight years. I do not intend to make this business my life work, as I have other plans in view. So that anything I may say will be without prejudice and from a practical working knowledge of conditions.

I am not opposed to the fundamental principles of certain forms of compulsory, contributory, non-contributory, unemployment, health insurance, old age pensions, nor to any individual or collective thought or action formulated with the intention of aiding and improving the condition of the wage-earner. While I believe in a gradual extension of the principles of public ownership of certain public utilities when it is shown conclusively that private efforts fail to create and maintain a condition of justice and equity and such social relationships as are responsive to the need of the times, when government shall demonstrate ability to conduct public utilities for the public good with better results than they are being conducted by some of our private enterprises, when private efforts fail to achieve certain required results, then has government in a democracy justification for stepping in with its own machinery and replacing private action? Under such circumstances would a movement for State control be sound and within the range of practical achievement?

My experience has shown me that there are some, — a great many in fact, — who, because of indifference, prejudice, or a misconception of their duties to their families, do not take advantage of the many splendid opportunities offered them in the most convenient form to provide protection for their dependents, for themselves. In this respect I firmly believe that a thorough, constructive campaign of education, pointing out the essentials necessary for the maintenance of good health and their rightful relationships to the community's well-being, and making the application to the conformity with such teachings voluntary, will be far more effective than to have the State step in and say this or that must be done, when in the opinion of those affected it should not be done unless so dictated by their own conscience.

I am well aware that we are not considering a legislative enactment; that this is not a legislative body. If it was a question of allowing the people to decide whether or not they should have health, State or social insurance, I would favor it, but it is not such a question. It is a question of conferring upon the General Court the constitutional right to legislate upon such matters should it in its wisdom and judgment consider it necessary for the convenience and safety of the public. Furthermore, I believe that any action of this body that might influence legislation in behalf of State or social insurance is unnecessary, because the State already has that power. Assuming that the question at issue is: Has the State such authority? the committee on Social Insurance in its report, quoting from bulletin No. 18, makes this significant statement:

> In view of the recent Federal decisions, it is obvious that constitutional rigorism is at an end, and that the fourteenth amendment to the Constitution of the United States does not stand in the way of State legislation respecting these various forms of insurance.

It further states:

> Of course the question still remains whether such measures are in violation of the provisions of the Constitution of Massachusetts.

In view of the fact that there is no restriction prohibiting such legislation in the Constitution of Massachusetts, when it is believed by so many that if there was such a restriction it would not be operative, because it would be in direct violation of the fourteenth amendment

to the Federal Constitution, designed to prescribe regulations to promote the health, peace and happiness of the people, the provisions of this amendment are broad and specific, its interpretations in opinions by Justices of the higher courts, by decisions of the Federal Supreme Court itself, are clear and definite. When you realize that these economic theories have the sanction of law, that the police power extends to all the public needs, that the courts recognize that public sentiment must make law and that courts must interpret the law in accordance with the spirit of the times, it must be obvious that the States have such power.

As I understand it, in the States where there are no constitutional provisions, the matter may be regulated entirely by statute. The claim is made by the advocates of social insurance that a great amount of sickness and a high death-rate prevail among American wage-earners, that existing agencies cannot provide adequate relief. If this was true, and it was found upon investigation that State operation and compulsion is necessary as a remedy, then any measure intending to permit such legislation merits serious consideration. However, the available statistics and every reliable health survey and sickness estimate made in this country indicate that health conditions here without social insurance are as good, and in many instances much better than in countries where such laws have been in force for a number of years. The United States Commission on Industrial Relations, the American Association for Labor Legislation, the Metropolitan Life Insurance Company of New York, the Social Insurance Commission of California, in their sickness survey in different sections of the country, including Boston, estimated an average of 6 to 8.56 annually for sickness disability. In Germany and Austria in 1913, after more than twenty years of social insurance, sickness disability averaged 9.19 and 9.45 respectively. Statistics show also the mortality of those countries without health or social insurance to be lower than in countries where such laws have been in operation for a great many years. When you consider the recent rapid strides made in so-called social insurance by private enterprise, you can see readily how great the improvement has been.

Take, for instance, the more recent and modern system of protection. It is known as group life insurance. It is a development of American insurance, whereby a number of lives are covered by a single blanket policy. It may be regarded as wholesale insurance, with decreased overhead expenses, and eventually will stabilize labor and capital. It is intended and expected to establish employment on a more permanent basis, and to promote more friendly relations between employer and employee. It is either contributory or non-contributory. The contributory plan brings about an automatic saving of money, enabling the members thereby to systematically and easily accumulate savings and to provide for their old age by creating a pension fund. It provides protection for the dependents of members, and it may be so written that the pay envelope will continue to come to the family in whole or in part for a number of years following the death of the wage-earner. This form of insurance covers all employees of any person, firm or corporation. It may be used to create endowments for churches, colleges, etc. And it provides further that in case of an insured life becoming totally and permanently disabled before

attaining a certain age the premium charge will be waived and the amount of insurance on such life paid to the insured in installments. Although this plan is somewhat new and still in the experimental stage, a great many manufacturing concerns throughout the country, recognizing that the success of their business to a very great extent depends upon the efficiency and the loyalty of their employees, and after careful study and investigation as to the best and proper method of showing their appreciation for such loyalty, are taking advantage of this opportunity and are providing their employees with this form of protection.

When you analyze this question fairly, impartially, without prejudice, you must recognize the fact that the growth, development and achievement of our American insurance companies and their concern for the welfare of the public are consistent with the principles of American ideals and democratic institutions. One company in particular, the largest in this country and perhaps in the world, has entered a great field for the benefit of its policy holders, entirely beyond any obligation implied in their policy contracts. It has taken place among the foremost agencies for the conservation of human life, having carried on a campaign of education in the interest of improved health, established a free nursing service for its policy holders whose circumstances are such that they need it, and engaged systematically in welfare work along the lines of modern thought among the millions of industrial workers who are its policy holders.

A wonderful change has taken place within the past twelve or thirteen years in the development of American insurance. Since the purification of American insurance in 1905 by the Armstrong investigating committee of the New York Legislature the highest point of efficiency in agency and financial management has been reached. The legislation enacted in New York upon the recommendations of the Armstrong committee was revolutionary and drastic. As a result of that investigation, upon the findings of the committee, upon the recommendations of the committee of fifteen appointed by the Insurance Commissioners of various States, the companies doing business in Massachusetts are operating under as good, if not the best insurance laws of any State in the Union. There can be no doubt that the committee entered upon its labors intending and expecting to put an end to so-called industrial, now known as social, insurance, as well as to tontine assessment insurance. An elaborate statement of facts, which for the first time analyzed and made plain the system of American insurance, and which the committee admitted as deserving of special investigation, was submitted by the vice-president of this great American company. This statement was made the basis of extended cross-examination. The testimony taken by the committee left them without facts which would warrant prohibitive legislation, and in their report they declared that such legislation would be unwise. The real conclusion of the committee was that the alternative seemed to be presented either of prohibiting altogether so-called industrial (now known as social) insurance, or of permitting its continuance substantially on the present basis, subject to regulations designed to secure economical conditions applicable to the present situation. The report of the Superintendent of Insurance of New York at that time showed that the question was decided by the good showing made by this

company. In the report of a recent examination, that is, a comparatively recent examination, of this company by the New York Department of Insurance, the document was prefaced by a memorandum in which laudatory reference was made to the activities of this company in several of its departments. Particular stress was laid upon the desirability of encouraging and extending in this country the writing of so-called industrial insurance, for which this company was chiefly noted.

The question of whether private enterprise should be left much longer in control of supplying the masses with insurance upon a large scale considerably puzzled the Department of Insurance, as it did the Armstrong investigating committee. However, whatever doubts existed on this point were dispelled quickly by the showing which this company made under an examination which was searching in the extreme and which in the first instance had been undertaken in no spirit of preconceived approval of the company methods and purposes. It is three years since that examination was complete, and to-day, notwithstanding the fact that the world is steadily growing more radical in its attitude toward private enterprise as a suitable agency for the accomplishment of quasi public purposes, the question of permitting companies like the one referred to to continue to supply the great social service of providing insurance to the masses unchallenged by interference or competition from the State itself, is not being agitated to anything like it was a few years ago. In other fields the socialistic ideal of State control has been making much headway during this time, while in this field it has shown a distinct tendency to abate. If this means anything it means that in the field of American insurance, however it may be in other directions, private enterprise has been splendidly justifying itself by its works. Upon no other ground is it possible now for private enterprise engaged in any quasi public fields to escape the challenge of the new spirit that is abroad in the land.

From a business conducted solely for profit it has become, as conducted by this great American institution, the most widespread agency for social uplift the world ever has known. That its growth has involved no sacrifice of efficiency in the handling of administrative details, but on the contrary has been the direct result of increasing efficiency, is shown by the comparatively small losses sustained by this company in proportion to the large investments made by the high earning power of the company's securities, and by the steady decrease which has been taking place in the percentage of managerial expenses to the company's premium paying income. The fact that the percentage of lapses due to the abandonment of their insurance by policy holders is continually decreasing speaks eloquently to the same effect. This last mentioned development is perhaps the most convincing evidence which could be offered that the policy holders are very well satisfied with what they get in return for the premiums they pay. This great showing can be explained very largely, it seems to me, by the fact that those in control of such organizations realize to-day that such institutions must shoulder responsibilities to the public at large of a somewhat different order from that which confronted them when engaged in business in only a small way, and that the affairs of such companies simply cannot be administered in a spirit which takes only

the business side of things into account. Having recognized what the public rightfully might require from such institutions, having in fact been largely instrumental in educating the public to a full realization of what it rightfully might require from insurance companies, this company waited for no change in existing laws before striking out as a pioneer among insurance companies along the pathway of social service on a high scale. Leaving out of consideration the mere numbers of those who have been benefited by this company's activities, the example which it has set to other great business organizations by its early recognition of the new responsibilities attaching to all organizations which have attained a certain size is one of the most beneficial of recent occurrences in the field of American business. I have neither the time nor the inclination to weary you with a detailed account of the many things these companies are doing in the social field, but I assure you a careful perusal will show the extent to which these companies have recognized the great modern truth that organized wealth under private management, if it is going to be allowed to exist at all, must assume certain public responsibilities which never were dreamed of under the old régime.

I am not making this statement nor giving these facts for the purpose of praising this company or its management. It just happens that this great American institution presents so many admirable illustrations of what an efficient and highly enlightened modern business organization can do in the way of keeping abreast of modern thought that it can be used properly as an illustration favoring my argument, namely, that certain forms of initiative and enterprise are at their best still capable of doing the finest possible work in fields from which latterly all the talk has been that they should be compelled to retire.

Those of you who have been more or less closely connected with the work of the State during the past few years have been in a position to realize better, perhaps, than many others, the extent of the tide that is setting nowadays in the direction of what is commonly called socialism, by which I mean, of course, the taking over by the State at the earliest possible moment of nearly every form of productive activity. You have been in a position, too, where you can see plainly some of the evils that creep very insidiously into all public administrations of large and complicated affairs. Upon many the effect of the experience has been a disinclination to see the movement toward State control proceed a bit faster than it must. Is it not fair to assume that the better plan would be for the people to pause now and then before such an example of private enterprise as I have described, and decide soberly whether in the long run good is going to come from substituting political administration in place of the kind of private administration which apparently can be secured for such companies nowadays, and which can be safeguarded to any extent the State may desire by a system of efficient governmental supervision? This company is only one of several such companies of which substantially the same things I have said with particular reference to this one might be said generally. It is by no means a unique example among American institutions or among American insurance companies of enlightened and improved modern business methods. Institutions like this constitute the most effective barriers we have to-day against the too rapid spread of socialistic ideas.

Mr. Wonson of Gloucester: I should like to inquire of the distinguished gentleman from Worcester, chairman of the committee on Social Insurance, if the words "systems of social insurance" would include or be synonymous with "any system," so that they would be broad enough to admit of compulsory insurance in any form that the Legislature might want to enact.

Mr. Washburn of Worcester: I can answer that question, I think, in the affirmative.

Mr. Wonson: I am glad that the answer was so short and to the point, and so unequivocal. We heard from the insurance companies a minute ago. We know that we all have been lobbied by them and asked not to allow this thing to go any further, and their viewpoint has been very ably expressed.

I want to call to the attention of the Convention this afternoon in a few minutes what the situation is in the district where I have the honor to be a resident at the present time, and let you judge for yourselves whether you will allow anything like the present conditions to go on when it is within your power to do something to remedy them. The war has taught, among other lessons, that very many and varied industries are necessary to the upkeep of that war. Every workman cannot be engaged in a safe employment, and we know that very many and varied employments are necessary to keep up the war machine and the people back home, and we know that some work that must be done is very dangerous and hazardous, and some people are called on much against their will to do those things which must be done and assume these risks which have been placed upon them.

I state as a general proposition that no system of accident insurance is any good unless it is compulsory upon all industries to accept that system. It is not fair for a worker on this side of the State to be insured when one on the other side of the State engaged in the same industry, or, perchance, a more dangerous one, is not insured. Our laws are wrong when they allow employers to choose and discriminate for the well-being of large groups of workmen and their dependents. Conditions for workers should be as uniform as possible. The trouble with our present system has been that there exist great loopholes. There is a hiatus created, so to speak, in the whole system, which allows a certain group of people to be taken care of advantageously while others are not taken care of in any way. Representing in part, as I do, the city of Gloucester, which is the seat of the great fishing industry of this country, I want to call to your attention a situation under the Workmen's Compensation Act which you do not know exists.

If there was a proposition here before us which would compel every employer to insure his employees I gladly would support that proposition as it would remedy my difficulty, but this resolution under discussion to make it constitutional for the Legislature to enact a compulsory act is the best thing we have here presented to us. I urge a favorable consideration of it, and strongly appeal to you to give it another reading and pass it on to the next stage.

Some critics will say to me, if I am engaged in an industry that does not accept the Workmen's Compensation Act as it is at the present time: "All right, stay out of it if you want to, and when there is an injury in your establishment if you do not accept it all the three defences

at common law are taken away from you, and what chance will you stand to get a verdict for the defendant?" Well, I admit that is the inducement to bring employers to accept the act in land or ordinary industries or employments, but in the fishing industry every accident and every loss at sea is "an act of God," which is what the law terms it, and is a defence to an action at common law. In such cases there is no possible way of proving negligence on the part of the employer, because there is no negligence on the one hand and no evidence can be procured on the other. If the employer does not accept the act and the injury occurs on shore, why, the three defences are taken away from him, but we still can prove that the employer is negligent and a heavy recovery may be had. But with a loss by reason of a storm at sea or by some other thing like being lost in a fog or being washed overboard by a heavy sea, where is the possibility of proving human negligence, where there are no witnesses, perhaps, or no element of negligence on the part of the employers present? And so that leaves one entire industry beyond the reach of the compensation act because the employer elects not to come under it, and beyond the reach of any recovery at common law under section 1 of the act.

We have reports from the Industrial Accident Board at different times, and if we turn to their recommendations of January, 1917, we will find their call for a compulsory act. Time prevents me reading it to you, although I have it before me. They say in closing that "the remedy for this situation will probably be found in the action of the Constitutional Convention rather than by the Legislature." In other words, the specialists in workmen's compensation insurance in our State have put it up to us and expect us to do something along relief lines at this session.

What is the fishing industry, if perhaps we do not know whether it is important enough to legislate for? I do submit and admit that it has received but scant attention from our law-making bodies in times past, and especially during recent times, but it is the oldest industry in our Commonwealth. We recognize it as a sort of a patron saint by the image of the "Sacred Cod" which is extended above our heads here. The value of the landings of fish in the ports of Massachusetts in a year amounts to more than $25,000,000, and at the prices prevailing at the present time that figure will be greatly increased. One hundred and thirty-two million pounds are landed in the port of Gloucester alone, and that quantity is worth approximately $7,000,000 at last year's prices. Now, what do we do for our other industries? There is a $7,000,000 industry in one of our cities alone, and bear in mind that Boston and a score of other cities and towns are likewise objects of this unjust discrimination.

Now, what are we doing for workers in the other industries? Well, a figure or two might suffice to show. During the fourth year of our present act 135,000 injuries and deaths were reported, and the board received 21,274 agreements for compensation. Settlements were effected in 18,152 cases, and there were 93,825 benefits paid by the insurance companies direct, amounting to nearly $5,000,000. I might go down and quote other figures, but it shows that that amount of compensation has been paid by insurance companies to workers in other industries, and industries not as hazardous, mind you, as the fishing industry. Even in cases where there was no compensation in-

surance taken out by employers there was also a large number of benefits paid. Of the 93,825 cases during the year above-mentioned 463 were fatal, 366 of which were insured, 97 not insured. In 80 cases out of the 463 there were no dependents, and in 383 there were 954 dependents left. In other words, each death had 2.49 of dependents, and in 21 per cent of the fatal cases not covered by insurance 47 per cent of the 21 per cent got insurance from the employer direct, and they averaged $1,590 per person and totaled $38,175, whereas workmen insured under the act got on an average on the fatal cases $3,053.53 apiece and the total was $155,730. That is an indication of what is done ashore. In the cases where there were compensation policies over $3,000 per person is paid to the dependents, and where there is no insurance the firms voluntarily paid nearly $1,600 per person. None of these "philanthropists" is in the fishing business.

All the pay earned by workers in this industry concerning which I am telling you is uncertain. There is not so much per week; it is contingent upon the catch of fish. Each one of the crew gets a share of what is left after the fish are sold and after the expenses have been deducted. The figures show that the average number of persons in each family of workers in the fishing industry is greater than the average among the shore employees injured under the act. I will come to some figures later to prove that. The work is hazardous, more so than is the case in most of the industries that now have insurance under the act. How important this industry is at the present time, and how it needs cherishing and assistance is testified to from several sources, and one is the fact that an international commission has gone up and down the coast and has held sessions in different places, and all restrictions in the way of free intercourse between Newfoundland, Nova Scotia and American ports have been wiped away. Secretary Redfield was chairman of that international commission. The United States Food Administration has promulgated rules and regulations recently, so that every State law in the Atlantic outside waters has been suspended for the duration of the war, and you and I now can take our nets and go to any place where there have been restricted waters and fish anywhere in said waters with any kind of gear. This has been done simply because the United States government has realized that this industry must have something under it to keep up maximum production to supply the war needs of the Nation. Gloucester shipped to the Italian armies and to other allied governments last year very large amounts of cured cod and herring. Local consumption could get very little of last winter's cure. This shortage should not have been allowed to occur.

Another thing. It has been declared by Provost Marshal General Crowder so important that a mariner should be kept at his work that he has been placed in Class 4 in our draft, and the Gloucester fishermen of draft age are at their employment, while the fellow ashore, curing the fish, has been called to war. The fisherman has been classed as a mariner and if he is as important as these instances show he is then we ought to follow out the policy of the National government with respect to him.

The average earnings of the fishermen are much less than the earnings of laborers ashore. They average less than $1,000 a year. Put against that the great risk, mind you, that there is. The greatest

stock in the history of the fishing industry, the stock of the vessel which was the high liner last year, amounted to about $85,000 for the vessel, and each man shared $2,200. And yet I was taken into the Fishermen's Institute the other day and shown one of a crew who averaged $74 during last year's fishing. One made $2,200, the other made $74 for the year. Now, there are the extremes, so that it is hard to find a level which will be an average for all. One-quarter and oftentimes one-half of a fisherman's time is lost to him; he cannot work the entire time. Then the question of going out and coming back in debt brings the average down; and this frequently happens.

Now let us take up the losses of life. Here is what I am coming at, primarily. At least one-third of the losses are in families where there are a wife and children, — that is, where there are dependents, — and the average of our losses amounts to a wife and three children per man, that is, four dependents to a fatal loss at sea as against 2.49 which is the average of dependents for the loss of a land worker who is insured under the act at the present time. Practically none of the fishermen has any personal life insurance. What there is, if any, is the simple industrial policy, $100 or $200, — just enough with which to bury the person if he should die ashore.

Pringle's History of Gloucester tells us that between the years 1830 and 1892, 576 vessels, with 3,224 lives, had perished, an average of 52 losses of life a year in the industry in one port. We have 10,000 engaged in the industry all over the Commonwealth, but I simply am quoting figures for the one city I am familiar with, although I plead for the brave workers all over our State. That man power loss to one city from 1830 to 1892 was 3,224 lives. From 1892 to 1913, 1,251 men were lost, leaving 340 widows and 823 children. A further idea of the dependency may be gained from this figure. Take the whole period from 1860 through 1913, and there were 1,121 widows and 2,960 children left out of the one city alone. So that since 1830 5,000 deaths have resulted in the attempt of the people engaged to eke out a living and to supply us with a part of our sustenance. No records are available to give the number of dependents or the extent of the suffering during those years.

You ask me what happens if any one is lost at sea. Well, there are two words that sum it up. Public charity is the only thing. And I will tell you that that is a tremendous burden on the city, and on the State too. You would be surprised if you knew the amount of money which is coming out of our taxpayers to go to meet the demands of this form of public charity, something which should be spread all over the Commonwealth. The industry should bear the burden the same as other industries bear their burdens and then those who use the product will pay in its cost the infinitesimal amount which would be necessary to pay the premiums for some such sort of accident and death insurance. That kind of democracy is being preached in our draft and other war activities. The annual report of Gloucester industry shows that there is one charity which can be applied to for help, and what do you suppose the income from that fund was last year? Two hundred and eighty-three dollars, and aid was given to 13 families, — $22 apiece!

In the frontispiece of the Gloucester Fishermen's Institute Bulletin for the current year appears this simple statement. It portrays a

picture we see painted very often down there, and I hope it will make an impression on your minds:

In Provincetown, on Labor Day, September, 1917, a procession of 72 fatherless children were carrying a large American Flag through the streets. A few days before in a wild storm that swept along the coast their fathers had all been drowned. When only one or two men are lost on a trip, an event of frequent occurrence, it is considered as one of the inevitable and unavoidable risks of a fisherman's life. The death is recorded "Lost at Sea" and the widow and children, if any, are left to struggle on as best they may. For be it known by all who read this that the protection afforded wage-earners on land, known as Employers' Liability and Workingmen's Compensation Acts, does not apply to seafaring men.

When 72 children are deprived of fathers in one day, we rub our eyes. The newspapers consider it news, and some generous minded people start a subscription for the care of orphans. In a few days some new sensation covers the front page of the papers and the orphans are forgotten. For the Provincetown orphans something over $20,000 was given. It costs $20,000 to educate one boy at West Point. Apparently then, we value the services of 19 brave men who died that we might live, as much as we value one young man who may die in our service or who may live all his life at our expense. Or consider it another way. We are willing to give as much for the education for four years of one boy whose service can be little more dangerous than that of our fishermen, as we are for the education of 72 boys and girls, some of them for 14 years, who will when large enough, give themselves to work of feeding the world and we have not the wisdom to do this by taxation, we do it by appealing to the well-to-do and generous. We honor our fishermen by telling them how brave they are, how necessary they are to the life of the Nation, and then when they die in our service, leave their widows and children without adequate protection! It is not misinterpreting the feelings of these men to say that their wish is more evidence that the State, as well as individuals, appreciates their work. It is true that the fact that many of the fishermen work on a coöperation plan makes some difficulty in giving them the protection which is now given to wage-earners. But a little thought could easily devise some method to give their families the protection they need and deserve. Looking at those 72 children marching behind the American Flag one wonders whether, when they become old enough to realize that the Nation it represents had seen their fathers die in its service, without giving them the protection that was their due [and which it gives others], they will still look upon it with loyalty and devotion. Is it not time that the people of the United States awoke to the fact that the way to make a loyal and united Nation is to give a proper care to the men and women who make the Nation? The bravest men we have, engaged in our most dangerous occupation, deserve at least an equal protection with all other workers.

Until as a Nation we do justice to those who "go down to the sea in ships," as individuals we must do all we can to make the life of our fishermen as pleasant as possible.

Now, what did we try to do? We brought a case for the fishermen under the Workmen's Compensation Act, and we were awarded a verdict by the Industrial Accident Board and by the courts of $10 a week for four hundred weeks, or $4,000. We thought then that our troubles were over. I have it from an associate in the office of one of the largest law firms in Boston that the captains and the owners in the industry filed into the office and said something to this effect: "Gentlemen, we are ruined. What is this thing going to amount to?" I have it from him that the head of the law firm, which firm is one of the biggest insurance firms in this city, said in substance: "Gentlemen, here is a way out. This Massachusetts act has got a joker in it. It is elective. It need have no application to you if you don't want to accept it. You can have your shore workers insured under it. You have your fish skinners, your bookkeepers, and those others who never get injured, and who never get lost at sea. Then what you can do is to go down home and form another corporation, separate from your other corporation, and transfer all your vessels to that cor-

poration, and then let the vessels' corporation hire the men and let that corporation be kept separate from the other, keeping your bookkeepers, etc., employed by the old corporation where there is no chance of their being injured. Here is a way out of it, so you can cheat the orphans and widows that these men leave behind who die in your service." What did they do but take the suggestion and go do it, and from that time to this there has not been a case that has been gotten by the Industrial Accident Board. Our act is elective, it allows them to take out no insurance if they do not want to, and they are not taking out any insurance and therefore there is no remedy coming for all those who are injured in the industry nor for the losses of life that I have shown you. Even payments on that one case have been stopped by the insurance company on account of the United States Supreme Court's decision in the case of The Southern Pacific Railroad *v.* Jensen (244 U. S. 205), in which it was held that it was a case for the United States courts, and that our Industrial Accident Board and our State courts have no jurisdiction. But Congress in October last year (Act Congress Oct. 6, 1917, c. 97, sec. 1) blocked that loophole and cured that decision, so that at the present time if another case comes up our Industrial Accident Board does have jurisdiction under our Workmen's Compensation Act. But what still is the trouble? We have got an elective act. There is nothing to compel our employers to insure their men, and there is the root of the present trouble. So the way is all set, by the United States Supreme Court's recent decisions and by the Act of Congress last October, for us now to remove the question of unconstitutionality from our State Constitution so that our Legislature, whenever it wants to, can do something; and the Supreme Court of the United States has made it clear and made it possible for an act to be not repugnant to the Federal Constitution if we cure our own Constitution. Knowing that this injustice is continuing are you going to let it go on without action?

Mr. DRESSER of Worcester: Is the gentleman aware that every compulsory compensation act in the country so far has been held valid, and that the United States Supreme Court has held it valid, and does he have any serious doubt that the Legislature next year might enact a compulsory compensation act?

Mr. WONSON: I am aware that the Washington act has been upheld in 243 U. S. 219; the Iowa act has been upheld in 243 U. S. 210, and the New York act also has been upheld, 243 U. S. 188, but in the first two instances I am aware also that there is a choice given of several other ways of insuring, and I believe that was weighed very considerably by the court in declaring these compulsory acts constitutional. We have not yet got that situation here. New York, the third one that I am aware of, made a constitutional amendment in order to allow it. As for the Legislature doing anything in this regard now, the gentleman from Worcester (Mr. Dresser) knows the result of his proposition last year for self-insurance and knows the temper of our Legislature, and if he has had anything to do, which I have seen him have, with the Judiciary Committee in this Legislature, he will know that it is going to take years of plugging to get this Legislature to do anything for the widows and orphans, no matter where they are. One trouble is, that they are afraid that after they do make a compulsory fund to which all employers can contribute it will not be con-

stitutional after they get it. If we do not act here, I certainly hope the gentleman from Worcester is correct in his interpretation of the law.

Just one thought I want to leave with the delegates, and that is something that was called to our attention this morning. He twitted us with being dreamers. We might be called dreamers, in suggesting such a thing as compulsory accident insurance and justice for the poor, the injured, the widows and the orphans, and we were charged this morning with having a matter before us which savored of the dreamer. But somebody, I think it was Herbert Kaufman, has said about the dreamers that:

> They are the chosen few, — the Blazers of the Way, — who never wear Doubt's bandage on their eyes — who starve and chill and hurt, but hold to courage and to hope, because they know that there is always proof of truth for them who try, — that only cowardice and lack of faith can keep the seeker from his chosen goal; but if his heart be strong and if he dream enough and dream it hard enough, he can attain, no matter where men failed before.
>
> Walls crumble and empires fall. The tidal wave sweeps from the sea and tears a fortress from its rocks. The rotting nations drop from off Time's bough, and only things the dreamers make live on.
>
> They are the Eternal Conquerors; their vassals are the years.

Mr. Bodfish of Barnstable moved that the resolution be amended by striking out lines 3 to 18, inclusive, the whole article of amendment, and inserting in place thereof the following:

> The General Court shall have power to establish by general law any system or systems of pensions, compensation or insurance of persons for the benefit of any of the inhabitants of the Commonwealth.

Mr. Bodfish: I believe that I can assert without fear of successful contradiction that it is the supreme duty of the State to conserve its human resources by providing for the enactment of laws to prevent and relieve industrial accidents, occupational diseases, overwork, involuntary unemployment, and other injurious effects of our modern condition of industry. Systems of relief are therefore of vital importance to the welfare of the State. The Convention will do well, then, to consider the proposition before it. It has been mentioned here that some of us believe in the lack of constitutional restraints, that we would leave the Legislature practically free to deal with any question as it sees fit; while others believe in filling the Constitution full of restrictions, even more restrictions than we have to-day. But I take it that most of us fall somewhere between these two extremes. For my part I believe, as I suggested in my remarks yesterday that Washington believed, that the government should be given sufficient power to carry out its functions. I believe that the Legislature should be given full and complete authority to deal with those questions whose solution depends upon, and must depend upon, constantly changing conditions. Now, this question that we have before us is one of those, and to-day we cannot say what will be good for the Commonwealth to-morrow. We all know that there has been wonderful change in the last twenty years, and in view of those tremendous changes that were unlooked for twenty years ago how can we, as a Convention, attempt to say what the Legislature shall do during the next twenty years, or during the life of this amendment?

It seems to me that it is expedient for us to adopt an amendment that is simple, broad, concise in its terms, that is in form what Mar-

shall said every constitutional amendment should be, — devoid of specific detail and definition. By enumerating all the kinds of social insurance that we know of to-day we can only show to the future generations how limited our knowledge was when we adopted the amendment. It has been called to our attention that the commercial clause in the Constitution of the United States was the right kind of a clause. It was simple, just a few words, and yet it has enabled the National government to do what it has found necessary to be done in regulating interstate commerce. It has been called to our attention also what has been accomplished under the simple words stating the police power of the Commonwealth in our own Constitution, and it is my purpose in moving this amendment to attempt to state in broad, simple, concise form the great object that we hope to attain.

I seek in this amendment to give the Legislature full power and authority to deal with these questions, without attempting to enumerate these questions, without attempting to deal with the jury system or without attempting to say that there shall be medical aid as well as money payment. I do not know what the future may bring forth, and I do not know what form of insurance may be best in the future. The committee had evidence before it that a non-contributory old age pension system would be as economical for the State as the present method of pauper relief, that it would cost no more, and that such a system would save the self-respect of the person who received the assistance, and saving his self-respect would save the respect of others for him, and in many instances would enable him to continue to be partially self-supporting, which of course would be a great asset to the Commonwealth. So I say we do not want to adopt an amendment which, like the one that is now before us, probably would limit legislation to the contributory form of relief, for you notice it says "systems of social insurance." Now, what is insurance as we to-day understand it? It is protection that is paid for, and no matter what the terms are which follow, I submit that a court might well say that the whole amendment was limited to contributory forms of relief.

There are other practical reasons why the amendment which I have offered should be adopted. One is that if you adopt it you will save the necessity of dealing with this question under other heads. It has been called to our attention that it is important that we put no more amendments upon the ballot this fall than are necessary. Why then should we deal with the pension question under three different heads? I suggested yesterday that in dealing with the question of pensions for judges who were retired involuntarily we should not touch the pension question, and I was glad to vote for the amendment offered by the gentleman from Haverhill (Mr. George), because it seemed to me that we did not want to give judges retired involuntarily the class distinction of being named in the Constitution as eligible for pensions. It also seems to me that if my amendment is adopted it will be unnecessary for the committee on the Bill of Rights to take any further action on No. 279, which yesterday we voted to discharge from the calendar and recommit. It seems to me the action which that committee took on that proposal was taken from an erroneous and untenable point of view. They seemed to take the view that if we granted a pension of more than $1,000 to a person that was class distinction.

Now, I submit that if it is class distinction to grant a pension of $1,000 it is class distinction to grant a pension of less than $1,000, differing only in degree. I cannot see that you are creating any special privileges or class distinctions by giving a large pension to one person and a smaller pension to another, any more than you are when you give a large salary to one man who serves the public and a smaller salary to another. If you are creating class distinctions in the one case you are in the other. I think they are mistaken in their point of view.

Yet, the action of the committee on the Bill of Rights, in submitting that proposition No. 308 to us, brought out a lot of amendments which touch upon every phase of this question which is under consideration, and it seems to me that we may well consider for a moment what those different phases were. If you will turn to the calendar of yesterday you will be able to find there the amendment to which I refer. You will find there that in the first place the most of them, especially the resolution No. 308, deal only with public servants, and it seems to me there you are beginning; by making a class distinction you will limit public servants in the amount of pension that they may receive, while any other person in the Commonwealth has the privilege of receiving a larger pension. Then you have the exception made of war veterans. I submit that war veterans ought to be rewarded. I believe in the policy of the State continuing to reward heroic and faithful service, but there are others who do not, and I submit that when you grant pensions to war veterans and refuse them to others who have done equally heroic and faithful service in other walks of life you are creating a class distinction. Then you will find there is an exception made of those who are injured in public employment. Why make a special class of them? It does not seem to me that we want to do that. And then we have another class, chiefly those who can contribute to the pension that they are to receive. Does the State want to set down in the Constitution the principle of rewarding those who receive a large enough compensation to contribute to protection for the future by saying to them: "We will give you as much as you can succeed in putting in the savings bank. We will duplicate what you may be able to save." May it not be, with two men receiving the same salary, that one of them may have a large family, one of them may be faithful to his moral obligations to some relative to whom he is not legally bound, that one of them may support the public institutions. the charities, the churches, while the other may be remiss in all of his moral obligations, may have no family to support, may be able to save something, and yet be no better man than the other? Shall we say to him that we will give him out of the treasury of the Commonwealth as much as he can save? Is not that class distinction? Is not that taking from those who have not and giving to those who have? Is that fair? Is that the policy that this Commonwealth is going to undertake? Is that the motive on which we are going to undertake to relieve those who need to be relieved? It seems to me that that is not right, it is not fair, that we do not know to-day just what forms of assistance it will be best for the Commonwealth to give to its inhabitants in the future.

Therefore, it seems to me that we should leave this question entirely in the hands of the General Court. The gentleman from Hol-

yoke (Mr. Avery), asked us the other day, on the question of a decennial census, if we could not trust the good sense of the General Court. I submit that in these questions which depend on constantly changing conditions we can and we must trust the General Court. I say, if we can trust the General Court to deal with the question of taxation, we can trust that body to deal with this question, and this amendment which I offer will leave it entirely in its hands to deal with this whole problem and will make unnecessary any other amendment to the Constitution touching the question of pensions. It seems to me that my amendment ought to prevail.

Mr. SHAW of Revere: May I ask the gentleman a question? You have to establish by general law any system or systems of pensions, compensation or insurance of persons for the benefit of any of the inhabitants of the Commonwealth. Assume that there are employees who are engaged in work in Haverhill who live in New Hampshire, that there are those engaged in Fall River who live in an adjacent State, and who are injured in the course of their employment of this State. Does this preclude them from compensation or insurance?

Mr. BODFISH: My understanding is that if they live outside of the Commonwealth, if their domicile is without the Commonwealth, they would be excluded.

Mr. Balch of Boston moved that the resolution be amended by striking out, in lines 4 and 5, the words "old age pensions or insurance."

Mr. BALCH: It appears to me that we are faced once more with a measure in which unlike things are mingled together. I for one am in favor of what is commonly known as industrial insurance and I note that almost every word of argument that we have heard on this measure has been addressed to the sole subject of industrial insurance. We have a vast store of experience behind us to indicate the wisdom of industrial insurance. We have a vast mass of data on the subject. At the other end of the scale comes the old age pension and in between is a whole string of other forms of insurance immediately between these extremes. I have moved to strike out only that form of insurance which is most different from industrial insurance. Possibly, to have been strictly logical, I should have moved to strike out everything excepting industrial insurance, but it seems to me that the other forms of insurance included in this measure and tied up with industrial insurance are either so special and small or else so related to industrial insurance that logically they can be considered with it. I submit, however, that that is not true of the old age pension. The fundamental difference hardly needs to be pointed out. Industrial accident is something that no one can foresee or foretell. It may happen to any man before he has had time to lay by anything with which to meet it. Old age, however, happens to all of us. It is not an unequal risk. Old age happens to all in due course of time according to his fate. All can foresee it; it comes on progressively; all have time to lay by for it so far as they are able. No one is taken by surprise by old age. Now this difference is fundamental in the whole philosophy of the matter. It goes to the very heart of it. I do not think it is fair to require the Convention either to vote against all these forms of insurance or else to vote not only for industrial insurance but also for the old age pension, which is a pure socialistic gratuity

system. In order, therefore, that I may have a chance to vote in favor of industrial insurance without violating my conscience by voting for old age pensions, I move that the old age pension be stricken out to be considered in due course on its separate merits.

The discussion of the resolution was continued Tuesday, July 30.

Mr. FERRY of Northbridge: Some weeks ago I promised the Convention that I would investigate the working of social insurance in Germany, but I was interrupted by the limit of time and did not have a chance to go into the matter. It seems to me, however, that this resolution is an unnecessary one. If I remember correctly, the amendment offered by the gentleman from Brookline in the third division (Mr. Walker), amending the initiative and referendum resolution, provided for all kinds of social welfare measures and I think, if I remember correctly, that he argued that it would cover all of that class of legislation. It seems to me that this whole resolution should be rejected. If we are going to care for our aged, and I am not going to argue that we ought not to do so, it seems to me that instead of having an old age pension, which limits the amount that shall be paid to the pensioner, if we are going to do anything in this State, we should follow the lines of the mothers' aid law, which is working very nicely and is doing lots of good. Something along this line might be brought out and enacted into law, that would help our aged and give them enough to care for them decently instead of giving them about a third as much as they would get under the outdoor relief, as they are doing now in England.

I wish to call to the attention of the Convention the statement in bulletin No. 18 regarding social insurance. At present the United States is the only great industrial Nation without compulsory health insurance. Germany inaugurated the movement in 1883 under the leadership of Bismarck. Now, they failed to tell you that Bismarck alone was unable to have this law adopted. He had to appeal to the Emperor, and with the power of the Emperor he succeeded in having it adopted, over the protest of all the liberal element of the working people. They did not want it.

Now let me read what Professor Fisher of Yale says. He is president of the American Association of Labor Legislation. It would seem from the wording of this statement that the labor movement was somehow mixed up with this organization, but that is not the fact. Very few labor men belong to this association, which is a foreign one, with headquarters in New York and with branches in foreign countries.

This act was the first step in Germany's program of social legislation. Her wonderful industrial progress since that time and the comparative freedom from poverty, reduction of the death-rate, and the physical preparedness of her soldiers, are presumably due in large measure to health insurance.

We must admit that Germany for a number of years has been advancing in her industrial capacity, but we must remember that this was due a great deal to the fact that she has paid a wage that is the very lowest of any civilized country of any importance in the world. Now let us see what the health situation is in Germany.

Out of one hundred insured wage-earners 36.7 were listed as sick in 1890, and 45.6 in 1913. Somewhat of a change, is it not? — only

a large increase instead of a decrease. The average number of days of sickness per insured member, which was 5.9 in Germany in 1885, when the law had just gone into effect, increased to 6.19 in 1890 and to 9.19 in 1913, again an increase.

Now let us take the death-rate. In 1912 the death-rate in Germany was 15.6 per thousand. The same year it was 11.2 in Australia, 14.8 in Belgium, 13 in Denmark, 12.3 in Netherlands, 8.9 in New Zealand, 14.2 in Sweden, 14.1 in Switzerland. All these countries are without compulsory insurance. Now let us come to our own country. In the United States, we find that in 1912 the death-rate was 13.9 per thousand, further reduced in 1915 to 13.5. You see while in Germany the death-rate was increasing, in the United States, without social insurance, it was decreasing.

Let me take your time to investigate the housing problem. We have heard a great deal about the housing problem of Germany, and what beautiful tenements the people had, and how happy they were in their magnificent dwellings. The general mass of workers, both skilled and unskilled, live in what are known as "barrack tenements." These tenements are built in a series of blocks, one row behind the other, the grim rows situated thirty to forty feet apart, and usually three to six stories in height. The gloom, the foulness, the lack of light and air, the sordid barrenness of the dark rooms, the lack of baths and heat were hidden by the meretricious overdecoration of the street exterior. American visitors, seeking proof of German superiority over the rest of the world, described only these gaudy exteriors. They did not tell that the hall baths in the rear were used by from eight to ten families, or that one-fourth of the families living in these blocks were living in one, two, or three rooms, and that many of them had to take lodgers to help pay the rent. The Berlin census of 1900 shows that 96.7 per cent of the city's population were living in rented houses.

Compare that with Massachusetts in 1910. According to the National census, 248,445 people were living in their own homes, owned by them, and 448,932 were rented. Thus you see that about half as many people, compared with the number of rentals, lived in their own homes, while in the city of Berlin a little over 3 per cent owned their own homes. Of 555,416 dwelling-houses in Berlin in 1913, housing about 2,000,000 persons, 40,690 consisted of one room, 186,757 of two rooms, 180,850 of three rooms, and 62,000 of four rooms. Of this number 34,508 had no kitchens, 41,115 had roomers, and 58,000 had transient night lodgers. These are the happy homes of the German workers, and the German worker, earning on the average of $225 a year, had to pay about fifty-six days' wages for these magnificent homes.

Now let us see what the wages and the hours were in Germany, compared to the hours of labor in England. Germany is eight to twelve per cent higher, with the United States 10 to 34 per cent higher. I will read only a few of the wage rates in Germany in 1914. A stonecutter received $1.62 to $1.72, masons received $1.26 to $1.61, carpenters $1.24 to $1.61, journeymen printers, — I wish the gentleman from Brockton (Mr. Brown) was here, for I should like to have him listen to these wages, — $6.55 to $7.44 a week. I wonder how our labor men would like to work on our railroads for the following prices: Skilled shop workers 86 to 87 cents a day, machinists 89 cents

to $1.09. The average employee of the Prussian State railroad received 76 cents a day.

Let me call your attention to the condition of the women and children in Germany. In 1910 the hours of the women were reduced from 11 hours to 10, and 8 hours a day on Saturday. We are told that there were no sweat-shops in Germany. In 1905 the Berlin Chamber of Commerce said that there were 100,000 sweat-shops in Berlin, and the women, mostly working at home, received from 75 cents to $1.50 per week, and only twenty-five received a wage of $2.50 a week. The young girls working in the canning factories work from thirteen to eighteen hours a day, and on Sundays ten or more hours, and they receive the magnificent wages of three to four and a half cents per hour.

I will read an average list of the wages paid women in the industries in Germany. Metal industry 49 cents per day; engineering industry 55 cents per day; electrical industry 65 cents per day; woodworking industry 47 cents per day; stoneworking and pottery industry 41 cents per day; food, drink, and tobacco industry 51 cents per day; leather and rubber industry 67 cents per day.

According to the report made in 1914 by United States Consul General Henry H. Morgan, at Hamburg, the number of children employed in German mines, mills and factories in 1911 was: Under 14 years 7,434 boys and 5,970 girls; from 14 to 16 years, 332,882 boys and 172,535 girls. In the mines there were 40,979 boys and 1,063 girls, and more than 7,000 women.

I wonder if you ever saw in the United States a woman hitched up with an ox or a young girl hitched up with a dog, ploughing and drawing carts through the streets. And this is the country that has been compared with America, and many times America has been held up to ridicule in this comparison.

And what did they receive for all this? I will read a list of the pensions and benefits received by these people. The average sickness pension was $48.45 a year, less than $1.00 a week. The average old age pension was $39.75 a year, about 76 cents a week. The average widow's pension was $18.49 a year, about 35 cents a week. The average orphan's pension was $19.07 per year. And it was for this the German people sacrificed their individual initiative and their personal independence.

Now as to the moral standing of the people. We have realized lately that we were misinformed as to the morals of Germany. Authorities differ as to the number of illegitimate births.

I will take a moderate figure and place it at 21 per cent of all the births. This condition was abetted and encouraged by the government, and you can understand very readily why they needed maternity hospitals. The children are taken from the parents and cared for by the government.

It seems to me that it would be very unwise for us to give up and set aside as discredited the principles and traditions which have made this State great. We can realize when we think of the women outraged, the children and babes murdered and the food taken from the mouths of conquered Nations, left then to starve, that the moral standard of the people must be very low. I sometimes wonder if the very devils in perdition do not blush with shame when they compare

their feeble efforts to debauch the world with those of their neighbors, the Huns.

I hope that this resolution will be defeated.

Mr. WASHBURN of Worcester moved that the resolution be amended by striking out, in line 8, the word "incurred", and inserting in place thereof the word "received"; and by striking out, in line 10, the words "medical care", and inserting in place thereof the words "curative treatment."

Mr. WASHBURN: It often has seemed to me that the Convention would transact its business much more expeditiously if it confined its attention to settling the question immediately before it. This matter now under discussion already has had a reading and now comes before us for a second time. There was some discussion upon it on Friday; there has been a little to-day. It seems to me that everything that has been said thus far has been irrelevant, and much of it immaterial.

There are two questions, and only two, before the Convention in connection with this resolution. The first: Is there any doubt as to the right of the Legislature to legislate upon these matters of social insurance? The second: If such doubt exists should it be removed?

We are not in any way concerned with the subject-matter of the twenty-two resolutions embodied in the report of the committee. We are not engaged in a legislative discussion or investigation. We are sitting as a Constitutional Convention to decide whether or no, if already the right does not exist to regulate these matters, it should be conferred upon the Legislature. It is important to notice that this is not a new question. Soon after the Colony of Massachusetts Bay was created under the charter of William and Mary we began legislating upon questions of health and up to 1848 there were fifty or more measures passed. This has been a question that has engaged the attention of social students and of legislators for many years. Let me briefly recite some of the more recent investigations made by authority of the General Court.

I pass over with mere mention the Workmen's Compensation Act of 1887, which, strictly speaking, is not social insurance. In 1907, a commission was appointed to investigate various systems of old age insurance, old age pensions or annuities. In 1913 a commission was appointed to investigate the subject of pensions. In 1914 the Director of the Bureau of Statistics was instructed to gather information which would be needed for a proper consideration of the subject of old age pensions. In 1916 a recess committee on social insurance was appointed to study the effect of sickness, unemployment and old age. In 1917, in his address to the Legislature, His Excellency the Governor urged the consideration of certain forms of social insurance, making certain recommendations upon this subject. In 1917 another commission on social insurance was appointed to investigate the extent to which poverty occasioned by sickness may be alleviated, medical care for wage-earners and others of limited means may be provided, and measures to prevent disease may be promoted by insurance. I do not mention these facts for the purpose of demonstrating that any one of these propositions should be adopted, but merely to bring clearly to your attention the fact that for many years the Legislature has been investigating these subjects and has proceeded upon the theory that it had the right to legislate upon them. If this Conven-

tion should reject this resolution it, in effect, would say to the Legislature that matters of this sort, or some of them, are beyond its jurisdiction. Perhaps that might have been said twenty-five years ago, or possibly ten years ago, or perhaps five years ago, but it seems to me that now that all of the great industrial Nations, excepting ours, have adopted some part of the social insurance program, it would be unwise for this Convention to reach the conclusion that these matters or any of them cannot be legislated upon in this Commonwealth.

My friends, we always have had with us, and always will have, the evils that follow in the train of sickness, of accident, of all human disabilities, a burden that always has been borne and always must be borne by the great body of our people. Already I am told on good authority we are spending in this Commonwealth about $23,000,000 a year to relieve the weak and the helpless, half of it in round numbers coming from the Commonwealth and the other half from private contributions. The question to be decided is: How can the burden best be borne to the ultimate advantage of the community? I am not now arguing for or against any one of the twenty-two resolutions included in the report of the committee. I simply am seeking to place before you the importance of the problem and undertaking to demonstrate that it is one with which the Legislature should be allowed to deal. Of the enormous economic loss resulting from the disability of these workers I take it there is no doubt. A high authority, the United States public health service, estimates an annual loss of $500,000,000 due to the sickness of wage-earners, and another competent authority in the State of New York has estimated that because of sickness, and disability arising out of sickness, 40,500,000 working days are lost in the State of New York every year. The problem is one of vast proportions. It may be beyond human power to deal with it, but our Legislature should not be estopped from making the endeavor.

Mr. Morton of Fall River: I should like to ask my friend from Worcester (Mr. Washburn) if there is really any doubt about the power of the Legislature to act upon any of these matters which are embodied in this resolution.

Mr. Washburn of Worcester: I think the opinions of lawyers would differ. I think there are some lawyers in this Convention, for example, who would say that the passage of a compulsory employers' liability act would be entirely within the constitutional power of the Legislature, and some might take the opposite view. As to the different kinds of social insurance, including sickness insurance, old age pensions, annuities and the like, I fancy that there might be quite a difference of opinion. But I dispose of that question by saying that the Legislature either now has the power to legislate or it has not. If it has the power no harm can follow the passage of this resolution. If it has not the power, the resolution ought to be passed.

I do not assert that any of the resolutions included in the report of the committee should be adopted by the Legislature. I merely say that doubt exists as to the constitutional right of the Legislature to deal with some of these social questions and that the doubt should be removed.

Mr. Broderick of Waltham: One of the important functions and obligations of government is to provide food, fuel, clothing and shelter

for those under its dominion who are without the means to provide for themselves these necessaries of life. The first principles of humanity and civilization compel recognition of this function and obligation in government. Those who are destitute and helpless should have relief, and this proposition involves no new doctrine in government in this Commonwealth, but by the amendment proposed it is intended to authorize the Legislature to establish a general pension system which introduces a new function, imposes a new obligation and confers a new power in government in this State. Our nearest approach to it is our present pension system for public employees. I believe that if this Convention should deem it wise to enlarge our pension system it should be enlarged by a constitutional amendment clearly defining the scope and the limitations of the system. How the Legislature has exercised its power in providing pensions for public employees is well known, and while it is approved by some it is disapproved and criticized and condemned by many. No one can deny that members of the Legislature have used it most effectually to elevate themselves to high office, nor can it be denied that members of the Legislature have been elected to office in districts where their own party was in a hopeless minority by pledges to support an extension of the system to a new class of public employees, or to increase the amount of pensions to those already pensioned. So common have such instances been that they have become almost a public scandal. Delegate to the Legislature the power imposed by the amendment now under consideration or by the substitute for it offered by the gentleman from Barnstable in the fourth division (Mr. Bodfish), and you will multiply that offence many times over.

What is proposed by this amendment? To give to the Legislature the power unlimited and unrestricted to take money from the public treasury and give it over to almost any person or any class of persons who, in its discretion or wisdom, it may deem to be entitled or deserving of it. This is a most extraordinary and dangerous power to confer. It has been urged that the Legislature should have large powers because conditions may arise which cannot be foreseen now. But if conditions should arise requiring a change in our system the Constitution can be changed to meet such conditions. What is the purpose of a written Constitution? It is to define the powers of the law-making body of the State and to impose reasonable and necessary restrictions upon the exercise of those powers. Is there any power, can any one imagine of any power, to be delegated by the Constitution to the Legislature which should be defined more carefully or more clearly restricted than the power to require one class of our citizens to pay tribute to another class? I believe that there are those who are more deserving of pensions than those to whom pensions are now paid, and I believe that our pension system should be broadened, but not as outlined by this amendment, by delegating unlimited and unrestricted authority to the Legislature. The prevalence of pauperism, it is said, is one of the most dangerous evils that any community can be afflicted with, especially if it exists among those who are able and willing to work. Rare instances of it are inevitable. But if common there must then be something wrong in the industrial and in the financial system of our State, and this wrong should be corrected, because it is the prosperity of the masses of the people that constitutes the

life and the strength of the State. But pauperism as an evil is unimportant as compared with a numerous class, unworthy and undeserving, receiving tribute out of the public treasury. That tends to promote idleness, weaken and destroy self-reliance and engender discontent among those not included, which undermines the whole structure of government. I believe that we should broaden our pension system, but it should be by a constitutional amendment, as I already have stated, clearly defining the scope and limitation of the pension. There are two classes of persons who are entitled to special consideration, it seems to me, — those who are under permanent disability resulting from injury or disease incurred in the course of or arising out of their employment, and deserving persons who have reached the age of seventy years and have no means of support. I hope that we shall adopt an amendment to our Constitution including such persons and any others who may be enumerated who are equally deserving. [Applause.]

Mr. Clark of Brockton: It has remained for this morning to present to me one of the greatest surprises that has come to my mind in all the sessions of this Convention. I have sat here from time to time and listened spellbound to the siren voice and the profound logic of the gentleman from Worcester (Mr. Washburn), as he has warned this Convention repeatedly against radical and progressive measures. And what is my surprise this morning to note as I read his proposed amendment to this matter that he has utterly deserted his friends of the conservative ranks and is found clean over with the radicals, — a leader of the radicals. To use an old expression, he has out-Heroded Herod himself in this amendment. I cannot understand it; I do not know what has actuated him in this matter. This proposition opens so widely the possibility along various lines and various channels of legislative activity regarding pensions, regarding insurance, regarding almost every other activity in which the Legislature may engage, regarding human life, human health and human finances, that nobody knows what can be done or what cannot be done under this proposition if it passes. While I do not know and I do not believe a man in this Convention knows what can be done and what cannot be done under it, for that very reason I believe it is dangerous and I oppose it in its present form.

In the first place, I believe that we should consider and treat it very carefully and very candidly and with a view to securing something that will be useful, something that will be correct in its form and in its ultimate and logical results along the line of pensions. But we have another matter, another resolution, that provides that opportunity. Let us bring the pension systems, whatever they may be, under that heading and not mix them up with this matter.

Then again, I do not know what can be done and what cannot be done under the social insurance here. I am not certain to what extent it may abridge human rights and human liberty if carried out to its full and logical extent. The gentleman from Worcester proposes to let in all kinds of treatment. They sometimes bury people in the mud, in the mire, in the clay, as a healing process. His amendment opens it up to any process, submerging in the mud, laying on of hands, any kind of trickery and foolishness that may be imposed upon mankind. I believe that we all should study this very carefully before

adopting it. I have become very deeply impressed with a sense that there is a danger lurking in this broad, wide-open, uncertain, indeterminate resolution. I have some sympathy, — considerable sympathy, — and would like to see something worked out whereby we may secure maternity benefits. I look upon that matter favorably. Insurance against unemployment, possibly; I am not certain myself, I confess, as to how that would work out. For injuries incurred by workmen we already have a system that has been developed and is working very well and is doing an immense amount of good, that is costing the employers directly, and indirectly the consuming public, vast sums of money. I believe in this compensation; it is right; I always have favored it when I have been in the halls of legislation and I continue to favor it and it may require some further development. But I believe that we have authority under the Constitution now to develop it to the fullest extent that is necessary. "It may provide medical care, money payment", etc., — everything else, — no limit, no restrictions. I might go on and give you statistics, give you dates, but those have been given with perhaps sufficient elaborateness. But I hold in my hand here extracts from a report of the special commission on social insurance. These are extracts only, it is true, but presumably they are most pertinent and the most important parts of that report. I suppose that report costs the Commonwealth of Massachusetts $15,000 to $18,000. I find very little of information in it. What little I do find is not in favor of this amendment but is in opposition to it. On the whole, I trust we will go very slowly in adopting this proposed amendment, very much of which, in my opinion, should be rejected absolutely, and I feel that the Commonwealth and the people of the Commonwealth will sustain no serious damage if it is thrown overboard in its entirety.

Mr. Dresser of Worcester: I hope that this resolution will not pass. At the last reading I attempted to show what could be accomplished now and for what purpose the resolution was proposed. It does not add one iota to the power of the State to take any progressive preventive measure through the elimination of slums, through the extension of medical care, through health and safety regulations. It does not add one iota to the power of the State to require the agency which causes harm, whether that agency be an individual or an employer or a landlord, to pay for that harm. The only purpose and the only use of the resolution is to require agencies which do not cause the harm to pay. That is not in accordance with our theory. If there has been one desire that has filled all our breasts, from the man who came over in the cabin of the Mayflower to the last immigrant in the last immigrant ship, it has been that here he should have a chance to live his own life, to better his condition, to have his chance. That is what the country always has stood for, to give the individual, as far as it is possible, his chance to make good. It never has stood for the proposition that a class, whatever the class may be, — a class of birth or a class of riches or a class of calling, — shall impose its ideas on any individual. That is the essence of our democracy, expressed perhaps by Mr. Root as well as it can be:

> The central principle of our system of government is in the proposition that every man has a right to full and complete individual liberty, limited only by the equal liberty of every other man. Our whole system of law is in its essence only the en-

forcement of the reciprocal limitations of individual liberty. The justification of all laws and customs which constrain human conduct is that they are necessary and appropriate for the preservation of the liberty of others. Whatever law passes beyond that limit and seeks to impose upon the individual the ideas of others as to what his conduct should be, whether to subserve the interests of others, or to conform to their prejudices and to their ideas of propriety or wisdom, even though those others may constitute an overwhelming majority of the whole community, is a violation of the principles upon which our government was formed.

The purpose of this resolution is to enable the ideas of others to be imposed upon the individual, — that he who gets his wage by the sweat of his brow shall spend it as some one else shall tell him.

Now you may say that is a theory. It is, but let us see the facts. Social insurance, as it is understood and discussed here, arose in Germany in the years 1883, 1885 and 1886. It was adopted in Austria in 1889. No other country adopted any one of those laws until after a quarter of a century, — until after 1910. A generation has grown up under the social philosophy defined by the social insurance system in Germany. England adopted it in 1913, Holland in 1914, Russia, Roumania and Serbia in 1914. Outside of the German and Austrian empires no country has adopted these things until within the last five or six years.

Now what has been the result? We know, perhaps, why it was adopted. The story is that Bismarck felt that he would out-socialize the Socialists and put these schemes in effect. I happened to see two or three years ago a letter in the New York Times from the American wife of a German official, in which, speaking of some other matter, she used this sentence:

"We shall pass the compulsory National insurance bill," said a Minister of State to my husband, "because it will keep men at home whom we need for the army." To the people the bill was represented to be an act of paternal care for their welfare.

That is the genesis of social insurance in Germany. And what has been its effect? Its effect has been not to eliminate poverty, not to diminish sickness, not to increase preventive work. It has been to pass out dole to the unfortunate. It has been, as Mr. Gerard, you may recall, said in his book, to nail the workmen to the land and to the mills "as effectively as the serfs of the Middle Ages."

What has been the effect on the mental and the moral condition of the people? That you can get from the German statements themselves. Dr. Bernhard, professor of political economy in the University of Berlin, said two or three years ago:

The opinion is gaining ground that we are in reality arriving at the opposite of what was intended. For working-men's insurance legislation is showing undesirable moral and hygienic results which were originally regarded as a necessary evil but which are gradually making the blessings of working-men's insurance appear very questionable.

And what says another German who for twenty years was in the Council which managed those insurances? He says in an article written a few years ago:

I deem it a deed well done to have called attention once again to the all-pervading cancer that is destroying the vitals of our State.

A friend of mine a few years ago inquired from employers in Germany whether social insurance paid as an employment proposition. They said: "No." He asked the costs. The costs were high. "Why do you wish it? Why do you stand for it?" "We stand for it," said

the employers, "because the Government is committed to it; and although the cost to us is high, we get aid from the Government in our bonuses, in our price-fixing and in our foreign markets. It is an indirect tax that we pay the Government."

If those are the theories on which social insurance was adopted, — what has been its effect? We see what these men have said, but we know what has been its effect. For a generation, thirty and more years, the German working-men have been brought up to take their bread, their work, their opinions, from the State. They have been held in such subserviency that when some other class said "*Der Tag* has come," they were driven forward like cattle to the slaughter. And they *were* driven forward, because when they advance the officers stand behind the lines with drawn revolvers to shoot down the slacker. But we who have not been subjected to a generation of such training, who still believe that individual initiative is worth something, when we and our allies go forward, officers and men, rich and poor, native born and immigrant go forward, — *together*. If that is worth while, if that sort of democracy is worth dying for, it seems to me that that principle is worth voting for. I hope the resolution will not pass. [Applause.]

Mr. Carr of Hopkinton: As a member of the committee on Social Insurance which reported this resolution, I am a little astounded at the opposition that has arisen at this session, because we held a number of hearings at which the several propositions were given a hearing and I recall only one or two people who appeared in opposition to any of the propositions which were before your committee. All the people who appeared before our committee were in favor of these different propositions that we have reported in one resolution, and we felt because we reported it in this one resolution that it would combine the essence of what was desired by all of the people who were advocating these measures. They were all combined in this resolution. In our first report, if you notice, we divided the different subjects into four different classes. Health insurance, old age pensions, unemployment insurance and compulsory workmen's compensation were separated, and I believe that on the last stage of this matter at its first reading, an amendment that combined the whole of the subjects together was adopted because they are properly allied. It has been intimated by the question of the gentleman from Fall River (Mr. Morton) the learned ex-Justice of the Supreme Judicial Court in this Convention, by his question to the gentleman from Worcester as to whether there was any doubt about the Constitution in its present form being broad enough to permit the Legislature to enact the laws covered by these resolutions and if that was the fact, — and it seems to be the opinion of a great many lawyers in this Convention and elsewhere that the present Constitution is broad enough to permit the Legislature to enact any of those laws that we have heard objections to, —

Mr. Washburn of Worcester: I venture to interrupt the gentleman at this point, and in further elucidation of the matter that he is discussing, by reading from page 22 of bulletin No. 18, prepared by the legal advisers of the Convention to this effect:

Without inquiring too curiously whether the Massachusetts Supreme Court would uphold the constitutionality of a compulsory Workmen's Compensation Act

in the absence of a constitutional amendment, it seems proper to state that social insurance legislation, if compulsory, would be best safeguarded by an express constitutional amendment. It is significant that in the State of California such an amendment has recently been passed to pave the way for legislation of this kind.

And then in concluding its report the commission says:

In view of the recent Federal decisions herein referred to, it is obvious that "constitutional rigorism" is at an end and that the fourteenth amendment to the Constitution of the United States does not stand in the way of State legislation respecting health, unemployment and old age insurance. Of course the question still remains as to whether such measures are in violation of the provisions of the Constitution of Massachusetts.

That doubt could be removed by the adoption of an amendment expressly conferring upon the Legislature authority to provide for the several forms of social insurance herein considered.

Mr. CARR: You can see from the report just read that that was the proposition that confronted us. There was, as has been said, some evidence before us that the present Constitution was broad enough to permit the passage of these laws, no matter how bad they were, no matter how much they might Germanize the people, as has been stated by the gentleman from Worcester in this division (Mr. Dresser); the present Constitution is broad enough to do all of these things. It may be possible that it is going to create litigation at every attempt that is made by the Legislature or people who advocate these measures, that it will mean litigation that will require a Supreme Judicial Court decision on every phase of these questions. That is the situation that confronts us. Is it not our duty as a Constitutional Convention to remove that doubt? We are sitting to remove any doubts from our present Constitution, if there are any doubts as to the constitutionality of these proposed laws. If we believe that the Legislature ought to have the power to consider and enact to-day any one or any parts of them that they think would be for the general welfare, ought we not to remove any doubt as to their constitutionality? And that is all we are asking this Convention to do. We are not going to enact any specific laws that are suggested in this general resolution. We simply are going to say to the Legislature: "You may consider and enact these laws" and that when that is done they will not be confronted with the objection: "Why, these proposed laws are unconstitutional." In the Legislature a member opposed to these laws says they are unconstitutional and a member in favor says they are not. Then a question is framed for the Supreme Judicial Court to decide whether a specific act that the Legislature is considering would be constitutional if enacted. Those are the reasons why your committee decided that these questions were of enough importance and were of such yearly consideration by different groups that were interested in them that all doubt as to their constitutionality ought to be removed.

Now let us also consider, if we will, what is the source of objection to clarifying the Constitution on this matter. Because that is all that has been asked. There is a doubt only in the matter of constitutionality at the present time, and we simply are asking to clarify the Constitution on that point. Who are the objectors to it? The people who are going to be affected if the Legislature does enact these laws, the ones who probably fear that their bread and butter is going to be affected, naturally want to have that argument still left with them,

that these matters are not proper constitutional subjects for the Legislature to consider. Those are the people who are objecting. You all probably received through the mail this morning, — I did in my box, — this document signed by the Insurance Federation of Massachusetts, John W. Downs, executive secretary. For some reason or other the insurance companies fear if the Legislature is given this authority that it would make workmen's compensation compulsory. I will pause here a moment to ask if, after listening to the gentleman from Gloucester (Mr. Wonson) last Friday, you are not satisfied that something ought to be done in the way of a compulsory workmen's compensation law which would take care of that class of working people who now are allowed to suffer because their employers will not insure. The men who are engaged on the railroads are not insured. I will ask you to stop and consider the case of Ashton *v.* Boston & Maine Railroad (222 Mass. 65), where the court held for the first time that the Workmen's Compensation Act did not take away the right of the employer to require the employee to prove in an action at common law that the employer was negligent when the employee was injured in the course of his employment. All that class of railroad employees are not covered now by the workmen's compensation law. In this case of Ashton, if you recall it, he was working in the Hoosac Tunnel and met his death, and his widow sued for compensation under the common law. Though the employers' three defences were taken away by the act, the Supreme Judicial Court said that the burden was still upon the employee or his representative to prove that the employer was negligent. That is all the law amounts to. While you have taken away three defences you still have left to the employees of employers who have not insured, the hardship of proving, as the injured insured employees do not have to, that their employers were negligent. We say that the Legislature ought to have the undoubted power to pass a law of compulsory workmen's compensation. But we are told not to do so. It is going to Germanize the Nation. Before this war with Germany, we always in the Legislature and in all places where they were considering progressive laws for the benefit of the working people, have held up both England and Germany and other European nations as being in the forefront in considering and enacting laws for the improvement of conditions of the working-class. The war never has taken away this credit from those nations. But does this war or even the defeat of Germany, mean that the care of the working-classes in that country is evidence that Germany did wrong in caring for them? I do not think you will say so. Is it evidence, because England waited until this matter had been thoroughly tried out in Germany and then adopted this system of social insurance, — if England defeats Germany or the allies defeat Germany, is it any evidence that England was right? Of course it is not. What we are trying to consider here is: What is for the best interest of the working-classes of this country? Ought we in this State to be prevented from enacting or considering those beneficial laws that have been enacted in European nations and have been found so beneficial by them, and also by several States in our own Nation? I can see no objection to this amendment simply because Germany has similar laws. The only purpose of this amendment is to remove the doubt as to the constitutionality of any of those laws if attempted to be enacted at the present time.

Now let us see what this proposed resolution is, because maybe many of you have not even taken the time to read just its language:

"The General Court shall have power to establish systems of social insurance, including old age pensions or insurance," —

"The General Court shall have power to establish systems of social insurance." And then we further try to explain the expression of social insurance. What does social insurance mean? We have not left the term so broad as to cover every possible evil that might exist. We have mentioned specially those things which the Legislature has been considering for years, which the working people have been trying to secure, — laws to better their condition. Here are the matters that may be considered under the term social insurance:

old age pensions or insurance, pensions for physical disability arising from any cause, health insurance, maternity benefits, insurance against unemployment and compensation to workmen or their dependents from injuries incurred by workmen in the course of or arising out of their employment.

It may be to provide for medical care or curative care as well as money payment.

Mr. Theller of New Bedford: I should like to ask whether in the last line which the gentleman has just read the words "a money payment" preclude a series of money payments. If it does, I think that ought to be corrected.

Mr. Carr: The whole matter is left with the Legislature. I do not believe that we are attempting to tie their hands even as to the method of payment. Whether the payment is to be made in a lump sum or at different times, is legislative. The whole resolution is drawn with the idea of giving the Legislature full power to consider and to adopt laws that will be constitutional and that will tend toward the benefit of the working people of this Commonwealth. And I want to say here that that is the only thing that this committee on Social Insurance really considered. It was not a committee that represented any group of business interests. It was a committee made up largely of men who had been identified with the labor movement in one way or another, and one or two of our members are men who have been identified closely with the passage of the Workmen's Compensation Act as it is in the laws to-day. We were imbued wholly with the idea of doing something to enable the Legislature to pass laws that would be for the benefit of the laboring people. And I am surprised to find on the floor of this Convention the opposition that the report has met with from so-called friends of labor. The main reason, — the only reason that I can see, — for the opposition is that they do not understand it; that possibly they may fear it is a case of the Greeks bearing gifts of the gods. There is nothing of that in this proposition if you will read it. It is simply, as I say, clarifying the Constitution so that these matters which we all believe ought to be considered by the Legislature can be considered. Is there any question of the fact that old age pensions that have been advocated by the Governor of this State, that have been studied by several commissions, — that that question is a subject that should be considered by the Legislature? And yet if you do not adopt this amendment you still leave in doubt as to what would happen if the Legislature enacted a non-contributory old age pension law.

Mr. Herbert A. Kenny of Boston: Has the gentleman read the report of the Massachusetts State Branch of the American Federation of Labor in which they ask that this measure which he is advocating be voted down? Has the gentleman from Hopkinton read that circular of the Massachusetts Branch of the American Federation of Labor?

Mr. Carr: I have before me here a document dated July 29, 1918, if that is the one the gentleman refers to.

Mr. Kenny: I am referring to document No. 382. Is that the resolution the gentleman is speaking on?

Mr. Carr: Yes, that is the resolution.

Mr. Kenny: I should like to have the gentleman from Hopkinton explain why the Massachusetts State Branch of the American Federation of Labor does not want us to vote for that proposition?

Mr. Carr: That is the thing that I am trying to make clear to the Convention, — that I cannot understand the document we received in the mail this morning, in view of the fact that at the hearings held by our committee on Social Insurance no such objection was raised by anybody. On that committee, if you look through the names of the members, you will find presidents of the different unions of which they were members. I think there were surely seven men on that committee who are actively identified with the labor movement, and I know that two-thirds of the membership of that committee were men who were imbued only with the idea of doing something for the good of labor. And why this document is here this morning I cannot understand, — whether it is a recent expression of the American Federation of Labor or not. I know what we had before us was the thing that they said was required. There were something like twenty or thirty separate resolutions offered covering similar subjects and then we grouped them all together because we wanted to find out just what it was that was required. And it appears from this letter as I read it that they are opposed not only to a portion of No. 382 but to the whole of it. Do I understand that the American Federation of Labor wants to put itself on record as against old age pensions? Do I understand that the American Federation of Labor by this document here is against pensions for physical disability or compensation to workmen or their dependents for injuries incurred by the workmen in the course or arising out of their employment?

Mr. George of Haverhill: The delegate from Hopkinton has asked a question with regard to old age pensions, and I want to suggest to him that the old age pensions that have been suggested are not popular with the men who labor, — for instance, the man who arrives at the time of life when he is in such a condition that he cannot be self-supporting, the city or town where he lives is bound to contribute to his support even if it costs $500 a year. Under this proposition he might get $75 a year, — in lieu of what his necessities might demand, — which perhaps might buy his coal; therefore that sort of a pension is not popular with them.

Mr. Carr: Of course that is merely a joke of the member. We all know we are not trying to pass a law in any specific form of old age pensions. All we are considering here is whether we will clarify the Constitution so as to permit the Legislature to consider the subject of old age pensions and pass laws in reference to it.

The objections that have been raised by the gentleman from Haverhill (Mr. George) are merely legislative, — whether it is to be $75 per year that is to take the place of the cost of the care that they now receive from the overseers of the poor, or whether it is some other form of old age pension, is for the Legislature to decide. But I do want to say that the present Governor, in a message he gave to the House in 1917, recommended a form of old age pension; that several commissions have recommended a form of old age pension; that we ought to have an old age pension, I believe, in this Commonwealth. I have seen the benefits of old age pensions. I have seen where the shadow of the poorhouse has been taken out of the lives of poor people in Ireland, where they no longer have only "Over the Hills to the Poorhouse" to take care of them in their old age, but where the government has provided the old people with a pension large enough to enable them to spend their last days among their relations and friends instead of the disgraceful end in a poorhouse.

That is what I should like to see established in this Commonwealth, so that a man, after spending his time and working in a mill or factory, and bringing up a large family, who have taken upon themselves other families to bring up and no longer can take care of their aged parents, — that the State will recognize them as having performed a duty for which they should be compensated. I believe there is no question in this Commonwealth as to whether an old age pension, based upon the necessities of the person, should be enacted, but there is a doubt of the constitutionality of that. I say, the committee on Social Insurance simply have asked leave to remove that doubt. Let the Legislature consider it; let the gentleman from Haverhill (Mr. George) go before the legislative committee and, if he has any objection to $75 given under an old age pension instead of the $500 that it costs the overseers of the poor, let him go before the legislative committee and advocate that the amount be $400 instead of $75.

But that is not the question before us. The question before us is to clarify the Constitution so that that matter can be considered by the Legislature and so that the gentleman from Haverhill will be able then to give some enlightenment to the Legislature that may be considering the subject constitutionally. There is not one of those propositions that we have recommended here in our resolution that has not come before every Legislature in the past ten years and that has not been met always with the objection that it is unconstitutional. That is the first and last objection. "No; we won't consider it any further; it is unconstitutional." They always have said that. Let us give the Legislature this power; relieve this doubt. Let us give them the power to consider those questions and the other humane questions and enable the Legislature to enact specific laws, that will cause the poor woman about to be confined to be taken care of properly during maternity. Objectors think if we pass such a law, so that the poor will be given those advantages, they will be affected in some way in their pocketbooks. Those are the sources that the objections come from; not from any broad-minded, liberal man who wants to have this question considered on its merits, and give to all working people the consideration that they are entitled to under those circumstances, and the laws that should be enacted to enable it. It is all very well for us to have this beautiful doctrine that is expounded here

by the gentleman from Worcester (Mr. Dresser), about the individual liberty of working people. Yes; the individual liberty that the wage will give them; that is the liberty to which they are confined. I say that they cannot, even by coöperative action, even by a unity of all those people, through their legislative bodies, they cannot have by social insurance laws the individual treatment that men of wealth can have in their homes. There is no system, where a man has to work for a wage, that he can get all the advantages of wealth. He can improve his present condition by that intelligent coöperative action which the Legislature may give if you pass this resolution.

I ask the delegates here to still consider this proposition, to take away from your minds the wishes of the men who have some selfish interest in leaving the Constitution as it is at the present time. Leave the hands of the Legislature free, so that they can consider those problems which are humanitarian and surely are worthy of their consideration.

Mr. White of North Brookfield: The gentleman in the third division (Mr. Carr) evidently has made a great study of this question of social insurance. I wonder if he will be kind enough to state to the Convention about what the old age pension system would cost the State, say in the course of five or ten years.

Mr. Carr: If we were considering only a legislative act, it would be one thing. The same question was raised by the gentleman from Haverhill (Mr. George). We are not legislating. If you mean to say we ought to tie the Legislature's hands by first finding out what a system of old age insurance is going to cost, and if we thought it ought not to cost more than $5,000,000, and then the Legislature be limited to establishing a pension system not to cost more than $5,000,000, that would be one thing. Or do you want to say you will give the Legislature power to establish an old age pension system, but it shall not cost the State any more than $15,000,000? We are not considering the cost detail here. We are asking only that the Constitution be amended so that those questions may be considered sanely and wisely. If I was asked by the gentleman who just spoke (Mr. White) as to what particular system of old age pensions the Legislature ought to adopt, or if it ever will adopt any, my answer is I cannot tell.

Mr. Parker of Lancaster: I would inquire of the gentleman in the third division (Mr. Carr) whether he believes that this Constitutional Convention ought to confer powers upon the Legislature which it does not believe the Legislature ought to exercise? Does he not think that this Convention should confer only those powers which it holds that the Legislature ought to exercise for the public welfare? And does it not follow that we ought not to support this pending measure, to confer this power upon the Legislature, unless we believe also that the Legislature should exercise that power?

Mr. Carr: I am afraid my speech has been made in vain as far as the gentleman from Lancaster (Mr. Parker) is concerned; because I thought I made it clear that it was because the Legislature had been considering those matters, and considering them seriously, and that a large body of people in the Commonwealth had been considering all those matters here, that we now are asking leave to amend the Constitution so as to relieve any doubt of the power of the Legisla-

ture to enact such laws. Of course, we should not give the Legislature power to take a man's life without due process of law, or his property. That is the question he is asking me. Of course, we ought to limit the Legislature to just the kind of laws that are named here and other laws of like import, and not give them the right to do otherwise.

Mr. THELLER of New Bedford: As the phrase in line 10, "money payment," might be interpreted to be a lump sum payment instead of a series, I move to amend by striking out the three words "a money payment," and substituting therefor "money payments."

Mr. MYRON of Boston: I had the honor of being a member of the Social Insurance Committee, which has reported the amendment now under discussion. The committee reported almost unanimously and recommended the adoption of this general amendment, which gives to the Legislature authority to pass pensions and different kinds of social insurance, in whatever manner it sees fit.

The fact that I voted for this amendment does not mean necessarily that I am in favor of any and all of the different kinds of social matters included in it. The fact is that I realized that under our present Constitution there was some doubt as to whether or not the Legislature could pass many of these matters, and I believed that if at any time in the future the people of this Commonwealth should desire to have passed any social measure such as is contained in this proposition, they should not be confronted with the obstacle of its being unconstitutional.

The only matter in this proposition or in this amendment in which I am particularly and deeply interested is the matter of non-contributory old age pensions. That is not a new matter. It has been agitated and discussed for many years. Practically every country, every civilized country of this world, with the exception of ours, has to-day some form of old age pensions. Many railroads, mercantile concerns and corporations of this country have instituted and to-day maintain, a system of old age pensions for the protection of their employees in old age. The Commonwealth of Massachusetts has spent thousands of dollars in the last ten years investigating and looking into this matter of old age pensions; and I may say that if a State like Massachusetts has spent the money and given the time in looking into this proposition, I believe it is because Massachusetts always has been noted for its willingness and for its generosity to advance legislation of such a humane character as this. For in a State such as ours the thought of the old age of thousands of working people who have toiled nobly, raised large families, endured the usual troubles and misfortunes of life, and come down to old age in comparative poverty, appeals forcibly to our ideas of humanity and justice.

Mr SAWYER of Ware: It seems to me we have a very excellent resolution here which we ought to order to a third reading; if we vote to order it to the next reading we are not committing something that we cannot withdraw later on.

The gentleman from Lancaster (Mr. Parker) raised the point that no one should vote to order this to another reading unless he himself believed in the proposition; that we are ethically bound, or, in other words, we would be ethically at fault, if we passed along to the Legislature something we did not believe in. That is true, and yet our relation to the Legislature is something of that of the grand jury to

the petit jury. The grand jury does not insist on hearing the evidence so thoroughly as does the petit jury. It gives itself some leeway, and passes the matter along to the petit jury. Now, if we believe in the general proposition, that is sufficient to warrant us to vote to send this to a third reading.

The Federation of Labor has sent out a circular in which it objects to this. Why? Because they want a system that shall be "non-contributory." They want us to write into the Constitution that it shall be "non-contributory." We cannot do that in justice. The present resolution goes as far as justice demands.

I want to say just a word in dissent of the evidence submitted by the gentleman in this division from Worcester (Mr. Dresser) in regard to Germany. It is of doubtful expediency to quote at this time as anything in favor of any proposition, what were its results in Germany. Yet when he stated that those who had inquired into the working of the system in Germany said it was unsatisfactory, he quoted as his authorities the manufacturers and employers. Others who have gone from this country to Germany, or did go before the war, to inquire into the situation, brought back a radically different report. When he said it was Bismarck's policy to out-socialize the socialists, that was not the exact policy. His policy was to have an autocratic State give to the workers what they wanted from their own State, and take away political revolution. How well he succeeded the German situation testifies. He cemented the people's allegiance to the autocratic State by the very virtue of the benefits which the autocratic State conferred upon them. In the early days of the war we had a great many investigations carried on in regard to the physical status of the employees in Germany and employees in England, and always in favor of the employees in Germany. The fact that we are in this war, and that it takes so many nations to defeat her, shows that she has something that means efficiency, and the thing that has given Germany her efficiency is the fact that for thirty years she has been showing consideration to the working people, she has sought to develop a well-nourished and healthy proletariat, — and we see the results in this war.

Mr. Bodfish of Barnstable: If I may claim your time for just a minute, when I moved an amendment on Friday I pointed out to the Convention that the adoption of it would make unnecessary the consideration of the question of pensions under any other head. I pointed out to the Convention that we already had discussed this question and acted on it under three different propositions, and it was not wise to load down the ballot with amendments that were not necessary.

Every argument that has been made here this morning in favor of the proposition before us fits the exact amendment that I offer. I ask you to test it and see if that is not so.

The first question which the delegate from Worcester (Mr. Washburn) said that we should consider was: Has the General Court this power? Some may think it has not; personally I think it has not. If you believe it has, it seems to me that you should not vote for either of these propositions.

The second question is: If the Legislature has not this power, should it be conferred upon the Legislature? There, again, I say it is our duty, as members of this Convention, not to place upon the

ballot any proposition that we think should not be written into the Constitution. I believe, however, that the Legislature should have the power given to it. Now, if the Legislature is to be given the power, how is it to be given? Is it to be given by an amendment which is written in such terms as a constitutional amendment should be written in, — broad, general terms, — or is it to be filled with legislative detail and definition? That is the question. Now you come down to the exact point at issue between the amendment I have moved and the proposition before you. I submit that if you are going to adopt any amendment of this kind, and send it down to the people, you ought to adopt the proposition that I have placed before you.

Mr. Robbins of Chelmsford: I agree with the speaker in the fourth division who heads this document No. 382 (Mr. Washburn of Worcester) to this extent: That we should expedite matters and come to a conclusion as soon as possible. I disagree with the gentleman in this division from Hopkinton (Mr. Carr) when he says that any matter, or, rather, the expression of any matter, which heretofore has appeared unconstitutional, should be made constitutional by this Convention. The power of the Constitution to restrict is just as important as its power of permission. In all matters of revision which come before this Convention it is well to first try and visualize conditions as they would exist if the revision was a part of the Constitution and we were living under its operation. We should be careful also not to disturb existing conditions unless some actual benefit to the greatest number is to be derived.

What is the present condition relative to insurance matters in Massachusetts? What is the status of the policy holder? Remember, all arguments, to have weight, must consider the policy holder. Are there any hardships imposed at the present time upon the insured? Probably there is not a delegate in this Convention who is not a policy holder of some sort. What has been your experience? Have you any fault to find with your treatment?

Take the first question, relative to existing conditions in Massachusetts. Every company doing business in Massachusetts is now regulated by State control. I hold in my hand a report, consisting of 117 pages. What is in that report? "Laws Relating to Insurance and Insurance Companies," and that does not include Savings Bank insurance, Casualty insurance on the assessment plan, and the business of fraternal benefit societies. That is protection, and that is what you pay your money for in every case. Would you be any more protected if the business was carried on by the State? I am a firm believer in government control when an emergency requires it, but I do not believe sweeping powers should be delegated to government control when not necessary and at the expense of private enterprise.

There has been some jealous criticism of the amount of money that insurance companies make. That would be an additional protection if it were so. We might as well use as an argument that every enterprise that appears to be financially successful should be taken from private control and controlled by the State. Would you authorize the Legislature by constitutional amendment to recommend that the State set up bureaus and commissions enough to engage in all these different enterprises? The time for State control always has been,

and always will be, at a time when private enterprise is not able to contribute to public needs.

The second question is the status of the policy holder. Now we get down to your experience and mine. We are asked to contribute a certain amount in order to be protected should misfortune overtake us. This amount is no more and no less than our neighbors pay for the same protection. Is there anything unfair in that? We may feel that the rate may be high. Is there no recourse? In every community rates are considered and amended from time to time upon application of the party interested. Is there any delegate here who can say truthfully that the companies are not very generous in settlements? Is it not true that those who do find fault with adjustments are invariably those who consider their policy a license rather than a contract of indemnity?

My legislative experience has been confined to this Convention, but when I read the Bill of Rights in my Constitution of Massachusetts it seems to me that the introduction of the proposed amendment would look like a daub of red paint across an otherwise carefully painted picture. The business already established is entitled to some protection, particularly when no serious conditions exist from the standpoint of the people served.

I hope this Convention will vote to reject the whole proposition, with its several amendments.

Mr. O'Connell of Salem: As a member of the committee on Social Insurance, I want to say that the committee practically agreed to disagree. If the members of the Convention would look at report No. 327 they would wonder why there came from that committee a comprehensive report and an individual report. As the chairman of the committee has said, the committee was unanimous in the opinion that if there was any doubt existing as to the Constitutionality of these measures that doubt should be removed. It was not a unanimous opinion concerning all the specifications which come under the scope of this general amendment, that there was doubt existing as to their constitutionality.

For instance, I desire to direct my remarks to health insurance. I have contended that there never has been any doubt existing as to the regulating of the public health. I believe we have sufficient enactments or statute law, and sufficient other provisions, to guard against bad health of the inhabitants of this Commonwealth. We have the State Board of Labor and Industries, whose powers are to investigate and eliminate any conditions which would be injurious to employees, and we have the State Department of Health, and we have local boards of health. We have, too, enactments in ordinance form, regarding the regulating of the health of the inhabitants and various other forms of legislation along these lines; and I have claimed that there is no contention or any doubt as to the General Court regulating against bad conditions that may spring up in various quarters.

I believe, under those conditions, that this present provision or specification as to health insurance is only to bring out the one doubt that may be existing in some minds as to this one instance, — the enactment of compulsory insurance laws. I do not believe that a compulsory insurance law is necessary or is desirable. I believe that

under the present conditions our Constitution privileges the General Court to enact the necessary preventions to insure the good health of the community.

For instance, I will refer you to the case when the United States government went to the Panama Canal. Panama was filled with disease. The government did not take a compulsory insurance act to the Panama Canal to eliminate disease; it took its medical department there, and its engineers along with it, and other craftsmen, and eliminated that disease in a practical way, thereby preventing the disease from continuing. Likewise, as to Havana after the Spanish war. I say, rather than to bring forth a health insurance resolution, in compulsory form, to eliminate disease, we ought to use preventive means, rather than a compulsory insurance provision, as a cure. I think we have all these preventive means. I believe, as a member of the committee, that that was one of the reasons that brought out these individual reports; it was the contention along these lines. That was my objection, and that was one that the committee agreed to disagree upon.

Mr. BROWN of Brockton: I cannot understand the opposition to this resolution unless it is based upon the possibility of what the Legislature may do. I hold to my own position. If the Legislature, of course, has got power it may do something it ought not to, but if it has not got power how can it do anything? Yet something should be done along these lines.

I favor the Bodfish amendment, because it is in principle all that the committee ask and at the same time it leaves the working out of the whole subject to the Legislature. It is not yet so far perfected that anybody can present a plan in detail which will not meet with objection. It is possible, if the Legislature is given power, to evolve something better than what the resolution presents.

Mr. DONOVAN of Springfield: As one of the members of that committee, the Social Insurance Committee, I wish to speak in favor of the amendment that is now before the Convention. I am one of those who supported the majority report of that committee, feeling that the report covered any contingency that might arise and believing thoroughly in granting to the Legislature the power to take up these matters that are of such social import. It seems to me that we should adopt the principle of giving power to the people and to their representatives. I have nothing to fear from the Legislature, while we have behind the Legislature the power which will be given to us by the initiative and referendum, an amendment which I have every reason to hope will pass, along with any other progressive amendments that we may submit at the coming election. For that reason I feel that the power should be given to the Legislature and that we should not express fears as to how they should use that power.

I am not committed to a specific measure of dealing with health insurance. There are possibilities in the way of legislation upon this subject that make it very dangerous to that class in which I am particularly interested, that part of the public known as the wage-worker. For that reason I would not stand here endorsing health insurance, if we had before us a measure drawn as some think it might be drawn. But as to giving power to the Legislature to meet a situation or meet conditions as they arise, I am perfectly willing to do that, and I am

going to support the Bodfish amendment for the reason that it seems to me to be broader and more concise than the majority report of our committee.

Mr. WASHBURN of Worcester: I have a very few words to say in closing this debate. In the first place, I will call the attention of the Convention to the amendments that I have offered to No. 382, in the nature of perfecting amendments, and which effect these two changes: In line 8, the word "incurred" should be stricken out, and the word "received" inserted in its place. In line 10, the expression "medical care" will be stricken out, if my amendment is adopted, and the words "curative treatment" inserted. Objection was made to the expression "medical care" upon the ground that it probably was unduly restrictive in a constitutional amendment. Those are the only two amendments that I have introduced, and the only two amendments that I favor.

I am not in favor of the Bodfish amendment, which seems to me too broad. I am not in favor of the McCormack amendment, nor of the amendment submitted by Mr. Balch, but only of the two amendments I have mentioned.

I will add that I hope the Convention will not forget that we are dealing with principles and not with matters of legislation. It is one thing to confer power upon the General Court; it is quite another matter for the General Court to legislate. The Legislature, upon various occasions, has appointed commissions to investigate all branches of this subject of social insurance. If this Convention fails to pass this resolution its action may well be interpreted as indicating either an opinion that the Legislature already has that power, from which conclusion there is substantial dissent in authoritative quarters, or else that the Legislature should not have conferred upon it the constitutional power to deal with all these social questions.

The amendment moved by Mr. Balch of Boston was rejected.

The amendments moved by Mr. Washburn of Worcester were adopted.

The amendment moved by Mr. Theller of New Bedford was adopted.

The amendment moved by Mr. Bodfish of Barnstable was rejected, by a vote of 28 to 109.

The resolution (No. 382), as amended, was rejected Tuesday, July 30, 1918, by a vote of 43 to 107.

XXXVIII.

STATE INSURANCE.

Mr. E. Philip Finn of Chelsea presented the following resolution (No. 108):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

For the purpose of providing protection against fire hazard and loss to dwelling-houses and the contents thereof, laws may be passed establishing a State Fire Insurance Fund to be created by contribution thereto by owners and occupants of dwelling-houses or tenements, said fund to be administered by the State, determining the terms and conditions upon which payments shall be made therefrom; but no payment shall be made therefrom when the loss or damage shall have resulted from the failure of the subscriber to obey any lawful requirement of any constituted authority.

Laws to be passed establishing a board which may classify all risks according to their degree of hazard, to fix rates of contribution according to such classification, and to collect, administer and distribute such fund and to determine all rights of claimants thereto, and pay losses sustained by subscribers to said fund.

The committee on Public Affairs reported the following new draft (No. 319), July 11, 1917:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The sharing or equalization of risks by means of insurance being a matter of public interest, the General Court may provide for insurance of any and all kinds by the Commonwealth; but the liability of the Commonwealth for risks and losses shall be limited to the funds derived from such insurance.

The resolution was read a second time Tuesday, June 25, 1918; and it was rejected the same day.

THE DEBATE.

Mr. Hobbs of Worcester: As one of the members of the committee who passed upon this matter, and who yet remains unconvinced after the majority of the committee were, I hope that this matter will not go on without at least some satisfactory reason being given for its passage. I am inclined to think, from such an inspection as I have given to the subject, that the State, if it chose, could set up a system of State insurance now. Insurance is a matter which borders very closely upon, if not actually included in, matters which stand on the peculiar footing of public service. The Legislature from time to time has taken steps in regulating insurance and contracts of insurance, and has exercised a certain amount of power in passing upon insurance rates.

Furthermore, the State from time to time has made appropriations of money, not for setting up systems of insurance of its own, but for setting up systems of insurance partly public and partly private, such as the appropriations in assistance of savings bank insurance, for instance, and in the starting of the insurance company which was intended to administer the Workmen's Compensation Act. That par-

ticular insurance company has passed through so many forms and under so many names that I am not altogether confident, but I believe it is now the Liberty Mutual Insurance Company.

If the State can appropriate money, and if it can exercise the large measure of regulation that it has in the past, if other States have set up systems of State insurance, as I am confident that they have, I should consider that this amendment was in all probability entirely unnecessary, except for one purpose, and that purpose is the declaration of the desire of this Convention, or of the people, that a system of State insurance should be set up. It is my impression, from what small acquaintance I have with public opinion, that there is no especial desire on the part of the insured, at least, for State insurance. We have had propositions in the Legislature looking to the combination of workmen's compensation insurance under a single company, and upon the occasions when that legislation was under consideration the General Court was overwhelmed with protests from individuals insured in private companies. There is a strong conviction, although largely an erroneous one, that there is a measure of competition in insurance company rates, — certainly that there is a competition in insurance company service, — and that they ought not to be taxed for the setting up of a competition with the companies under which they now are insured. Therefore I question if there is any such public demand for State insurance as would warrant the Convention in going on record in favor of such a system, if the only use is merely for the purpose of making such a declaration of public policy. Without some intimation of some far better reason than I have seen yet, I would not favor the adoption of this resolution.

The Convention refused to order the resolution to a third reading, by a vote of 36 to 82.

Mr. E. Gerry Brown of Brockton moved that this vote be reconsidered and this motion was considered on the following day.

Mr. Brown of Brockton: From the beginning of the agitation on the working-men's compensation down to the present time, and whether before legislative committees or elsewhere I always have made it understood that my position is that all accidents should be taken care of by the State without any intervention of any private interests. The State should take charge of the injured from the very beginning. In that way it can distribute the burden. The present system is not a proper method of distributing it. Noting this matter on the calendar I thought that I was losing an opportunity of having something to say whereby the Legislature could have power to create a State system. But it has been brought to my attention that this power is given in the matter of social insurance. I can well understand how the Convention is adverse to the idea of further enlarging the functions of the State by adding fire insurance, and therefore with the consent of the Convention I would be pleased to withdraw my motion to reconsider.

The motion to reconsider was withdrawn.

XXXIX.

BILL-BOARD ADVERTISING.

Mr. James P. Richardson of Newton presented the following resolution (No. 53):

Resolved, That it is expedient to amend the Constitution so as to provide as follows: — Full power and authority are hereby given and granted to the General Court to regulate, restrict or prohibit advertising on public highways, in public places, and on private property within public view.

The committee on Social Welfare reported that the resolution ought NOT to be adopted.

It was considered by the Convention Friday, June 21, 1918.

Mr. George W. Kelley of Rockland moved that the resolution be amended by striking out lines 1 to 6, inclusive, and inserting in place thereof the following:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: Full power and authority are hereby given and granted to the General Court to enact laws regulating and restricting advertising on public highways, in public places, and on private property within public view.

This amendment was withdrawn.

Mr. Charles Frederick Dutch of Winchester moved that the resolution be amended by substituting the following new draft (No. 381):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law.

This amendment was adopted Tuesday, June 25, 1918; and, accordingly, the new draft (No. 381) was substituted, and it was ordered to a second reading, rejection of the original draft, as recommended by the committee on Social Welfare, having been negatived.

The resolution (No. 381) was read a second time Tuesday, July 30.

Mr. Augustus P. Loring of Beverly moved that the resolution be amended by striking out lines 3 to 5, inclusive, and inserting in place thereof the following:

The General Court shall have power to regulate and restrict advertising on public ways, in public places, and on private property within public view; but no person shall be deprived of the use of his property without just compensation.

This amendment was rejected.

The resolution was ordered to a third reading Tuesday, July 30, and was read a third time and passed to be engrossed, without further debate, Tuesday, August 13.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 193,925 to 84,127.

THE DEBATE.

Debate was begun Friday, June 21, 1918.

Messrs. George W. Kelley of Rockland and Charles Frederick Dutch of Winchester moved certain amendments cited above.

Mr. RICHARDSON of Newton: I have observed, as various matters have come before the Convention for debate, that it has become fashionable for some member in the course of the debate to refer to the matter then under consideration as probably the most important that has come or is to come before the Convention. I will say at the outset that I make no such claim with reference to this proposal, and that I do not expect it to be so referred to either by any of its friends or by any of its opponents. What I do say about the matter, however, is this: That the so-called bill-board nuisance in this State attains the proportions of a serious detriment to the welfare of the State and a substantial evil; that there is a widespread public interest in the question and a general demand for some effective means of regulating it, and that a constitutional amendment is the necessary prerequisite and absolutely essential preliminary to any such regulation. And I propose to devote the time at my disposal to an attempt to convince the members of the Convention of the truth of those three facts.

If any of you will take the trip from Park Street by electric car to Lake Street, over Commonwealth Avenue, justly celebrated as one of the most beautiful city approaches in the country, and will take the trouble to count the number of advertising signs which border that beautiful boulevard on either side, you will find that in that short stretch of half a dozen miles there are more than 250 of these structures by actual count. They are of all shapes and sizes and colors. There are single deckers and double deckers. They are of every sort, shape, size and color, and they portray the virtues of every sort of product, from ales to automobiles and from corsets to cigarettes. I submit that it needs only a view to convince any member of this Convention that the presence of those signs in that locality is a detriment to the whole region, that it affects the value of real estate unfortunately; and that it deteriorates the vicinity, both as a dwelling-place for those who wish to live on Commonwealth Avenue or near by, and to the travelers on the highway who use that avenue as an approach to Boston.

I simply use Commonwealth Avenue boulevard as an illustration. It is by no means a unique condition of affairs. The Revere Beach Parkway equally is disfigured with these uncouth structures, and that condition exists in every city and town, I venture to say, in the Commonwealth. Go into almost any city, and you will find one of these structures erected in the city square or on some conspicuous part of the city streets where there happens to be a vacant lot. No matter if it shuts out the view of some piece of greensward which the city has set aside for a park. No matter how much it may disfigure the beauty of some choice bit of architecture, some public building, there you will have your omnipresent bill-board, and under the law as it stands at the present time the community is powerless to do anything whatever about the matter.

Go out into the country and travel along one of the highways upon which Massachusetts has spent so many dollars of the taxpayers' money and of which she is so justly proud. Come to a commanding point in the view, from which should be seen some vista of pastoral or rustic or mountain beauty, and the chances are even that the traveler's eager eye will have to feast itself on some flaming pronouncement in favor of "Tireless Tires" or something of that sort. And there again the Commonwealth or any subdivision thereof is powerless to prevent the disfigurement of that highway, upon which it has spent the taxpayers' money so bountifully.

Gentlemen, instances of this sort will occur to every one of you. I shall not spend any further time in demonstrating the existence of these conditions. Newspapers have editorialized upon them. Magazine articles have been written about them. You all know that these things are true. Under the Constitution as it stands at the present time, there is no authority, gentlemen, to deal with them except in so far as they affect the public health or safety, and it is plain that not one bill-board in a thousand can be said directly to affect the public health or safety.

I am well aware that this argument will be subjected to the alleged reproach of being based upon æsthetic considerations. There is something about that word "æsthetic" that hardly ever fails to draw a laugh. In the hearings before the committee the statement was made that everybody who was in favor of such a restriction as this either wore skirts or ought to. Now, gentlemen, without pausing too long upon the mental picture which would be presented by the spectacle of the learned judge from Cambridge in the third division (Mr. Walcott) and myself in feminine garb (we two being among the staunch supporters of this resolution), I go on to say that I accept that challenge, and I am proud to say that this resolution is based largely upon æsthetic considerations, which, being translated into Anglo-Saxon, means nothing more nor less than considerations of beauty. I thank God that the time has passed when it is possible to sneer at considerations of beauty as having no part in the governmental activities of the State. Art galleries, museums, parks, esplanades, water basins, good taste in architecture, statuary and memorials, all these things are recognized now as distinct assets of the life of a community and as of great value in raising the standard of public health, morals, education and citizenship. And so I not only am willing to admit, but I am proud to say that this resolution seeks to make it possible to preserve and enhance some of the beauties of this Commonwealth of Massachusetts, both natural and artificial, as it is not possible to do under the existing Constitution in its interpretation by the Supreme Judicial Court.

Is there a widespread public interest in this matter? Let me present a little of the evidence on that point. On June 19, 1917, the board of aldermen of the city of Newton passed this resolution. I shall read only a few words from it:

Whereas, It is the judgment of the board of aldermen of the city of Newton that the legislative authority of the Commonwealth should have the power to regulate upon public and private property the erection or display of posters, bill-boards and advertising devices, therefore be it

Resolved, That the board of aldermen of the city of Newton respectfully suggest to the Constitutional Convention the consideration of the expediency of so amend-

ing the Constitution of the Commonwealth that the legislative authority thereof shall have power to regulate upon public and private property the erection or display of posters, bill-boards and advertising devices.

This resolution was directed to my colleagues from Newton and myself, and we were instructed to put the matter before the Constitutional Convention.

In the hearings before the committee the rooms were crowded with people who came there to advocate the passage of this resolution. There were representatives from boards of trade, from civic leagues, from improvement associations, and individuals interested in this matter all around the Commonwealth. I have received letter after letter commending the purpose of this resolution from people whom I never saw or heard of. Colonel Sohier of the Massachusetts Highway Commission appeared before the committee in favor of this resolution, and in connection with his testimony let me recall one piece of it, that out on the Mohawk Trail, that "last word" of scenic beauty in this Commonwealth, he had gone down into his own pocket and bought a piece of property at a commanding point upon the Mohawk Trail in order to prevent its disfigurement and spoliation by a bill-board company because that was the only way in which he could see that the desired end could be accomplished. The Mohawk Trail itself at this very moment is disfigured at various points by the erection of such structures as we are attempting to regulate by this constitutional amendment.

The hearings before the committee, as I have said, were well attended. There is every indication of a wide-spread public interest in this matter. The Boston Herald, the Boston Transcript and the Springfield Republican all have commented favorably upon it in their editorials. I venture to predict that if this Convention should see fit to pass this resolution in one of its forms, — and I may say now that I shall be very glad to accept, so far as I am concerned in it, the proposition of amendment under the name of Mr. Dutch of Winchester, which I think is an improvement in language, — that if the Convention shall accept that proposition and put it before the people, when the time comes for the people to mark their ballots, as they go down the line they will come to this matter and they will say to themselves: "Aha, here is something that is plain and simple and we can understand it, and we want it," and they will mark "Yes" in favor of it by an overwhelming majority.

Mr. Flaherty of Boston: I should like to ask the gentleman from Newton (Mr. Richardson) if he is not aware of the fact that the Supreme Court of the United States, in a decision handed down on the 21st of December, 1916, and reported in volume 242 of those reports, holds that a Legislature by a proper regulation has ample authority to control the bill-board advertising. It is the case of Cusack Company *v.* The City of Chicago.

Mr. Richardson: I will cross the bridge of the Cusack case when I come to it, simply pausing here to say now, however, that the United States Supreme Court never has said that a State court had not the right to interpret its own Constitution. The trouble with the law of Massachusetts now is not that there is any adverse decision from the United States Supreme Court, but that the Massachusetts Supreme Judicial Court by the case of Commonwealth *v.* Boston Ad-

vertising Company, 188 Massachusetts, 348, has interpreted our Constitution in such a way as to make the regulation of the structures impossible.

Mr. McANARNEY of Quincy: Does not the gentleman know that the case he refers to, Commonwealth *v.* Boston Advertising Company, really decides that in this State private property cannot be taken and condemned for purely æsthetic reasons, without compensation to the owner, but upholds the doctrine that it can be taken under the police powers if it is being put to a use detrimental to the public health, safety or welfare?

Mr. RICHARDSON: I do. I know that that is what that decision comes to. And I am asking this Convention frankly and plainly to amend the Constitution of this State so that regulation of this sort of a structure can be had upon æsthetic grounds, if you want to use that word in connection with it, under the police power of the Commonwealth; in other words, to extend the police power of the Commonwealth to a point —

Mr. McANARNEY: Does the gentleman contend, in view of the Fourteenth Amendment to the United States Constitution, that we can extend the police power of this Commonwealth, even by a constitutional amendment, for any reason that does not have to do with the health, welfare and safety of the people?

Mr. RICHARDSON: I do contend exactly that.

Mr. McANARNEY: Will the gentleman refer us to any decision of the Supreme Court to that effect?

Mr. RICHARDSON: I can.

Mr. McANARNEY: I should like to see it.

Mr. RICHARDSON: I refer the gentleman to the case of the Cusack Company *v.* Chicago.

Mr. McANARNEY: I submit that case does not go that far.

Mr. RICHARDSON: There is a discussion of the Cusack case in the pamphlet entitled "The Regulation of Bill-boards," which has been put in the hands of every member of this Convention, and I am willing to leave it to the legal members of the Convention, or to others for that matter, as to what the Cusack case really does decide.

It has been brought out plainly enough by these interruptions that a constitutional amendment, in this State at least, is necessary if we are to have any means of regulating these structures. Whether the gentleman from Quincy (Mr. McAnarney) is in favor of the present condition of affairs, unregulated bill-board nuisances, I do not know. His question would seem to indicate that that was his frame of mind. The fact about the matter is, of course, that in this country we tolerate these things to an extent which would be regarded and is regarded as perfectly preposterous by any foreign country where they take some steps to preserve the natural and artificial beauties of the community.

The decision in the case of Commonwealth *v.* Boston Advertising Company stands at the present time as an absolutely insurmountable barrier to any legislation regulating bill-boards. I have no desire to make this a technical legal argument any further than I am obliged to do so, and so I have taken the liberty of having had printed an editorial reference from the Boston Transcript and the reply to it which was written by me last summer, which brings out an analysis

of the Boston Advertising Company case and states, as well as I can, or could in oral argument, the essential features of that case. The state of the law at the present time in this Commonwealth is about as follows:

If my neighbor across the street from me erects a boiler factory on his premises and thereby deteriorates the value of the neighborhood as a residential district or for other reasons, because his use of the property has offended against the sense of hearing, he can be restrained under the exercise of the police power by the courts; if he erects a soap factory on his premises and thereby makes my property of less value because the sense of smell is affected injuriously he can be restrained there again by the courts; but if he uses his property for the erection of a bill-board and thereby deteriorates the entire neighborhood perhaps because the sense of sight is affected, he cannot be restrained by the courts, because, by a species of historical accident, dating back into the days when the social consciousness of the community was otherwise than it is to-day, the courts have held that that species of use of the property cannot be interfered with under the exercise of the police power, while the use of the property which interferes with the other senses to which I have referred, hearing and smell, is contrary to the well-being of the community.

I contend, therefore, that there is a real need for the adoption of an amendment of this sort, which will extend the police power of the Commonwealth to the regulation of this sort of private business, almost the only kind of private business, gentlemen, which at the present time escapes wholly from any kind of chance of legal regulation.

This matter has had the attention of a commission of the Commonwealth. The commission consisted of Mr. Trefry of Marblehead, a present member of this Convention, in his capacity as Tax Commissioner; of Mr. Boynton of Everett, then Attorney-General; and of Mr. Frederick J. McLeod, then chairman of the Railroad Commission, now chairman of the Public Service Commission. The report of that commission is printed as House document No. 1637 of 1915, and its conclusion was that in order to obtain any effective regulation of this subject in the Commonwealth of Massachusetts on the ground of unsightliness a constitutional amendment was an absolute necessity, and it recommended such an amendment.

The resolution as originally drawn by me is exactly in the words recommended by that commission. The minority report of the committee changes it to a certain extent, striking out the word "prohibit". It is perfectly satisfactory to me to accept either the minority report of the committee or the substitute moved by Mr. Dutch of Winchester.

It is certain that we cannot do any business in the way of regulating this industry in this Commonwealth while the Constitution of Massachusetts remains as it does at present; in other words, you must modify your Constitution here in the State first. I assume that very likely a law passed under such a modified Constitution would have to go to the Supreme Court of the United States for interpretation as to whether it constituted a violation of the Constitution of the United States; but, gentlemen, if you want to regulate this industry you have got to begin at home. The Supreme Court of the United States will take care of that question when it is presented to it. But on that point I venture to think that rigorous interpretation of State Consti-

tutions at the hands of the United States Supreme Court is a thing of the past. I venture to state that the case of Cusack *v.* Chicago, to which reference already has been made, is a long step in the direction of making it plain that, when such questions as these come before the Supreme Court of the United States, they will hold that the States have a right to interpret their Constitutions in the broadest possible way in their exercise of the police power; and that when a State Constitution itself gives a State authority to extend the exercise of the police power for such reasons as this, such action will not be interfered with lightly by the Supreme Court of the United States. But no progress can be made until first our State Constitution is amended.

Now, gentlemen, from what sources do the objections to this proposition come?

Mr. BRYANT of Milton: Before the gentleman leaves the legal side of this question I should like to ask him if he has considered the provision of the United States Constitution that private property shall not be taken for public use without just compensation; whether that is not the ground on which the Massachusetts court decided, and whether the Legislature cannot do this regulating if it chooses to pay compensation to the owner of the land.

Mr. RICHARDSON: It seems to me that the gentleman is confusing in his own mind the exercise of the power of eminent domain with the exercise of the police power. In other words, there is a clear line of constitutional difference between the exercise of the police power at the hands of the Legislature, which does not require compensation in the course of its exercise, and that of the exercise of the power of eminent domain, which does require compensation to be paid. That I believe to be the answer to the gentleman's question, if I understand it correctly. What I am asking is that the police power of the Commonwealth be extended to cover this matter, in which case, as is pointed out quite clearly in the report of this commission to which I have referred, no compensation would be necessary. It simply restricts the manner in which a man may make use of his own property, and does not take it away from him.

Whence do the objections to this proposition come? At the hearings before the committee two classes of people were represented to object. The first you easily can guess. It was the bill-board people, the Messrs. Donnelly, *et al.*, whose names are familiar to you, because you see them on their property, on the bill-boards. The reasons for their objection are not far to seek, of course. They fear the very shadow of an approach of any kind of regulation. I think that they are in error in their position. I do not say for a moment that the bill-board industry within reasonable bounds is not a legitimate industry. I do say that it ought to be centralized and controlled and regulated. I do not believe that under such regulation Messrs. Donnelly, *et al.*, would be driven out of business. In fact, it seems to me quite possible that the business under proper regulation would be as profitable as it is to-day. Nevertheless, if it comes to a point when the right of these gentlemen to conduct their business without restriction is to be compared with the welfare of the entire Commonwealth, I say that the greater interest is obviously on the side of the Commonwealth and its citizens, and not on that of the bill-board people,

who have grown rich out of this industry, unregulated, already. That was one class of objection.

Let me point out that no real estate owner appeared before the committee to object to this proposition. Not a single man who owned real estate was here to object because a possible source of revenue might be taken away from him or because the use of his property might be curtailed, — not one. Neither did any advertiser appear to protest against this possible curtailment of the ways in which he might get his case before the public, — not one. Only the people who are in this business as middlemen pure and simple, and this is not a particularly happy day for the middleman engaged in non-essential enterprises. The other class of objectors were labor men who apparently feared that some people possibly might be thrown out of a job if this industry was curtailed.

It seems to me that the editorial in the Transcript hits the nail on the head when it says it is unable to understand the position of the bill-posters, who are afraid that some men might be thrown out of a job. This is a poor time to make any such argument. It is impossible to believe that any men who are engaged in this non-essential industry, skilled carpenters or painters or anything of that kind, cannot get positions, even assuming that we had regulation here in full force and that the business was being cut down. It is preposterous to suppose that they could not get other and more useful work, and probably more remunerative. But the labor men overlook the fact that this measure is directed against the selfish interests which have been preëmpting the beauty spots in our parks and highways, and is intended to preserve for the laboring man, the poor man, the "common people," if you want to use that overworked expression, the parks, the esplanades and the highways which the State has laid out and which are the poor man's garden and his place of recreation and enjoyment; to preserve to those people these places untarnished by such disfigurements as now exist all up and down the more thickly settled portions of our Commonwealth. This is not simply a case of protecting the Mohawk Trail or places that people can reach by automobiles; it is a matter of protecting the village green, the city park, the city suburb, the beach, etc., from despoliation by these structures. And so I find it hard to understand why the laboring man, of all people, should appear to oppose an amendment of this sort to the Constitution, which, as plainly as anything can be, it seems to me, is directed against a few selfish interests which are in the possession of a present monopoly, — an unregulated monopoly.

Mr. Creed of Boston: The gentleman speaks about real estate owners. As trustee I am interested in 74,000 feet of land along the Riverway. On account of war conditions I am unable to get anywhere near its assessed value. I pay heavy taxes to the city. Some of the wards are minors, and are people who need the money. I should like to ask him, is it fair to advocate an amendment which will prevent me from renting that land so as to get some contribution toward the taxes, because it offends the sense of sight of a small portion of the community?

Mr. Richardson: It seems to me that the plain answer to the proposition of the gentleman is that this measure that we now are talking about is not legislation, but is a constitutional amendment

intended only to give the Legislature power to deal with these conditions, and that it is impossible to conceive that legislation would be drawn in such a manner as to interfere with proper property rights. All we are seeking for now is to give the Legislature a chance to regulate this matter, and we are not trying to pass upon specific cases or to set up any particular or concrete standard at the present time.

If it should happen that a few men should be thrown out of a job, which I hardly can conceive, — because there again you are assuming that legislation has been drawn, and that it has been drawn in such a way as to interfere with the rights of the laboring man, — but taking the proposition at its face value, the strongest statement made before the committee was that there were about 3,000 individuals in the Commonwealth who might be interfered with, assuming that the bill-board industry was absolutely wiped out, not regulated; that there were about 3,000 people engaged in it. Three thousand is something less than one tenth of one per cent of the entire population of the Commonwealth, and even taking the matter at its very worst I submit that the interest of the great majority of the Commonwealth looks the other way.

Mr. Herbert A. Kenny of Boston: Does the gentleman think that the police power of the State can be extended to consider taking æsthetic considerations?

Mr. Richardson: I thought that I had answered that question already. I have attempted to.

Mr. Sawyer of Ware: The gentleman addressed himself to one-third of his proposition almost entirely. He wants full power and authority given the General Court to regulate and restrict advertising on public highways, in public places, and on private property within public view. He has addressed himself almost entirely to public highways. What does he mean by "in public places"? Does he mean stores? Are stores public places? Can you prohibit the use of meal and tobacco signs by the proprietors? Will private property in public view mean that property through which a railroad line goes? If we have got to vote on this we would like to know what he means by two-thirds of the resolution.

Mr. Richardson: The only intention of the resolution is to deal with the subject of outdoor advertising. Now, it is perfectly conceivable to me that the last feature that the gentleman has spoken of, that is, outdoor advertising along the line of a private railroad, might be in need of regulation by the Legislature, that is, that it might be a disfigurement to the landscape. All lines of street railways, etc., where they cut across country, are, if I understand it correctly, on private property, and I would be in favor of giving the General Court power to regulate even such places as that. There is no intention here to go into the regulation of advertising in stores, of course. If the language of the resolution is deficient in that respect it undoubtedly will be changed, though I would not have thought that a store could be defined as a public place.

There is one further point which I wish to make, and I am done, and that is that under the present condition of things private property is not protected in the long run or in the great majority of cases, but is depreciated, because the unregulated existence of the bill-board evil at the present time, I venture to say, depreciates the value of ten

times as much property as it appreciates; in other words, that the depreciation resulting from the existence of bill-boards is ten times as great as any incidental appreciation that there may be here and there of a single piece of property. [Applause.]

Debate was continued Tuesday, June 25.

Mr. Dutch of Winchester: I had expected to listen this morning rather than to talk, but there is just one thing that ought to be said, and that is this: This is a proposition to protect property and protect the rights of the public, and I shall give just one specific illustration.

The town of Winchester a few years ago established a park toward the northern part of the town, largely for the benefit of the poorer people of the town. We no sooner had established that beautiful spot than the bill-board people surrounded it with obnoxious signs. Now, the money of the people was spent for that park. In great part the value of it was swept away by careless, thoughtless, heedless work on the part of the bill-posters.

That is the proposition. People with a lot of money can get away from all annoyance of signs. The rest of us cannot. We have to live around here. We have got to take advantage of the open places that are provided, particularly in this metropolitan district. Now, this is a proposition which enables the taxpayers to be protected in their expenditures when they lay out these parks and boulevards. It is a property protecting proposition. That is all there is to it, — to protect property. As Mr. Richardson pointed out, we can protect property against offensive smells and noises and other nuisances. Equally, we must protect our property against the unfair and improper use of this sort of business.

That does not mean the destruction of the business one particle. To say that it is going to turn out of employment 2,000 people, or the numbers that are given in this anonymous circular that has been sent round to us in opposition to this measure, is nonsense. Regulation, decently handled by the law-making body, is all that is asked for. If anything is being done in a proper way it will not be interfered with. The business probably will be put on a sounder basis than it ever was before, but we must look out for abuse.

Now, points of law have been raised. I desire to point out that Mr. Richardson, who offered this proposition, is professor of Constitutional Law in Dartmouth College. He has made this a study, — made this particular proposition a study, — in addition to his general work in Constitutional Law. Others, who are able lawyers, have studied the proposition similarly. I, for one, am prepared to take the law on this proposition from them, — that we need a constitutional amendment, and that the amendment that is suggested here will be effective. I believe there is excellent authority for us to go by.

As to the exact language which may be used, the language which is incorporated here, so far as the substantive words are concerned, was taken from a recommendation of a recess committee, and carried through by the minority and in turn adopted in the form which I have ventured to suggest the amendment should take. The purpose of the recast which I made was, first, to get over a technical difficulty in the use of the word "highway" in the minority report, because that is narrower than it should be. We should use a broader word, "ways,"

which includes both highways and town ways. Secondly, I recast it so as to conform to the general desire now that provisions of this sort should be made by the law-making body and not be restricted to the General Court. So this is recast so that the regulation shall be made by law, which would include the operation of the initiative, if the initiative is adopted as law-making machinery of the Commonwealth. And so I trust that this amendment will be adopted as necessary and decidedly advisable as a property-protecting proposition.

Mr. Clark of Brockton: While I feel very strongly that the argument adduced by the gentleman in the front of this division, the gentleman from Winchester (Mr. Dutch), perhaps is ample to convince the average mind, and perhaps to convince every unprejudiced mind in this hall this morning that this matter should be acted upon favorably, yet it seems to me that there is one feature of it that perhaps might be developed a little further, and that is the educational feature. We all of us, we men sitting here in this room, and our citizens generally, are made what they are because of education, using that term in its broadest sense, — because of what that education has been. Education embraces not only the training of the mind, the mental faculties, but the culture of the æsthetic element that the Almighty implanted in our make-up, in our natures. It also embraces the development of the moral element. These three elements are to be taken into consideration in educating a child.

Now, the most important avenues to put into a being that is to be developed, trained and educated, are the senses of sight and of hearing. Why is the child in the slums of New York, — and would be in Boston if we had any slums, of course, — why is the child in the slums what he is? Nine times out of ten simply because of what that child sees and hears. Partly, of course, because of heredity. But what of the hereditary feature of it? The child's heredity is the result of what its ancestors, its father and its mother, saw and heard in their day. We are all of us the result of our heredity and our environment, and the environment impresses itself upon our minds, upon our hearts and souls through the avenues of hearing and seeing.

Hence, I say, that it is a matter of importance as to the views that we behold, that the child beholds, as it passes along the streets in the city or the highways in the country, and that every man and woman, our citizens generally, behold, as they pass out through the country. Most of you men undoubtedly have had opportunity to pass along the Mohawk Trail, up and down the Connecticut River, or down on the Cape, and you did not go especially for the object at the end of your trip; you went for the broader vista, the vision that you could give your family along the Trail, — very largely that. That is what my family and myself, in the few opportunities that we have had to ride over this Commonwealth, have gone for. What of the beautiful Berkshires? We enjoy getting out there. You men from the Berkshires want to assist us in making the way out there so pleasant that it will be an inducement for us to travel there as often as may be.

I hold in my hand here an open letter, a circular letter, that I received at my home in Brockton. I suppose every member of this Convention has received one. It does not purport to come from the educational powers of the State, from any committee, any combina-

tion of people, who are interested in the education of children. It does not purport to come from any of the great churches, — the Catholic, the Jewish or the Protestant. It is unsigned. But, on scanning it closely, to me it bears the earmarks of pure commercialism. That is where opposition to this proposition comes from, — pure commercialism; and not from business men either, but from a little coterie of men between the producer, between the business man and the consumer, who are getting their living out of the public.

They say the consumer pays the price of advertising. I have felt in the last few months, as I have observed the advertising along the highways and streets, and in our great daily papers, covering many pages, that under the conditions obtaining to-day, with paper so scarce, and the price high and soaring, we are devoting too much space, too much time, too much money, to advertising.

I believe the intelligence of this body of men will see fit to pass this by a very large majority. It seems to me that it cannot be otherwise. It is not designed, as was pointed out by the gentleman in the front of this division, to prohibit advertising, but to regulate it, keep it within reasonable and proper bounds, to control it; and a matter of such importance as this, viewed from a commercial standpoint, viewed from an educational standpoint, I believe certainly should be under the control and regulation of the law-making body of this Commonwealth.

Mr. Brine of Somerville: To satisfy some æsthetic tastes, we are asked to change the Constitution, that the Legislature shall have authority to regulate and restrict advertising on private property within the public view. This, I believe, is a mischievous and dangerous amendment; mischievous because it opens a way for certain legislators to draft bills for purely graft reasons, and dangerous because it interferes with the property rights of citizens, and might destroy a large business that gives employment, according to the delegate in the first division, to about three thousand in this State. We want all the business we can get in this State, I believe.

Bill-boards have improved wonderfully since this question was first introduced. To-day many of them are works of art in themselves and have given employment to hosts of artists. I believe it would be a detriment to art to do away with bill-boards. The advertising on public highways and public places can be regulated without any amendment. The signs on Commonwealth Avenue, that have been spoken of, are attractive generally, and often cover up property that is unattractive. We should hesitate to change the Constitution to interfere with the property rights of citizens. Let well enough alone. The committee reports that document No. 53 ought not to pass. This amendment, and Mr. Dutch's amendment, are practically the same as the one the committee reported ought not to pass. I hope they all will be rejected.

Mr. Jones of Melrose: I think no one of us desires to do away entirely with the business of advertising in this way, as the delegate from Somerville (Mr. Brine) has suggested, but it does seem to me that we should try to find some reasonable middle ground. I have had a large experience in legislation regarding the government of the Metropolitan Park and Boulevard system; and ever since the decision of the court which established the law of this State in the case of the Common-

wealth *v.* The Boston Advertising Company, it has seemed to me that something should be done.

That is a case where a very large sum of money, contributed by the people, was expended in the building of a boulevard which connected crowded residential centers with a beach reservation. The Metropolitan Park Commission secured in 1903 an act from the Legislature to allow them to make reasonable regulations regarding the erection of bill-boards for advertising purposes within a visible distance of that boulevard. Under the provisions of the rule which they made, with the authority of the legislative enactment, they proceeded to remove this sign-board. The sign-board in question was forty feet in width, seven and one-half feet high, with black letters on an orange ground, with capital letters three feet three and one-half inches high, and two feet ten inches wide.

The court decided that that was unconstitutional for the reason that it was not in detriment of the public health or public morals, and refused to allow the constitutionality of the rule which the Metropolitan Park Commissioners had established, for the reason that it simply was established upon æsthetic considerations. If that be the rule of law, — and it is the rule of law in this State, — there is nothing to prevent this business from so encroaching upon the use of that parkway as to detract largely from the purpose for which it was built and established; for of course if we have a continuous line of such bill-boards as is here described, why, we might just as well not have built that boulevard at all.

I think we all would agree there should be some reasonable limitation and at present there is to be no reasonable limitation except such limitation as can be brought about by the course of public sentiment, and the course of public sentiment has had some effect, which has been stated by the delegate from Somerville (Mr. Brine) who has just taken his seat. The course of public sentiment has regulated this thing to a certain extent, but at the same time it appears that we are absolutely helpless except where we can bring public sentiment to bear.

We have met the same thing, almost all of us, in the cities and towns in which we live. The rule of construction as laid down in this case here in Massachusetts is based upon the narrowest construction of the constitutional provision. The Supreme Court of the United States has adopted a very much larger and more liberal rule of construction, which there is not time to go into this morning. But it does seem to me that property interests are perfectly safe if this amendment of our State Constitution could be made, and let the whole thing be regulated by the provisions of the National Constitution, which still would be operative. And the one reason it seems to me why we should take some forward step in this matter is because the rule in this State is based upon such a narrow constitutional finding. I hope therefore we shall not let this occasion pass without trying to do something in this matter. I have stated very briefly the situation, which seems to my mind conclusive that we ought to bring about a situation which will make some reasonable limitation, aside from the force of public sentiment, possible.

Mr. Adams of Quincy: I hesitate to take up the time of the Convention on this question, which already has been explained, I take it, fully enough for ordinary purposes. But there is one point which I

want to bring to the attention of this Convention, and it is the point on which it seems to me this whole controversy turns. It is the old question arising from the conflict between private interests and the public welfare. The question arises as to whether or not we are to be permitted to protect our own property, that is to say, our public property; and I want to point out to this Convention that there probably has been no single asset that has been possessed by the public of any community which has had a permanent value equal to that of æsthetic decoration. Look at it from the lowest point of view, that is to say, as a public pecuniary asset, and I want to point out to this Convention that probably no community in the whole world ever has realized so large a return for so many years on a public asset as the city of Athens has realized upon its public buildings. One of the great complaints against the Germans is that they have wantonly injured or destroyed the French public buildings, which never can be restored; and there is no doubt that France has reaped a greater pecuniary advantage from the works of art which she has inherited from the past than she has from any other asset in the possession of the community.

Now, this I take to be a great fact, exactly as the pyramids of Egypt have been an enormous asset to Egypt since four thousand years before Christ. I take it no other investment that any community can make could give such a return as these. They always have attracted, and they will continue to attract, and they do now attract, an immense sum of money to those communities.

If we permit a person for his private gain or in any way to detract from the drawing capacity of these works of art, we wantonly deteriorate our public property, and that is a commercial argument which I do not hesitate to advance. This business of æstheticism is not at all an imaginary thing, it is not a thing to be sneered at. It is a matter of dollars and cents, and a great many of them. And if you, for instance, have an asset such as the White Mountains, which, of course, is out of our jurisdiction, and you allow a speculator of some kind or other to deface or destroy its highways, you injure to that extent the State of New Hampshire; just as you do with us the Berkshires. That already has been explained. If you take a city and do the same thing to it you deteriorate all the property within that district.

And, gentlemen, that is an absolute fact. It is not a matter of speculation, it is not a matter of this or that idea of mine. For example, take Boston. Probably its greatest income is drawn from the industry of education, — from industrial education; and industrial education is based largely upon the attractive buildings in which education is carried on, — such as the public library. They are a very great attraction to strangers. That same rule holds throughout. It is a matter of business with us to protect our own assets, and that is really the basis of this issue before the Convention.

Mr. Dennis D. Driscoll of Boston: I am in favor of the amendment presented by the delegate in the first division (Mr. Dutch). In view of the rumors that are going through this Convention by many delegates, I feel it my duty as a delegate to this Convention to speak in behalf of that amendment to give to the Legislature what rightly belongs to it. You cannot blame the members of the Legislature last year for criticizing many of the delegates to the Convention,

when we have no confidence in the Legislature to enact laws in the interest of the people.

Now, with reference to the resolution giving to the Legislature the authority to protect our public and private highways, many people say it is injurious to labor. If it is unconstitutional for the Legislature to make laws to protect our public highways, and this Convention can give them an enactment which will make it constitutional, I think it is the duty of every true blooded American to give permission to the coming Legislature to act in the interest of the protection of the highways of this Commonwealth. As far as labor is concerned, there is no man in this Convention who will go farther for the opportunities of organized labor or the working-men and women than I will. I know the conditions of many of the organized labor-unions of this Commonwealth. It is all right for an employee to have in one city one local union of his industry and throughout the whole Commonwealth to have men who are not members of organized labor, and then preach the interest of the working-man and appeal to the delegates to this Convention to give their support to a measure in the use and name of labor. I hope the delegates of this Convention will vote in favor of this amendment and give to the Legislature the right to protect this Commonwealth, because in appearing before committees who have been handling this subject in the Legislature I am given to understand that the representatives of that industry said it was unconstitutional for the Legislature to act on such matters. If it was unconstitutional for the Legislature to act it is the duty of the delegates here to give to the Commonwealth the right in the Constitution by an amendment, and show confidence in our Legislature to act on matters of this importance.

I am not going to refer to any man who is in the business. I know the interest of wages and hours, and I know the many trades and occupations that go with the bill-board business. But organized labor upholds and backs up science, and when improvements of machinery come to destroy some trades we willingly accept them in the interest of the success of the country, not only of any city or of the Commonwealth. This amendment, as far as the action of the delegates to this Convention is concerned, does not destroy labor and does not put any working-man or woman out of work. I trust that the delegates to this Convention will show their interest in their own State and their confidence in the Legislature and in representative government, so that important matters like this when acted upon will be for the interest of the people and the interest of the Commonwealth.

Mr. Creed of Boston: The gentleman has said that we should vote for this amendment because it will show confidence in the Legislature. Did he in his famous speech on the initiative and referendum say that he was for the initiative and referendum because there was lack of confidence in the same Legislature?

Mr. Dennis D. Driscoll: I do not remember making such a speech. He can get a copy of my speech, and if he will produce it I will admit it.

Mr. Glazier of Hudson: I should like to ask the speaker if the Federal Constitution limits the powers of the Legislature, and if our increasing the powers of the Legislature overrides the limitations of the Federal Constitution.

Mr. Dennis D. Driscoll: It is a question that I cannot answer, because I am not an attorney, and I cannot find two of the attorneys agreeing on the important subject that is now before this Convention for action, so I am in a muddle between the attorneys. [Laughter.] I have heard so many decisions made by Illinois, the Federal courts, and I have heard so many decisions made by the Supreme Judicial Court of Massachusetts, and I have heard so much cry about democracy, that how in the name of God can we have any laws in this Commonwealth in the interest of the people? It is about time that we sent people to Congress who would amend Congress, to give us home rule in our Commonwealth to make laws in the interest of the people of this Commonwealth.

No man has criticized individual members of the Legislature under the auspices of organized labor more than I have, but I never have criticized the Legislature as a whole in the form of government. No matter how much they disagree, and perhaps they disagree on subjects that I am more interested in than the present subject, subjects which we fight for every year before the Legislature and we cannot get them to agree on, — such as the question of labor and the question of injunctions. I still have some confidence that some day the right men will be elected to the Legislature and will bring about such legislation as the people desire on this and other subjects.

This is the question that bothers me, unlike the attorneys who are studying law and who are arguing on this question. Will this amendment, if adopted by this Constitutional Convention and referred to the people and adopted by the people, be unconstitutional and so declared by the Supreme Judicial Court of this Commonwealth? I do not believe anybody here can make a decision on that but the Supreme Judicial Court themselves. I believe in the interest of the people, and I trust that the delegates to this Convention will adopt the amendment, and that the coming Legislature, if some of their members may be opposed to this and other important measures, may see the day come when the people of the Commonwealth will themselves wake up and send men to the Legislature who will do more for the interest of the people's welfare in this Commonwealth.

Mr. Powers of Newton: I think that this resolution originated in my home city of Newton. I assume, however, that conditions in Newton are not different than they are in other suburban cities around Boston.

I have received, and no doubt most of you have, what is called a brief in opposition to this amendment. It is not signed by any one. It apparently was prepared with great haste, without proper time for revision. But the claim is made that this is a great invasion of what are called private rights.

That we may understand the exact situation under which we labor in these suburban places where bill-board advertising exists, let me call your attention to what actually occurs in my own city. I buy, for instance, a house lot, upon which I purpose to build a house to be my home. After I have acquired title to that lot I am not permitted to build a house upon it, except with the consent of local authorities. After I have secured the consent of the local authorities to build a house by a permit which has been issued to me I am not permitted then to build the kind of a house that I may desire, because I am

obliged to accept plans approved by the local authorities. And after the plans have been approved by the local authorities, plans which may not please me but which do satisfy the local authorities, I am not permitted to build of the material which I may desire to use. I must secure the approval of the building commission as to the material of which I shall make use. Then, after the house is erected, I am not permitted to put water pipes wherever I choose to put them, or electric wires wherever I choose to put them; I must put those with the approval of the local board. And after I have moved into my house I am not permitted to keep an animal upon the premises without the consent of the local authority, a horse, or a cow, or a pig, or even a hen without a permit to keep that hen. And yet there comes along another man, who buys a house lot directly across the street from me, forty feet away, and he may put up there a bill-board as wide as my house and as high as my house without any permit whatever from the local authorities. He does not even have to secure from the local authorities any kind of permission.

Mr. Flaherty of Boston: Do I understand that in the city of Newton a person may erect a bill-board without getting permission from the city authorities?

Mr. Powers: That is what I said.

Mr. Flaherty: Is he not aware of the fact that in almost every city and town in this Commonwealth, and as he suggests with the possible exception of the city of Newton, bill-boards are not permitted to be erected unless they comply with the regulations of the building departments of the various cities and towns?

Mr. Powers: I do not know what the regulations are in other cities and towns, but I think you will find that the regulation with reference to the building of bill-boards is practically the regulation for building fences, and in most cases the bill-boards are built at the very locality where the fences are built, and I was not aware that there was any city or town that required a license for a man to build a fence along the highway.

What I was saying was this: After that bill-board, forty feet wide, perhaps, and forty feet high, has been erected, then it is leased to these bill-posters and they may paste upon that any kind of a poster that they choose, so long as it is not indecent and does not offend morality. For instance, they may put as a poster upon that bill-board one which I see in different parts of Newton to-day, reading: "The nearest place to a drink is Casey's," naming the street, about a mile away. Even though I who have built that house have attempted to correct my habits and have so far reformed that I think I have a permanent seat on the water-wagon, I am bound every time I look out of my window to see in plain letters, most attractive: "The nearest place to a drink is Casey's," naming the locality, less than a mile away. In front of it possibly there is an electric light. If I look out of an evening I see it there. There it stands as a persistent, continuing temptation to break the very resolutions I have made. On another part of that bill-board they may post, as I see in different parts of my city, this sign: "The only bright spot in Boston" is such a hotel, being a hotel that has had a reputation for great conviviality for a good many years. There is a picture of beautiful ladies and men sitting around, and most of the dishes upon the table are bottles. "The only bright spot in

Boston!" I sit upon my piazza of an evening and I look at those two signs: "The nearest place for a drink," Casey; "The only bright spot in Boston," this hotel. We can make laws to-day against those things that offend the nostrils, that offend the ears, but we must not make any laws against anything that offends the sight.

Well, it is said that if we pass this amendment we pass an amendment that is repugnant to the Federal Constitution, that is, to the Fourteenth Amendment, I assume, of the Federal Constitution. I am willing, as most of you are, to take my law from these constitutional law professors, and I do not seek to examine the law much beyond that. I did assume, however, that the Legislature through its police power had a right to protect a man in the enjoyment of his property and to protect his property against danger, and having that impression I thought I would find if there had been any statement made by any of the great jurists of the Commonwealth on that subject. I want to read to the Convention the opinion of Chief Justice Shaw, our great Chief Justice, who stands out to-day as one of the great jurists of the country and of the world. Way back, many years ago, he undertook to define what were private rights and the control of the law over private rights, and in Commonwealth *v.* Alger, which appears in 7 Cushing, he used this language:

> We think it is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community.

When a bill-board such as I have described is located in front of my property it depreciates the value of that property largely, and when I undertake to sell my house the first question asked is: "How long has that bill-board been here?" "Well, so many years." "How long is it going to remain?" "I do not know." And then the purchaser, or the supposed purchaser, understands perfectly well why I want to sell my house, and he does not buy. It is an injury to property. I am not undertaking to say how far the Legislature can go under our present Constitution to regulate the construction of these bill-boards both as to height and as to locality, but if it be true that we have not the right to-day to regulate these nuisances, because I call them nuisances, then it seems to me that the time has come when we ought to adopt an amendment to the Constitution which will permit the Legislature to do that.

The Congress of the United States for many years has been regulating what they call scenic arts. They have gone so far as to limit the amount of water that can be used at Niagara Falls, because they say that it interferes with the beauty of the Falls, and in limiting the supply of water which they take there they have taken it away from corporations which have been doing business for seventy-five years or more under charters from the State of New York, and I have not been able to find from an examination of the books that any one has claimed that this interference with the private rights for the purposes for which it has been made is in conflict with the Fourteenth Amendment of the Constitution.

I trust that this amendment will be adopted by this Convention.

Mr. KILBON of Springfield: The approach which I have made to

this question is not the approach of the trained lawyer, nor is it the approach of a trained æsthete. I am not particularly impressed with the horrors of bill-boards in general. They have had a place in my education, which I appreciate. I know that there are Uneeda Biscuits and Takhoma Biscuits, and I have found upon experiment that they look very much alike and taste very much alike. There are things advertised on bill-boards which I have not sampled. But I have approached this question, as I say, not with the point of view of hostility. It has not seemed to me that the bill-board was always and everywhere, or even generally, an intolerable nuisance. It has seemed to me, and increasingly seems to me, with the increase of bill-board advertising in our great National campaigns, that the business is susceptible of very great use. But I do find that the situation in which we find ourselves is distinctly an unfortunate one. I want to read to the Convention a few words from the report which was made in 1913 to the mayor of New York city. This commission says:

> In the history of commerce, outdoor advertising antedates the employment of the printing press. The handmade placard or sign upon a place of business is an ancient device for announcing wares for sale or soliciting patronage; but until well into the last century outdoor advertising went little further, and if it were kept within those bounds to-day, there would be no complaint. In the course of time, a few manufacturers, particularly of patent medicines, began to utilize fences, rocks, the sides and roofs of barns and other eligible surfaces in the country to advertise their products; and bill-boards for miscellaneous advertisements were erected in towns at a comparatively few places in each. Such was the moderate, though in some respects undesirable, condition of affairs when the individual manufacturer or dealer erected his own outdoor advertisements. But with the organization of great concerns which do not deal in the commodities advertised, but whose sole occupation and source of revenue are the outdoor advertising business, this form of advertising has grown with startling rapidity to enormous proportions; and, aided by electrical and mechanical discoveries and inventions, has assumed not only an astonishing variety of form, but has also become independent of sunlight, so that the wayfarer or citizen cannot now escape their importuning by day or by night.
>
> The ubiquity of these advertisements is an aggravating phase of the situation. They are no respecters of place. They are not confined to the unimproved tracts and rubbish-yards on the outskirts of the city. On the contrary, they are thrust into the finest vistas which our public places present. Beautiful churches, fine public buildings, monumental private structures, park spaces upon which the wealth of generations has been lavished, superb river views, are confronted and environed by enormous, unsightly and at times disgusting bill-board advertisements, which neutralize the effects produced by the exercise of our finest genius and the expenditure of vast sums of money, and rob the people of their rightful heritage of natural beauty.

The question before us, I take it, is simply this: How shall a business, legitimate in itself and capable of valuable use, be kept within limits? I think it must be maintained and admitted that it is not so kept at the present time. I have only to ask you to look at your own experience. Try to look at the harbor as you ride on the train out through Dorchester. See the three-deckers blocking views here and there at the corners. If you are rich enough to ride over the Mohawk Trail, — I never have been, — you find here and there, I am told and believe, — for I have been over other roads which, if not equal to the Mohawk Trail, you want to look at, — that at many points where vistas would open before you that would make you pause to enjoy yourself, the view is stopped by the erection of some structure of this kind. I had in my hands a little while ago a picture of the city hall in the city of St. Louis. I do not know what the city hall of St. Louis

cost. From looking at that picture I do not know whether it is a particularly beautiful building or not, but it was undoubtedly an expensive building, for cities of that grade do not build cheap city halls. It was a building in which the public had put a considerable amount of the value of the city. As you approach it from the side on which this picture was taken you can see just about one-third of a story below the roof. The rest of the space within the field of your vision is occupied entirely by a huge bill-board. Here is a picture in this volume from which I read to you a moment ago of a stretch in New York city in which, with the necessary breaks for the passage of the street ways, there is a bill-board five blocks long. If you stand where you can look in that direction you see nothing but this great stretch of multi-colored views. We have in the city which I have the honor to represent a school building erected just a little while ago at a cost of more than $1,000,000. Perhaps it is partiality, but I think it is not entirely that, which makes me feel that that building is the most beautiful school building I ever have seen anywhere. It stands in a large open area upon one of the principal streets of the city, opposite the United States Armory. The city took and takes a great deal of pride in that building. One morning, soon after it was completed, we came up the street and there, just on the edge of that property, was a bill-board. As bill-boards go it was a very good looking bill-board. It has been removed, because I spoke of it in the committee at the hearing, and the next morning one of the attorneys who was before us came to me and said that that bill-board had been removed. I am not sure that its removal really has improved the property, and yet it was an intrusion which was resented by a great many of us.

An accident of the law, — I do not mean an accidental interpretation, but simply the fitting in of a certain way of doing business with certain principles of legal interpretation which give to that business peculiar privileges, — an accident of the law has made it possible for people who are in this business to assume the attitude toward the general public that a small boy takes who stands on the edge of the field and thumbs his nose at the farmer who is chasing him off his property; only the small boy will run when the farmer gets near enough, and we have not yet got near enough to make this impudence disappear in that fashion.

The minority of the committee in making this report was careful to leave out the word "prohibit". We did not believe that it was right or just or perhaps altogether safe to interests that ought to be guarded properly to give the right to prohibit even to the Commonwealth as a whole. The power to regulate, we are told, does not include properly the power to suppress or prohibit, for the very essence of regulation is the existence of something to be regulated. But here is a program which a few years ago was put forth by the city planning commission of the city of Springfield, a program for the handling of the bill-board question, not very definite, but simply suggesting to the city council, who would have authority in the matter, the lines which they might follow in making a proper regulation of the business: That first the size of bill-boards might be regulated, that they may not be too large; that in the next place the material of which they are constructed should be regulated; that there should be regulations

as to their location with reference to sidewalk and surrounding buildings; that it might be proper to require inspection by the city building department, to demand permits for their erection, to collect a license fee from the agents who maintain them, and to tax boards as property according to their area. Some of those things undoubtedly might be done, certainly within narrow limits, under the present Constitution; some of them cannot be done at all, and we need to put things in this way.

What puzzles me about this matter was why anybody opposed it, anybody, that is, who is not in the business. I found some little opposition, — it was slight, but there was a little bit, — from landowners. A suggestion of such opposition was raised the other day by the gentleman from Boston in the first division (Mr. Creed), who instanced a case in which land which must be unproductive and unremunerative to its owners was able to give enough return to pay a part of the tax bill of the year by the erection of a bill-board, and who suggested that there might be other similar cases in which the restriction would work hardship. One must admit the hardship. The only question is whether the hardship existing in such cases is not far more than overbalanced by the general good, and we have again that conflict between the special personal interest and the general good which meets us at every point on our way through life.

I found also that the people who came before our committee came with this thesis at the back of their minds, and on their lips too, that if any authority was given to the Commonwealth to regulate or to restrain the business of bill-board advertising the business was killed. They took it for granted that the passage of this amendment by this Convention, — they did not stop even to think whether the people would accept it if it were accepted by this Convention, — would mean that it inevitably would follow that the business was dead. I cannot believe that men who are intelligent enough to make money in advertising really believe that. Why they said it I am yet unable to guess, but they carried that thought all the way through their argument, and they hammered it in until they had driven at least one conviction into my mind, and that was this: That if it were true that the passage of an amendment like this would kill that business, the business ought to be killed. But I do not believe that that statement is true. The business will not be killed if regulations like those suggested a moment ago are passed. Strong words are spoken against the business, it is described as a nuisance and all that, but those people know and I know, and everybody who is acquainted with our common humanity knows, that people very often talk a good deal louder than they think in their hearts, and certainly a great deal louder than they ever will act, and that when the question of actual adoption of any rules and regulations for the restraint or the proper regulation of this business is reached those rules would be of a sort that really in the end would work to the advantage of the effect and value of the business in almost every case, and furthermore, that if it can be proved that real injury is done without the attainment of a greater good in return the business will be allowed still further freedom to go its way.

I most sincerely hope that this Convention will put common sense against the kind of fear that has been expressed by those who opposed

the adoption of this amendment, and that the general good may be held by all of us as a greater thing than private gain.

Mr. KELLEY of Rockland: At the outset I wish to state that the substitute presented by the gentleman from Winchester (Mr. Dutch) is agreeable to the members dissenting from the report of the committee. I have but a few words to offer, but it will be upon lines distinct from lines thus far followed. I will say little about the æsthetic feature, the æsthetic sense. There is no need of it. Not a delegate here who does not appreciate its existence and its value. When you see the little tiny geranium in a tomato can on a window ledge in the slummiest part of any city, you have hope there. Some one in that household has a brightness and hopefulness of view which will prove to be the salvation and the uplift of society.

Upon that line it has been mentioned that the beautiful view from Dorchester is cut off. Has it ever come to the delegates from Boston in this Convention that the fairest view to be had of Boston is its approach on the southerly side, with the outspreading of the Neponset as it meets the waters of the bay? South Boston, if it is not, ought to be the most beautiful natural feature of the whole city. Now, come in on the train and try to see South Boston. All obscured by lines of bill-boards. There is one particularly fine view of Savin Hill, with the islands in the harbor and Squantum across. Can you see it? No. It may not be important; it may not be of much interest to one riding in the train whether he sees it or not, but there are thousands of people living right there, and that is their rightful outlook. Do they have that beautiful view, a view which, with larger range, goes back to the little geranium on the window ledge, in sentiment? No. There is a one hundred and fifty foot sign there, advising you when in New York to go to the Prince George Hotel, and next to that is a cat, a wooden cat with a tail twenty feet in the air, advertising Catspaw. You lose that view, and the people living there cannot have it.

But I did not rise to speak upon this line, although there is one other fact I will give. The gentleman from Newton (Mr. Powers), from the rich and opulent city, has told us what restrictions the man of wealth has in building a residence fitted to his taste. I know this situation: There is a row of houses built by working-men, owned by working-men, paid for by working-men by sacrifice and by saving. Opposite that row of houses is a pasture, rocky, full of shrubbery and trees, a beautiful bit of pasture. The man who owns it of course can erect buildings upon it and no one can stay his hand. But what has he done? The ordinary man never would have done it, but this man is of another kind. He has leased his land for bill-boards, shutting out entirely the view from those houses. He had a right to do it. The ordinary man, I say, would not have done it. Now, when the woman in any one of those houses, with her day's toil over, wishes to sit at her front window, or when one who is sick wishes to look out of doors, there is nothing but that display of bill-boards. The men owning those houses pay taxes to support the highway. They have as much right in the highway as the man opposite, and yet their rights, their tastes are curtailed. There ought to be some way, and I believe there is, to remedy such a situation.

I come now to say that which I intended solely to say. It has been hinted here that, in an anonymous brief received here, and which is

simply a reëcho of argument made before the committee by counsel representing the bill-posters, it is stated that there are hundreds of workmen who will be thrown out of employment. They will not be thrown out of employment if this resolution passes. They attended our meetings, representing the associated industries connected with this business. There are the woodworkers, of more than one kind. There are the painters, the metal workers, the printers. While the number, as stated, employed in this Commonwealth was varying, there are hundreds thus employed. And the men appearing before that committee to speak for their own cause are not ordinary wage-workers. The painters are not ordinary painters. They have had high ambitions. They are artists. The woodworkers are artists, and the metal workers are artists. Knowing that every bit of their handiwork is to be exposed to public view they have striven to excel, and they have excelled. In the first Liberty Loan drive the very best of designs and emblems and mottoes were made by those men engaged in the poster business. Now, what did the men say? They said the business should be restricted and regulated, and they know why. They know it is to-day a precarious business. It is likely at the whim of advertisers to stop. It is likely by over greed of bill-posters to stop. I, for one, would be willing to leave the whole matter of regulation and restriction entirely to the men who work on the boards. They have the æsthetic sense, not only largely but particularly. But they have nothing to say. They are powerless to restrict or regulate. They make in the best fashion they can that which they are told to make, and it is put where it is without any voice of theirs. I am sure that if we pass this resolution it will meet the approval of the workmen engaged in the industry under consideration.

Speaking of it as a precarious business, I would agree within one year to cripple the business. I would agree in three years to extinguish it absolutely. And I would do it in ways suggested by the hearings before that committee. It appeared that there are many who will not purchase anything that is advertised in this objectionable manner. It appeared, too, that here and there landowners have agreed that they will not lease their land. Now, then, you have only to develop and direct in this community and that, this town and that, the sentiment now strong, against such purchase and leasing, and these men then, so far as this business is concerned, are out of employment. The advertiser may have nerve boundless, nerve beyond measure, but his timidity is in the same proportion, and when he finds that anywhere public sentiment is against buying his goods he will cease to advertise and the bill-posters are out of business, and public advertising is gone.

Now, sir, no one, so far as I know, desires to prohibit and abolish public advertising. There are times and places when it is most desirable. But if we have means whereby cities and towns by boards of license or boards of regulation can say here to the advertisers now: "In such a place it is well to put advertisements of such character and of such size, but in that other place it is not," they will not put them in the other place. As the gentleman from Springfield (Mr. Kilbon) has told us, the day following a hearing before our committee an obnoxious advertisement in the city of Springfield was taken down. When the bill-posters so readily take notice of the criticism of a

single member of the committee it is of great significance. It surely indicates the action which will follow direction or suggestion made by men empowered to direct and suggest.

Mr. FLAHERTY of Boston: I rise to speak for the report of the committee. We had before this committee hearings that extended upwards of at least four days, on which both sides of the question were fully threshed out. Reasons that have been given here were given there, and it might be well at this time to take up some of the reasons that have been given by the various speakers in support of this substitution.

In the first place, I dare say all of you have observed that no one speaker here has taken any broad general view of the subject, but rather has confined himself to what they choose to term specific hardships resulting from what they are pleased to call unrestricted regulation. Now, I do not believe that it meant much to this Convention whether the bill-board has on it "Go to Casey and get a drink" or whether it has on it "Vote for Powers for Congress." It is just as objectionable one way as the other. It is a specific instance of hardship to a democrat, probably, who lives opposite the bill-board upon which that is put, but it simply is illustrative of the opposition before this committee.

The gentleman from Newton (Mr. Richardson), who unfortunately is not here to-day, and who spoke on this matter at great length on Friday, referred to the utter disinterestedness and the public spirit of the chairman of the Highway Commission, who purchased a large tract of land on the Mohawk Trail in order, as he said, to save that section for the people. I wish to remind the members of the Convention that when the distinguished chairman of that committee made that statement some one suggested that he was not wholly disinterested, that he had a mighty good investment that a great number of persons would be glad to take off his hands. And so, too, when you take all of the rest of the objections to this committee's report, they simply are reminders of hard cases; they are forgetting the broad general question.

I wish to call to the attention of many of the public men in this Convention, and particularly to many of the lawyers who from time to time have been interested in municipal affairs, how strange it was thirty years ago to suggest that for reasons of art and beauty the power of the municipality might be invoked, in order to preserve them for the common good, and yet within recent times we find the Supreme Judicial Court of Massachusetts in the Hotel Westminster case saying that that was one of the functions of government, a function to preserve the beauty for the general public, that no man has the right to destroy it, that no one person or set of persons ought to be permitted to do it. And that is not any idle statement; it is a decision of our Supreme Judicial Court here. That case went to the Supreme Court of the United States, and the position of our court was sustained. Can there be any doubt in the mind of any man about the power of government to regulate persons and things for the public good? This is not a question of seeking to preserve a private right when manifestly it is against the public welfare, not at all. We are here to do the things which, upon mature judgment and in the light of the experience of all men, we ought to do to relieve manifest conditions that ought to be relieved. We are not in doubt about this matter.

Great weight has been laid upon the case of Commonwealth *v.* Boston Advertising Company. That case decided simply one point, and that was that private rights could not be taken without compensating the owner. The question of the reasonableness of the bill-board was not in dispute, evidently from reading the case it was not even tried, so that the precise question before the Supreme Judicial Court was not the reasonableness of the bill-board but rather the other question upon which it went up.

The gentleman from Newton (Mr. Richardson) on Friday said that there was a widespread interest in this matter. That is true, an interest which has spread beyond the city of Newton and has taken up the attention of this country throughout the length and breadth of the land, even to the Philippine Islands, where the question was tried out; and in every instance a regulation by a city acting by power delegated to it was held to be valid and a proper exercise of the police power. If that is probably the universal view of every court that is worthy of the name, why can we not say that it is quite likely that the Supreme Judicial Court of Massachusetts will take the same view? Every court from the time courts were instituted has been a barometer of public sentiment. Fifty years ago, if you talked of æsthetics to the Supreme Judicial Court of this State or any other State, you would be laughed out of court. But to-day you can talk and you can talk it with force; you can talk it because behind you are adjudicated cases wherein the minds of the ablest public-spirited citizens that the country ever had are united in support of that view. And so, too, the cities and towns of Massachusetts from time to time have regulated bill-boards, and I want to remind the distinguished gentleman from Newton in the first division that for a long time past the city of Newton has prescribed rules and regulations for the building or putting up of bill-boards and requires that the party doing it shall have a permit.

The gentleman in the second division from Springfield (Mr. Kilbon) in a speech this morning purported to read from a report of a committee in New York. That report, I notice, was made in 1913. In the city of New York they have a board which is known as the Board of Estimate and Apportionment, I believe, and under the powers conferred upon that board it has full control of buildings in the city of New York. The board gets that authority from the charter of the city of New York which was enacted by the New York Legislature in 1912. But in 1916 the Legislature of New York further granted powers to this particular board to create zones in the city wherein certain buildings devoted to certain uses were to be thereafter restricted, where bill-boards and every other form of structure were put under its control. That law has been in effect ever since. The city of New York to-day is divided into three zones, — the residential zone, the zone for business houses, and then the so-called unrestricted zone. There is no question in anybody's mind about the constitutionality of that act. There can be no doubt about it. There can be no doubt about it in the light of the adjudicated cases. So that the special question of whether labor is interested or whether some particular man suffers from some particular eyesore as described by the distinguished gentleman from Newton is quite beside the question. It is a matter largely of special pleading. The whole question re-

solves itself down to this: Are we as sensible men of mature judgment, men who have some knowledge at least of the law, — or to put it in another way, men who may give a fairly safe guess as to what is going to happen, — are we going to rush headlong in passing an amendment simply because some persons have suffered some special hardship or some persons have special reasons for having this constitutional amendment adopted, or are we to follow the advice of the distinguished gentleman from Worcester (Mr. Dresser) who in a speech on Friday morning on the social insurance measures said that we ought to go slowly, that constitutional amendments are not desirable, that we ought not to have too many of them; if the law is plain or reasonably plain we ought to follow that. As he said, in the income tax cases the proposition went before the court three times before it finally was adopted, and then, as we all know, the court unquestionably was influenced by public sentiment.

Apart from the question whether labor is involved or whether some particular section is affected more than another, there can be no doubt about the power of the State to regulate, provided it regulates uniformly. There is no doubt about that fact. But let us pause for a moment and let us assume that the decision in Commonwealth *v.* Boston Advertising Company would be held to be the sound rule to follow, and let us assume further, — this is the fair assumption, — that such a taking would be in violation of the Fourteenth Amendment of the Constitution of the United States. What then happens? If land is taken, or rather if rights are taken away, from whom must the compensation come if it does not come from the Commonwealth?

I believe that my judgment is not one that is influenced by any others in this matter one way or the other. I feel that I am just as interested in the public welfare and in the public good as any of the gentlemen who spoke in opposition to the committee's report. I am not interested in any advertising agent, on the one hand, nor in laborers on the other, but, simply as a concrete proposition, why should we pursue this line of remedying, if you will, an admitted evil when we have ample authority to do it under our general law? It would be far better, it seems to me, if the law does exist, — and it seems that there can be no doubt about it, — to proceed by an exercise of the undoubted police power and regulate those things that ought to be regulated, regulate them uniformly. It does not matter whether the view of the gentleman from Rockland (Mr. Kelley) is obstructed as he goes down to Hingham or whether the question can be decided without this. We ought not to have amendments where they are not necessary and we ought to proceed as the people expect us to proceed in an orderly manner.

Mr. Walcott of Cambridge: I simply wish to ask the gentleman in the fourth division if he considers the Boston Advertising case still law in this Commonwealth.

Mr. Flaherty: Every case that has been decided remains the law until the Supreme Judicial Court says something else on the facts in that case. I do not believe, however, that the Supreme Judicial Court of Massachusetts now, if the question arose, not on the right to take a man's private interest away, but on the question whether the sign violated the well-settled, undoubted public rights, — there can be no doubt but that our court would follow the decision in the West-

minster case and say that if that sign violated any of the conditions imposed upon a private person in his relations to the public, then such a use by a private person could be restrained by a proper exercise of the power inherent in the State. There is no doubt about that question, and I referred to the case recently decided by the Supreme Court of the United States (Cusack *v.* City of Chicago) where an advertising company claimed that a certain city ordinance was unconstitutional because it required that before a sign could be erected consent of at least ten persons in a block should be obtained. This very question had been before the Illinois Supreme Court a very short time before, and the Illinois Supreme Court had sustained the objection to the regulation on the ground that it was unconstitutional, that it deprived a person of an undoubted right; but within a very short time thereafter the Supreme Court of Illinois reversed itself and held that the regulation was constitutional, and upon appeal to the Supreme Court of the United States the last view of the Supreme Court of Illinois was upheld and affirmed. Can there be any question in any man's mind that the courts are not susceptible to public opinion? Why, gentlemen, away back in the dark antiquity of the law, courts were susceptible to public opinion; they responded to public need. Even back in the days of darkest tyranny, when kings and autocrats took private property, the courts of England created a legal fiction to overcome the power and authority of the King. Every lawyer here knows that. So that the proper and orderly way to proceed is not to run headlong into a thing because certain people for special reasons feel that the law ought to be changed. There is no necessity for it, I submit. We ought to proceed with the means at our disposal to remedy any alleged evil that exists. And I feel in speaking for the majority of the committee, all of whom are supporting the view that I have just set before you, that it is one that we arrived at after mature judgment; we felt it was our duty not to encumber the Convention with the consideration of questions which, in our judgment, ought not to be considered here or placed upon the ballot. It was our conviction that the law as it now stands amply provides for such regulation, — all, surely, that a civilized community could expect. [Applause.]

Mr. Sawyer of Ware: Leaving the learned discussion of this proposed resolution or article of amendment between lawyers for a while, let us come right down to the common sense of it. There is no resolution that we could pass, no amendment that could be made to the Constitution, that would be more obnoxious and repugnant to the sense of our people than this thing. Some few years ago some of us put into political platforms questions of public ownership, to take private property for public uses and compensate the owners. They called us anarchists, socialists, everything you could think of. This is a proposition that proposes to take private property without compensation, and it is fathered and championed by some who in those days called themselves conservatives. Why, if this resolution be adopted, this amendment to the Constitution be made, and I have a large farm and make a deal with a corporation that they shall run a street railway across my land for half a mile, I am deprived of control of my own property back for hundreds of yards, a quarter mile or more. It means that if a public highway go through, instead of

these public uses making my property more valuable they make it less valuable, because under this amendment to the Constitution the right is given to the Legislature to take away from me the control of that property. I cannot erect a bill-board, I cannot do with it as I could have done otherwise, so that my property is taken away without compensation, and this is advocated here by conservatives who would "see red" if we talked about taking away property with compensation.

This whole thing is an attempt to legislate, and to legislate in a Constitution, to change the Constitution to suit the tastes of a certain group of people. There are a certain group of people to whom certain things are obnoxious, and they come up here and want us to change the Constitution to satisfy and gratify their private tastes. There was no great outpouring before this committee for this thing. There have been in the cities and towns no great public meetings remonstrating against this "outdoor advertising." Your committee, after duly considering the matter, reported that the proposition ought not to pass, and there is absolutely nothing shown in the public sentiment of the State to warrant us in believing that there is a public demand for this change in the Constitution. It is a demand that is fathered and fostered by a little group of people, and to incorporate this article into our Constitution means that we are going to amend our Constitution to satisfy the tastes of a certain group of people. How drastic it is! This amendment gives power to regulate advertising in public places. There is a law on the statute-book that prohibits profanity in public places, and the courts have ruled that a store where two or three are gathered together is a public place. The phrase is exactly the same, "in public places," as the language which they want to incorporate in this article of amendment. That means that they can go ahead and regulate the ordinary store. Well, now, there are certain people to whom tobacco smoke is very obnoxious; and now that the liquor question is settled for all time, they are beginning to advocate the prohibition of smoking. Suppose these people should have influence enough, — and that might happen, — it means that they would prohibit the advertising of tobacco in public places, — in stores, — and they might decide that smoking cigarettes was harmful to our soldiers and they would prohibit the advertising of cigarettes in our stores. There has been no proposition of so drastic, radical a nature as this introduced into this Convention. And I hope that we in our wisdom shall make a sober second thought and stand by the committee that heard the whole proposition and reported adversely upon it.

Mr. THELLER of New Bedford: I was of the same opinion last Friday as the gentleman in the third division who has just expressed himself (Mr. Sawyer of Ware). I thought this was legislation which the Constitutional Convention should not take up. I thought also that there was no necessity of amending the Constitution to provide for the regulation of advertising in public places. But I found the report of the House committee of 1914 had gone into this question thoroughly, and since last Friday I have read that report carefully and looked up some of the cases which it cites. I thought that if we could not get at the regulation of outdoor advertising through the police power it would be possible at least to leave the question alone in this Convention and legislate on it through the taxing power in the Legisla-

ture. In that case, it seems to me, we have nothing to do with the question, provided the Legislature can regulate by taxation outdoor advertising.

In looking over the report of this committee I find the conclusions arrived at were:

First, that the Legislature is unable to pass any proper tax legislation on advertising because such tax would not be proportional.

Second, the Legislature in passing an excise tax probably would run up against the Supreme Judicial Court, and the Supreme Judicial Court in its expressed opinion is somewhat in doubt as to exactly what an excise tax is, because sometimes it is interpreted in terms of a property tax, and if recognized as such would be subject of course to the limitation on property taxes that they must be proportional. Again, an excise tax, if it was on some particular business like the liquor business, which can be absolutely prohibited, would be useful in regulating advertising, but it could not be employed at all to effect its purpose if the business was not such a business as could be prohibited.

In the third place, it was suggested to this committee that there might be a license tax to regulate advertising, and this committee searched that question down and they decided that it would be impossible or at least there was doubt as to what the Supreme Judicial Court would do with such a regulation through the medium of a license tax, because the Supreme Judicial Court has decided, as I understand it, that in case of a license tax the license fee must not exceed the cost of regulation except in such industries as the liquor business. Thus this method would be ineffective.

Finally, it was put up to this committee that they might pass an occupation tax and tax bill-board advertising as an occupation. And there the Justices, as I understand it, in the 196th Massachusetts (Opinion of the Justices, 196 Mass. 603), weighing the question not of advertising but the question of an occupation tax, left the question in doubt by a vote of three to three.

So that the final conclusion of the committee appointed by the Legislature to look into this, as found on page 16 of that report, is this:

> The commission is unable to recommend any special tax that would probably be sustained by the courts under the present state of our Constitution.

Mr. Sawyer: I should like to ask the gentleman if this Convention accepts the recommendation of the committee on Taxation and takes the word "proportional" out of the Constitution, whether it would not be possible then for the Legislature to impose such taxes as would regulate the whole matter?

Mr. Theller: Of course that would depend a great deal on the form of the constitutional amendment that would be offered striking the word "proportional" out of the Constitution. I have not seen that amendment, so I am not able to pass an opinion on it. But I should say if that word was struck out it might be possible to put a property tax on signs and outdoor advertising, although in this way the locating of signs could not be regulated.

The finding of this committee shows that it is impossible to regulate outdoor advertising by indirection, that is, by the tax method. The gentleman from Melrose in the second division (Mr. Jones) has

pointed out that the decision of the Boston Advertising Company case determined that you could not regulate outdoor advertising in this State except under a very narrow definition of the police power. In other words, the police power, according to the decisions of the Supreme Judicial Court of this State, has not been so developed that a mere æsthetic purpose is justification for the regulation of the particular thing to which that purpose or idea applied. And that decision is flat. The Boston Advertising Company's decision was examined by this committee and I have read it since, and that decision, it seems to me, is flat that under the police power for a merely æsthetic purpose you cannot properly regulate advertising.

There is one method which does not need legislation to arrive at the regulation of outdoor advertising, and that is the power of eminent domain; and it has been argued here that if you wish to take this right away from property you should give compensation. That seems to me to be correct if you are taking away a right of private property in regulating signs. In these resolutions you are not prohibiting sign-boards, you are regulating them. The prohibition has been stricken out. Now ordinarily we do not give compensation for that kind of regulation.

Finally, there is one other thing which I do not think has been brought out in the Convention, and that is this: What gives the value to the sign-board? Is it the land on which it is situated? There is land just as good a thousand yards back from the road, — private land. You can build a sign on it if you wish. It is not the land, it is not the sign; it is the fact that the public has a highway through a certain section and that the public eye traveling over that highway gives value to the sign space. It is the public's eye. Have we, then, a right to regulate the value which the public gives? I think we have. I think that the value of the sign-board really is determined by the fact that the public road is there, that it has been built, that it is maintained and that the public pass along the highway; and under those circumstances it seems to me that we ought to exercise a right of regulation. There is no need of going into the question of necessity or demand for it. Of course the Constitution was not constructed on the idea that anything like the advertising régime of the present day would come about at all. We are running up against a new proposition. But I want to say this, that there is not one great city in America to-day, not one great city that you approach on a highway or a railway, which is not covered with signs of all kinds, advertising pills and pickles and condiments of every character and description. That is the characteristic of the gateways to some of the great American cities. There is not a country in Europe that does not regulate advertising; and in these days of civic pride and town planning it seems to me that if we have not the necessary power under our Constitution to get at a proposition such as this is looming up to be, — if there is any doubt, and the committee that looked into this question thoroughly says there is doubt, — why, then we ought to pass an amendment even though it appears to some to be legislation.

Mr. McAnarney of Quincy: Does the gentleman contend the State can create police power or take to itself police powers by virtue of a constitutional amendment that it would not have possessed without that amendment?

Mr. THELLER: I understand the police power exists aside from any legislation, — aside from any Constitution, if that is the gentleman's question.

Mr. MCANARNEY: Then, if the State has the inherent police power, if the police power is a power that is inherent in the State itself, why do you need a constitutional amendment to give that power to the State?

Mr. THELLER: For the very reason that the interpretation of the police power by our Supreme Judicial Court is such that an amendment becomes necessary.

Mr. MCANARNEY: If I understand the gentleman correctly, is not his objection directed against the interpretation by the court and not against the lack of police power? In other words, does not the case of Commonwealth *v.* Boston Advertising Company (188 Mass. 348) in effect decide that the Act of 1903, under which the Metropolitan Park Commission saw fit to act, was constitutional and that the Legislature did have the power with reasonable limits to regulate bill-board advertising but in that case decided the Metropolitan Park Commission had no power or authority to say, we will say, to John Smith: "You have a piece of land half a mile away from the public park; you cannot put an electric sign on that tract of land so that in the night time somebody going along in an automobile can read that sign"? Is not the trouble with the way in which the power of regulation was sought to be enforced in that case, and not with the power itself?

Mr. THELLER: It is not that I am making any objection to the decision of the Supreme Judicial Court if the Supreme Judicial Court found it necessary, under the interpretation of the Constitution as it now exists, to declare that the removal of that sign on the parkway was taking property without due compensation given by the law. If the Supreme Judicial Court, as has been said here by the gentleman who asked me the question, is compelled by the common law or by any other method to decide that way, we must not criticize the courts for it. I agree with the gentleman. But how can we then correct it? We have a right to criticize it, but how can we correct it? Are we going to let that decision stand in the way as a bar? How would the gentleman correct it? He will say that the State has the inherent right to correct it. When that right is defined in a particular case, that particular case limits the definition. So there is only one way then, — the gentleman knows that as well as I do, — and that is by amending the Constitution to adjust it to that particular decision, unless he wants to adopt some revolutionary method.

Mr. MCANARNEY: Can the gentleman think of any more revolutionary method than, every time you find fault with a Supreme Judicial Court decision, to rush and get a constitutional amendment to override the Supreme Judicial Court decision? It seems to me that is in itself revolutionary. Take, for instance, a case in which organized labor might object to a decision of the Supreme Judicial Court. Will the gentleman say that organized labor would be justified in demanding a constitutional amendment against that decision, no matter how sound it might be? In saying that I do not wish to advance any statement as to how I stand on labor questions; I am only asking that question.

Mr. THELLER: In answer to that question it seems to me that we are not rushing in at all with an amendment; we are here as a delib-

erative body to decide upon whether such an amendment is necessary. We are not attempting to put into the Constitution something that is unnecessary on the report of this special committee of the Legislature and on the reasoning of the gentleman from Melrose. We are not in any hurry on this matter at all, and it seems to me if we as a deliberative body come to the conclusion that we cannot get at this evil or regulate it in any other way because of our decision and because the power is not in the Constitution or inherent in the police power of the State as now defined, then we must do it in this way, and this certainly is not revolutionary or hasty. So that it seems to me that these conclusions are well taken, — that there is no method now of regulating this industry, practically the only industry that is unregulated. We cannot do it through the taxing power. The committee finds that after examining five different methods. We cannot do it because we are barred by the Boston Advertising Company case from doing it through the police power, unless we get a redefinition of it. I hope, therefore, that the substitute resolution offered by the gentleman from Winchester should have further discussion at least and be passed to another reading.

Mr. COLEMAN of Boston: It seems to me quite evident that the bill-board business as yet has not been regulated by the Legislature or in any other way to the satisfaction of the general public. I am not able to discuss the matter from a legal standpoint. It is quite evident that the lawyers themselves disagree in regard to it. But the mere presence of this amendment submitted to us for our consideration and the manner in which it has been urged are suggestive that there is need of something of the sort. The fact that our friends who are interested in the bill-board business are opposing it is evidence that they think it will give some added powers of regulation which the Legislature does not now possess.

I want to say just a word on this subject from the point of view of one who has been interested in the advertising business. It has been my fortune to be connected with publishing and advertising interests for the last thirty years. I know something about this bill-board and outdoor advertising business, not a great deal, but I have seen it developed from an insignificant beginning until it has become an industry spread all over this country, of growing power, giving a valuable service to the business men of the country, and I believe also serving the public helpfully. I have seen this business not only grow to large proportions, but I have seen, especially in the last ten years, the methods under which it is conducted very remarkably improved. I have seen also a splendid public spirit growing up in the outdoor advertising business by which the men who are responsible for its conduct time and time again have given the use of their bill-boards for public purposes in a most generous fashion. And they also have kept in tune with the crusade that has been under way in the advertising world during the last ten years for the elimination of objectionable advertising. They have yet some distance to go in cleaning up the bill-boards, as indeed have the newspapers and most publications, but they have made considerable progress in that regard. I think they are entitled to our full consideration with reference to the interests of their business, the capital that is involved and the spirit in which they have been trying to conduct it.

I want to say a word on their behalf, although doubtless I shall speak with their entire disapproval, when I say that the thing that their business most needs to give it permanence, security and dignity in the eyes of the public is for it to have a measure of regulation, which the amendment proposed by the gentleman from Winchester will give it fully without being too drastic. It will relieve the business from the continual attacks that are made upon it by an outraged public opinion. No one man in this business can determine just the limits within which he will keep his operation of the business, because his competitor may use the very location that he thinks is objectionable from the public point of view. Therefore an outside control in the interest of the public is not only a good thing in the interest of the people as a whole, but I believe that it would inure to the great advantage of the outdoor business itself. And I hope that the simple, complete and sufficient amendment proposed by the gentleman from Winchester will be the one that this Convention will adopt. [Applause.]

Mr. Walcott of Cambridge: The question of regulation of bill-boards dates back at least as far as 1902, when one of the distinguished Attorneys-General who grace this body and who intended to come here himself and speak on this question, — but I see that he is not yet here, — wrote an opinion as to the validity of legislation such as was passed later. It begins in this language:

> There is no legal reason why an offence to the eyes should have a different standing from an offence to the other organs. To strike the unwilling ear is in principle the same as to catch the unwilling eye. Obnoxious signs have rarely been held to be actionable nuisances, because only lately has the attention of the court been called to this aggressive method of disfiguring the landscape.
>
> The Legislature may very properly recognize and deal with the effect upon people in general of unrestrained scenic advertising, and take measures for its proper repression.

and explains that in other States, — for example, in California, — such legislation has been passed and has been proved constitutional by the courts.

As a result of the opinion of 1902 of the Hon. Herbert Parker, legislation was passed by the General Court in 1903 which has been referred to and was intended to give the Metropolitan Park Commission power to order signs on private property to be discontinued when in the opinion of the Metropolitan Park Commission it thought them a detriment to the landscape. The opinion of the Supreme Judicial Court in the case of Commonwealth *v.* Boston Advertising Company (188 Mass. 348) made this law unworkable, because it stated that unless signs were a menace to health or a fire menace, or situated on the public highways and not on private property, they could not be reached by this legislation. Consequently, though they in terms approved the legislation, they in fact took away all its usefulness. And since then bill-board advertising has been wholly unregulated in Massachusetts except for the small local restrictions which have been made by the building commissioners of the different cities and towns.

Now if the Supreme Judicial Court had included the preservation of beauty, art and æsthetics, or even general welfare, as an application of the police power, there would be no necessity of coming here with the requested constitutional amendment. But they did not. They were behind the court of Rhode Island at that time.

New York had a little difficulty with the interpretation of the police power, and in Laws of New York, 1913, chapter 247, paragraph 696, section 31, enacted this sentence:

> The terms "public or municipal purposes," and "general welfare," as used in this article, shall each include the promotion of education, art, beauty, charity, amusement and recreation, health, safety, comfort and convenience, and all of the purposes in the last preceding section.

Subsequently the court of Illinois sagged backwards and there were two or three decisions there not going the entire distance. In order to speed up the Supreme Court of Illinois the Legislature of Illinois passed a statute in 1912 providing —

> That the city council in cities and the president and board of trustees in villages and incorporated towns shall have the power to license street advertising by means of bill-boards, sign-boards and signs, and *to regulate the character and control the location of such bill-boards*, sign-boards and signs upon property in and about the public way and elsewhere.

The Supreme Court of Illinois was apparently a little touchy at having the Legislature of Illinois attempt to say what it should consider to be the police power, and when the Cusack case came up before them in 1915 (Cusack Company *v.* Chicago, 267 Ill., 344), they quoted the ordinance and stated afterwards (page 349):

> Whether this statute enlarges the powers which existed, as declared by this court in the *Gunning System* case, or not, it is not necessary to declare. It is at least a clear legislative declaration which unmistakably manifests an intention that the subject of bill-boards and bill-board advertising shall be subject to municipal regulation.

So that they did not in so many words rest their decision on this legislation. They merely mention it as tending to show the opinion of the community at that time.

If the Commonwealth of Massachusetts shall pass this amendment there is not the slightest doubt in my mind, and I think not the slightest doubt in the mind of any lawyer here present, that the Supreme Judicial Court will consider it a valid exercise of the police power. It is not only the language of the Cusack case when it came up to the Supreme Court of the United States, but the three or four cases which have come up subsequently on the interpretation of the police power that makes me say that. The last of these cases came up less than a year ago, on a municipal regulation in Kentucky, Buchanan *v.* Warley (1917), as to the segregation of white and black. The court there goes even further than it did in the Cusack case. I will read the opinion in the Cusack case, which I have before me, on this point. [Reading.]

Continuing after the recess, Mr. Walcott said:

I was saying, just at the hour of adjournment, that in 1902 the then Attorney-General had given to the Supreme Judicial Court a lead as to the method in which they might find power, under the police power of the State, to regulate the development of bill-boards, which at that time had become a nuisance, though not as great as it is at present; that in failing to take that lead, the court, by a majority opinion, — from which, I am credibly informed, the Chief Justice and our respected member of the Supreme Judicial Court at that time dissented, — held that the police power did not include the regulation of bill-

boards erected on private property except where the public health or safety were involved; that this was a view of the police power which was not held at that time by the State of Rhode Island, and which later, after the Legislatures had somewhat prodded their respective Supreme Courts, was *not* held in New York or in Illinois; that it is to my mind absurd that the great sovereignty of a State, — the great unreserved power which, somewhat roughly and incorrectly, is called the police power, — should not include the regulation of a business like that of bill-posting, which constitutes, in the minds of the majority of the people, I believe, a nuisance in its present development; and that it is a suitable subject for a constitutional amendment to provide the power which the Supreme Courts of other States have said exists in those States to regulate this nuisance.

All countries abroad are held to have this power. Most of our States at the present time are held to have it. How absurd a spectacle it is in each year's recurring legislative committee on this subject to see the annual hunt-the-slipper debate, where the legislative agents of the bill-board companies and bill-posters' unions who have been busy at this Convention appear each year and say: "Yes, yes, of course it is very desirable, but how can you do it without a constitutional amendment?" Then we come to the hearings before the committee on Social Welfare, and those same legislative agents, the preparers of this so-called anonymous brief, which every member has here to-day, appear and say: "Why, how absurd! A constitutional amendment on the subject? Wholly unnecessary; for even if the Supreme Judicial Court went off on a false scent in that Boston Advertising Company case, yet they are gradually eating their way around to a more correct decision. Be patient."

But the gentleman from Quincy in the third division has warned us: "Do not attempt to cure what you consider an erroneous action of the court by a constitutional amendment." Gentlemen, it is now fifteen or sixteen years since this question was first agitated. It seems to me, on the contrary, proper that a Constitutional Convention should give this inherent quality of sovereignty which the court years ago declined to consider that the State had. I should like to call to the attention of the members of this Convention the hearings before this committee on Social Welfare, — crowded, packed to the doors, thirty or forty people standing at each of the three days when the subject was considered; all of them, with four exceptions, so far as I recollect, in three days, in favor of this amendment and other amendments directed to the same purpose. Were there any representatives of the real estate interests there to protest? There were not, not to my recollection certainly. The Massachusetts Real Estate Exchange did not appear to protest. The Boston Real Estate Exchange did not appear to protest. Nobody as landowner appeared to protest. As has been suggested by the gentleman in the fourth division, if this is such a hardship on real estate how was it that the owners of real estate themselves did not appreciate the hardship and express themselves? Usually they have not been found inactive in appearing to protest measures in the Legislature which they do not consider in their interests. I believe the reason they did not appear was because they did not feel any objection to the amendment, but, on the contrary, would approve of it, — the majority of them; that in the long run

they feel some regulation of the bill-boards is to the advantage of real estate and not a detriment.

A straw man, in my opinion, has been set up here. It has been suggested that if a constitutional amendment such as is proposed by the minority of this committee, should be passed, the Supreme Court of the United States would throw it out as no proper exercise of the police power. That this is a man of straw I think the Cusack case clearly holds, and I shall read one of the paragraphs in that case, so that every gentleman here can make up his mind as to whether or not this is a man of straw. The court, speaking through Mr. Justice Clark, on pages 529, 530 of that decision, said:

> It is settled by that decision (Cusack Co. *v.* Chicago, 267 Ill. 344) that the ordinance assailed is within the scope of the power conferred on the city of Chicago by the Legislature. . . . We therefore content ourselves with saying that while this court has refrained from any attempt to define with precision the limits of the police power, yet its disposition is to favor the validity of laws relating to matters clearly within the territory of the State enacting them, *and it so reluctantly disagrees with the local legislative authority, primarily judge of the public welfare, especially when its action is approved by the highest court of the State* whose people are directly concerned, that it will interfere with the action of such authority only when it is plain and palpable that it has no real or substantial relation to the public health, safety, morals, or to the general welfare.

Citing the case of Jacobson *v.* Massachusetts, 197 U. S. 11, 30, the court go on to say:

> And this, for the reasons, cannot be said of the ordinance which we have here. [Namely the Chicago regulation previously approved by the Supreme Court of Illinois.]

In view of that language it really seems to me incomprehensible how anybody can argue seriously that there is the slightest reason for supposing that the Supreme Court of the United States will hold invalid any law which may be passed as a result of a constitutional amendment such as is proposed. And I trust for that reason, gentlemen, that this constitutional amendment may be carried in the form of the amendment proposed by Mr. Dutch, which is acceptable to the minority of the committee, as they have stated.

Mr. Hart of Cambridge: The character of this debate has been such as almost to exhaust the subject from every point of view. I wish only for a very few moments to call your attention to one particular phase of the whole question which I believe has not yet been urged. Certainly after the charming speech of the gentleman from New Bedford (Mr. Theller), one of the most helpful speeches which has been heard in this Convention, and after the speech of the gentleman from Cambridge (Mr. Walcott) there is little left to say upon the general question of constitutionality, though I shall touch upon it later. The real issue before this Convention is not that of constitutionality but of expediency; and if every gentleman here voted as he believes with reference to his own premises and his own conditions, there would not be a vote against the proposed amendment, because there is not a member of the Convention who desires to enjoy the blessings of bill-boards, unlimited and unregulated, on or near his own place of residence. It makes no difference whether it is Casey or Powers, whether it is devil or archangel. I do not want a wooden archangel looking at me across the street every time I look out the window! Why is it that the most desirable and costly pieces of real

estate in the Commonwealth are found where there are the fewest things to offend the eye?

A bill-board undoubtedly may be made a "thing of beauty and a joy forever." The bill-board may be made extremely useful. Use has been made of it by the Federal Government during the last year. There is no doubt that there are certain appeals which can be made by the bill-board, but they do not need to be made upon the scale or with the degree of ugliness with which we are familiar.

It is a great pity that our American cities have not paid more attention to their own beautification, such as that which makes so many European cities desirable. In the city of Brussels, for instance, many years ago they established the main street with a uniform cornice line and offered prizes for the designs of façades. The result is that they have one of the most beautiful streets in Europe. We do not look after things of that kind. But we have now an opportunity, — this Convention has an opportunity, — to aid our fellow-citizens and ourselves in establishing a principle which will reach one of the chief deformities, one of the things which most contribute to destroy the attractiveness both of the city and the country.

Anybody who went to the San Francisco Fair a few years ago must have felt, as I did, the splendor, the delight of going through a succession of majestic buildings, grouped about great courts and fountains, with all the embellishments which art could produce. I said to myself: There is not a city in the Union that is not rich enough to provide such buildings as these, and there is not a single city that has them.

The main point I want to make is not even the question of expediency, because that already is settled. Everybody who opposes this measure on reasons of expediency is arguing upon grounds of other people's expediency, and chiefly upon the vested rights and also the inchoate rights of the bill-posters and the men whom they employ.

Upon that point please let us observe that the custom of advertising in this manner and in other offensive manners has become a great feature of American life. The business of advertising by bill-boards I believe reaches into the scores of millions of dollars every year; and we ought to notice that the greater part of this money is absolutely thrown away, because it is competitive advertising. Is it a question of whether you will take a "Takhoma" biscuit or whether you will buy a "Uneeda" biscuit? If there were no advertisement you probably would buy one or the other in any case. That is to say, the community is obliged to submit to this barefaced interference with its sensibilities, to what end? That there may be an enormous volume of advertising. Now, what is the proof that a great part of the advertising is unnecessary? Why, that the government of the United States is beginning to stamp competitive advertising as a useless expenditure of money. For instance, the moment it took possession of the railroads it abolished, or took steps to abolish, all the devices which the different railroads had used to draw travelers from the other line to their line. They are all gone, as also the special privileges of stop-overs, — everything of that kind. They are routing passengers over the lines that are the shortest and most direct, hence in action the cheapest. Why? Because they think that advertising makes no passengers, but simply redistributes them. The man who makes some-

thing, the man who goes into a factory and produces something to sell, is striking the rock from which the spring gushes forth. The advertiser simply is taking his little spade and directing the current into this or that channel. He does not make anything. There is no doubt whatever that one of the reasons for the high cost of living is the enormous expense of advertising upon a great scale.

One question which specially interests me in this debate is related to constitutionality. We may take different points of view. The point of view of the gentleman from Quincy (Mr. McAnarney), who always charms us with his eloquence, however little we can agree with his logic, — his principle is that it is unconstitutional for this Convention to suggest a constitutional amendment upon a subject on which the Supreme Judicial Court of the Commonwealth already has made a decision. Great Heavens, gentlemen! If that is good law, then the United States of America has taken thousands of millions of dollars into its treasury without warrant of law, inasmuch as the 16th Federal amendment, permitting an income tax upon the basis upon which the present income tax is distributed, was intended to destroy the effect of a decision of the Supreme Court of the United States that a previous income tax statute was unconstitutional. It never would have been introduced if that decision had been otherwise. It did supersede the construction of the court and set up a new principle.

This Convention is superior to the State Constitution in the sense that it may suggest whatever changes seem to it proper. The people of Massachusetts are superior to the Convention, superior to their own Constitution, in their right to alter the Constitution. I admit the existence of no common law, derived from England or from our own practice, which is superior to the written text in the Constitution of this Commonwealth.

Again, we are told that people are going to be deprived of their property by legislation against bill-boards. My friend the gentleman from Ware (Mr. Sawyer) complained that he might be deprived of his farm. Though I think he did not use the phrase, the sense was that he had a right to do what he chose with his own. No farmer in Massachusetts has any such rights as that. He cannot use or sell his farm for the construction of a slaughter-house or a powder magazine in the neighborhood of a thickly settled part of the community. There are many limitations of that kind upon him, and there might well be a limitation upon his using his farm for the construction of bill-boards upon which advertisements may be placed. Such a limitation is not in the least unthinkable. And what is more, please notice that the property that we are talking about, as was pointed out so lucidly by the gentleman from New Bedford (Mr. Theller), is property in a state of mind on the part of persons riding by who may see that bill-board. Take the farm of the gentleman from Ware, or of any other gentleman who owns one, — is the right to the produce of that land disturbed, is the right to build on it disturbed? Not at all! The only thing that seems to be urged would be that a man should have a right to compel people as they went by to cast their gaze upon a bill-board situated on his land.

One of my colleagues, Professor Nathaniel Shaler, years ago organized a great National society against bill-boards and their kind and the thing was very simple. No dues, no meetings, no officers. You

simply shook hands with some member, and said, in substance: "I will not buy anything that is offensively advertised." The people of course have that remedy if they are willing to apply it, but there are other remedies that might be applied also.

What is the nature of this property in advertising sites? It is a new idea that there is property in the right to set up something on your land to call attention to. I do not mean that the idea of regulating bill-boards is brought forward for the first time in this Convention, but it has appeared only in the last quarter of a century in the United States. A new idea, because the object of legislation itself is new. That is, in addition to the ordinary uses of property we are now called upon to recognize that a man has a money right to cash in the eyesight of passers-by. When you talk about the Supreme Court of the United States interfering under the Fourteenth Amendment to prevent the taking of property without due process of law, what you mean is that there is a novel property vested in the owner of land, under which he is allowed to do something which may be offensive to a thousand of his fellow-citizens.

I cannot vie with the constitutional lawyers in the Convention in their intimate knowledge of the law, but I do consider that one of the most interesting periodicals that I read, — and I read it patiently, — is the West edition of the reports of the Supreme Court of the United States. Your attention already has been called to a recent decision bearing upon this question of advertising on bill-boards. I may say that outside of this immediate question, any one who systematically reads those decisions is aware that it is more and more the temper of the Supreme Court of the United States to allow that the whole is greater than any of its parts, to allow that the interest of the community may, and often must, override the interest of an individual.

Furthermore, under the present system we now are creating, organizing, admitting a right of property which is growing in importance and value, as you measure values, from day to day, and which probably will rise to plague us. The time for the Commonwealth of Massachusetts to act upon this matter is now, while it still is small. For instance, see what a length of time it took to clear Niagara Falls of the private rights of extortionate property owners. There was no question of saving the water power of Niagara Falls, which always must be available in case the Nation requires it. We all will admit that. My point is that unwisely people had been allowed to get on the cliffs commanding the Falls and build catch-penny sheds so as to charge preposterous sums for getting within sight of the Falls; and it took years and years to clear them out. The time to prevent the acquirement of these new intangible rights is before they have further accrued. We all seem to agree that if there be a real right of property which the courts would acknowledge, our courts will protect this right so far as it now exists; but that is a very different thing from providing an amendment under which a statute may be framed which will preclude the further accruing of these rights.

For these reasons, I am decidedly in favor of the proposition before the Convention in the form suggested by the gentleman from Winchester (Mr. Dutch).

Mr. Bauer of Lynn: I believe that we have had all the debate

necessary to bring out the facts for the enlightenment of the members of this Convention on this very important subject, and so I move the previous question.

Mr. Hobbs of Worcester: This matter already has been discussed to such length that I feel somewhat timid about discussing it further, and yet there seem to be rather important issues hanging upon this simple proposition. It is an attempt apparently to broaden out the police power. As the last speaker (Mr. Hart) intimated, the courts are taking constantly a broader and broader view of the powers of the State to act under the police power, until at times the police power has seemed to be coterminous with the visible universe, and an attempt to broaden it still further would seem to be very much in the nature of carrying coals to Newcastle.

The limits of the police power, as commonly understood, are the protection of the public health, the public safety and the public morals. The reason why the advertising proposition, when it has come before the courts, — the bill-board proposition as it has come before the courts, — has been held not to be within the police power is, I take it, because it could not be classed definitely under any one of those heads. Any regulation that fairly might be referred to any one of the three heads that I have mentioned unquestionably would have been constitutional, but the Supreme Judicial Court declines to hold a regulation in the interest of art as within the police power.

We are establishing constitutional rights in this Convention in a broad way. We are not tied down to a petty constitutional rule. In theory, at least, we are making a Constitution. I suppose we fairly might consider as to why we should take this matter and why we should broaden the Constitution in this regard. The police power is the power of the State to say how a man shall use his property. What the State does in requiring him to use his property in this way or that way not infrequently means a considerable expense; somebody has got to bear that expense; or it means a considerable property to forego the use of, and somebody has got to forego the use of that property.

The question is entirely different when the State pays for what it breaks. The State can do a good deal more that way, as long as it settles the bills itself. But it becomes a matter of much more caution, of much more difficulty, where it undertakes to lay down its rule to a man, to tell him he shall use his property in such and such a way and settle the bills himself.

It is for that reason that I, for one, and I think some others, look rather reluctantly at any proposition to broaden out the Constitution, and to give the Legislature and the cities and towns of the Commonwealth power to tell a man that he shall or shall not use his property in a certain way and shall bear the burden of that himself, without seeing pretty good reason therefor.

The main reasons that have been urged for this are two. First, it protects the artistic part of the community, the artistic interests of the community; and, second, it supports property rights. As to the latter head first. It does support property rights to a degree, but it is at the expense of other people's property. A man comes into a town, builds a house on a certain lot, and he wants to have the other lots restricted in such way that he is protected in the enjoyment of the house which he has built for his own profit or for his own enjoyment;

and this constitutional amendment is one of the methods urged whereby he can be secured in that enjoyment. There is no special reason why he should look to the community to be protected in his rights, which he has gained simply by occupying the land. Is there any particular reason why a man by settling down in a place and building a house or other structure should restrain permanently thereby all the land around it from being used except for purposes consistent with his enjoyment of that property? I think there is probably a question as to that.

Mr. PILLSBURY of Wellesley: We are dealing, in either of the propositions before the Convention, — for they appear to be substantially the same in legal effect, — with a dangerous principle, which may be and has often been abused; and while I am in sympathy with the resolution, and hope to vote for it in some form, I am not prepared to vote for either proposition in its present form, nor until I can be more certain of its meaning.

I think the Convention has become somewhat confused by the debate as to the precise question which these proposals present. It is a very simple question, and it is this: Shall we authorize the Legislature to prohibit any and all bill-boards, under any and all circumstances? That is the question. My friend from Springfield (Mr. Kilbon) said that the dissenting minority of the committee refrained from using the word "prohibit," because they did not want to go to that extent. But an unqualified and unlimited power of restriction is practically a power of prohibition, because under such a power the thing may be so far restricted that there is nothing left of it.

Now, confessedly, the right to use land for the erection of bill-boards is a property right, and the court has determined, and it could not have done otherwise, that it cannot broadly be taken away without compensation. What the court actually decided in the Boston Advertising Company case was only that the regulation there in question so far impaired property rights as to exceed the limits of a reasonable exercise of the police power and called for compensation. The present situation is unsatisfactory, because that decision leaves us in doubt as to what measures of regulation are good and what measures are bad, and it leaves no practicable method at present of getting rid of the bill-board nuisance, except by acquiring the fee of the land itself, and that the public ought not to be compelled to do if any other equitable remedy is within reach.

I agree that within all reasonable limits the public ought to have the right to regulate the nuisance, but it ought to act with reasonable regard to property rights. I think it likely that a middle ground can be found upon which all parties can meet; and except for the absence to-day of my friend from Newton in this division (Mr. Richardson), perhaps the most active advocate of this measure, I should have proposed an amendment designed to furnish such a ground. I shall not attempt to discuss the general subject in his absence nor to say anything further than that I trust that one resolution or the other, — and it does not seem to me to make any material difference which, — may be substituted to-day, in order that it may remain before the Convention for further consideration.

Mr. SAWYER of Ware: I just want to call the attention of the Convention to the fact that if this taxation resolution on the calendar be

passed by the Convention, taking the word "proportional" out of our present Constitution, it will give to the Legislature the power to tax bill-boards, and to tax them, if they be a nuisance, out of existence. Therefore it is not at all necessary that we pass any constitutional amendment like this, to give the Legislature power in a broad and general way like this, if we are going to pass that taxation resolution.

Mr. Dutch of Winchester: I should like to ask the speaker if he believes that the Legislature in that event could levy a tax on the particular obnoxious bill-board, the particular obnoxious type of bill-board, as distinguished from those which are unobjectionable?

Mr. Sawyer: I understood from the interpretation as put upon this by the gentleman from Wellesley (Mr. Pillsbury) who spoke, that bill-boards are a property right; and from the purport of the resolution that is upon the calendar that there could be a graduated or changeable rate of taxation upon the different classes of bill-boards, which practically would be so high as to eliminate those which were a nuisance.

Mr. Flaherty of Boston: One other thing I should like to say in the Convention about this matter. During the discussion of the initiative and referendum much point was made of the fact that in States where the initiative and referendum was in operation the ballot was encumbered with matters of little or no importance, particularly by matters already covered by some law then in force. I think that criticism would apply to this situation. It would seem as if a government that has survived as long as the Commonwealth of Massachusetts should have enough power under the Constitution, and in the exercise of its police power, to take a trivial thing like this, a matter really of not measurable importance, and settle it without going through this absurd process of amending the Constitution.

The gentleman from Wellesley (Mr. Pillsbury) says, and properly so, that the unqualified power to restrict includes the power to prohibit. The only difference, I take it, from the position he takes and the position that the majority of the committee takes is on the question of whether the State now has the power to do it. I am confident that if he looked at the authorities in this State, and the very great weight of authority throughout the United States, he unquestionably would come to the conclusion that we have that power, and that we ought not to take up so much time in a discussion of this matter. I think the Convention would be in a decidedly absurd position. For that reason, and the others that I have stated before, I think the committee's report ought to be sustained.

Mr. Kelley of Rockland withdrew the amendment previously moved by him,

The amendment moved by Mr. Dutch of Winchester was adopted and. accordingly, resolution No. 381 was substituted; and it was ordered to a second reading Tuesday, June 25, rejection, as had been recommended by the committee on Social Welfare, having been negatived.

The resolution (No. 381) was read a second time Tuesday, July 30.

Mr. Loring of Beverly: I wish to move the amendment which is printed under my name in the calendar. This differs from the resolution as it is now before the Convention by the addition: "but no person shall be deprived of the use of his property without just compensation".

There are two principles involved in this measure. The first is whether the public can take a piece of property merely on æsthetic grounds, for taking a right or easement in a man's property is equivalent to taking the property itself. A few years ago this would not have been considered a proper taking, or a proper place for the public to exercise its authority. The case that came before the court involving a principle, although the court did not decide the question directly, was the building of a road at Nahant in order to get a sea view. The road entered nowhere and came out nowhere, and the only convenience that it was to the public was that it gave them a good sea view. I am willing to concede that in the present advanced state of the public's rights, that the public, if for æsthetic reasons it wants to take a piece of property can do so. But I do think that there is a principle that this Convention ought not to concede, and that is that the public can take any man's property without compensating him for the taking, unless that property is absolutely deleterious to the public in the use which it has. That is, if there is a nuisance, if a building has got to be torn down because it is a menace to health, then it should be torn down because it is a nuisance to the public. But here in this case they propose to take an easement, a valuable easement, in a man's property, simply because they do not like the looks of the property with a bill-board on it. This bill-board is not necessarily one for advertising purposes entirely, foreign to the lot. As you know when a man wants to sell his house he usually puts a bill-board up on the front of the premises, especially if the house sets back a little way from the street, saying that the house is for sale and giving other description. When a man cuts up a piece of land into lots he usually puts a large bill-board at the entrance of the street, on which he puts a plan of the lots that he proposes to sell. Under this resolution as it stands unamended would it not be difficult to discriminate and say what bill-boards a man should put and what bill-boards he should not put on his lot, and would you not be taking from him something that was very valuable to him besides the income that he might get from some advertising concern for putting a bill-board on his lot? If regulations are made, any regulation which was so reasonable that it would not take away any of the man's substantial rights would not enable him to recover any great damages from the public for the injury to his lot, because the injury would not sound in damages to any great extent, but I think we ought to guard the principle very carefully that you shall not take a man's property without compensating him for the damage. In a case, for instance, where you take a park, you take a man's lot for the purpose of the park and you pay him for it. Now you propose to so restrict a man's lot right next to the park that he cannot use it for certain purposes, and you propose not to pay him for it. It would be much better for him if his land was taken.

I hope that this Constitutional Convention will see to it that a man's property is not taken without just compensation.

Mr. Parker of Lancaster: Some years since, I had occasion in an official capacity to make some study of the principle which underlies the measure now under our consideration. I was then of opinion that it was a lawful and proper exercise of the police power of the Commonwealth for the Legislature to make regulations consistent with the public welfare, restricting the use for advertising purposes of privately

owned real estate. I advised the Legislature by virtue of the position that I then held of the opinion which I then entertained, and adopting the theory so stated the Legislature enacted a statute empowering the Metropolitan Park Commission to establish regulations which should restrict the use of bill-boards or advertising boards within certain limitations and distances from the public parks. The statute so enacted later came before the Supreme Judicial Court for its review, and to my disappointment, I must confess, rather than to my surprise, that august tribunal held, as it often has, that my views were erroneous and therefore not to be entertained. In effect the decision was that the regulation then at the bar of the court was not a proper exercise of the police power, and the operation of the statute thereby was frustrated. I believe that since then no attempt has been made to enact a statute in any wise regulating bill-boards or advertising structures upon private property, because this decision of the Supreme Judicial Court has been held generally to mean that under existing constitutional limitations the restriction would not be held consistent with public policy and would not be recognized or sanctioned as a lawful exercise of the police power.

What is public policy? What may be a proper exercise of the police power in the enforcement of a sentiment of public policy, or of a declaration of public policy, must vary with the sentiments of the age in which the question comes before the court for decision. With accumulated experience, with added observation, with the disclosure of needs that become more and more apparent, with evils that may be developed as the years pass, the determination of what is a real and operative public policy must vary. I myself believe that with the sentiment constantly growing, with the manifestations of detrimental use of private property affecting the public, the time will come when our Supreme Judicial Court will hold that some restriction of this evil through police regulation is permissible within our present constitutional limitations. But, sir, I think it must be assumed that to-day these regulations, except in so limited a way as to be practically futile, would be held by our Supreme Judicial Court to be unconstitutional under the organic law as it now obtains. I believe, therefore, that this limitation of our present Constitution should be relaxed. I believe that this protection which this new enactment would permit for the public benefit should come into operation. I recognize the force, the power, I might almost say the authority of the observations of my learned associate, the delegate sitting with me in this division (Mr. Loring), when he holds that this Convention ought not to adopt any measure which shall relax the proper protection of private property or shall ignore the fundamental requirement of our organic law that private property shall not be taken for public purposes except due compensation attends the taking. I am assuming for the moment that we are not now restricted by recent constitutional limitations but are permitted presently to inquire what, without the existence of those limitations, would be a wise, a just constitutional provision, having regard both to the rights of private property and the interests and needs of the public.

This leads me to inquire very briefly of the nature of this alleged right of the landowner to erect upon his premises advertising devices, ostentatious or conspicuous figures or pictures, to attract the notice

of the passer-by or to intrude upon the observation of all who come within the range of human vision, his commercial enterprises or his perhaps legitimate commercial ambitions. I assert, sir, and submit it to the test of inquiry and criticism of my colleagues and associates here, that the use of private real estate for the erection of conspicuous, ostentatious, diffusive advertising-signs is not a right of property inherent in the ownership of the soil which the proprietor of that land may rightfully claim. On the contrary, I assert that this method of advertising constitutes an intrusion upon, an invasion of the property rights of others, not merely of those whose land is contiguous to that of the advertiser but of all lands that may be within the range of what again I state to be the intrusive trespass of the advertiser who erects this projective sign upon his own territory. I assert, sir, that this use, attempted to be protected by further constitutional limitations, is not the enjoyment of an inherent use or property right in the property itself, but constitutes in effect the imposition of an easement upon the property of others. All of us know that in theory of the law the ownership of the soil extends upward and downward, up to the heavens if indeed the virtue of the owner be such that he may claim such extension of his right, beneath to the nether territories as far as imaginary boundaries may run. The value, the advantage to the advertiser who would erect these signs upon his own land, is in no wise limited to the land itself. The value of this commercial advantage or benefit which he claims as a right is dependent entirely upon his environment. He will not erect any such advertisement in an isolated or secluded piece of land beyond the vision of the congregated multitudes of his fellows. It is useful, it is beneficial, only in so far as it intrudes upon the property of another, in so far as it passes this visionary but absolute line in the law of ownership from the heavens to the lower regions. I assert, then, that to embody, to fortify, to entrench and to perpetually preserve in constitutional limitations this alleged right of imposing an easement upon other persons' property by virtue of the ownership of a little tract of land which may be one's own, is a provision that is not warranted by existing principles of law, and would extend and assure by constitutional enactment immunities and privileges that are not inherent in the land itself.

I hope, my colleagues, if these suggestions which I have made to you with respect to the fundamental rights of ownership appeal to your own judgment, and you view with me this as a question not involving the protection of vested or established property rights under our existing Constitution, but as guaranteeing a use of property which rightfully does not belong to the alleged owner, you will hold with me that it is unwise, injudicious, inconsistent with the policies that have animated our constitutional and statutory law since the Commonwealth had its creation, to adopt the amendment proposed by my honorable colleague in this division (Mr. Loring) which is asserted to be a provision to insure the preservation of constitutional property rights, but which I think runs far beyond any such purpose or result. I think you will detect in this proposed amendment not only the grounds of the objections which I have stated, but that you will see that by the context of this amendment you are not merely reaffirming the principle that private property shall not be taken for public purposes without compensation, but you will observe that by the phrase-

ology of this amendment a supposed or alleged right to use one's property may be extended to the detriment of adjoining owners, by a use of one's property in such manner as will establish a hostile easement upon adjoining property. By virtue of the context of this proposed amendment you will observe that this particular use of private property, namely, the erection thereon of these conspicuous signs which traverse all over the surrounding territory as far as human vision may carry, is held, declared, must by inference and construction be held, to be affirmed as a constitutional property right in the owner of real estate within this Commonwealth.

Note what would be the result of the adoption of this amendment. Note the history of the development of this particular method of advertising, valuable undoubtedly because enormous expenditures are made in its manifestation. But why is it valuable, and where do you find the manifestations of this commercial instinct, this commercial development or magnification of property rights? Let the Commonwealth expend its money, procured from the overburdened taxpayers of this Commonwealth, in laying out boulevards that shall make accessible to all our citizens the most beautiful landscape that nature has given to us as our inheritance, and there, almost coincident with the development of those public improvements, you will discover these obnoxious interferences with the gifts which nature gave to us, and which we would secure for the public benefit. Take the metropolitan parks, acquired, maintained, at the public expense for the enjoyment of the public, not wholly material but very real, in the advantages so secured. Many æsthetic benefits accrue to the public by such manifestation of public power by such application of the public funds. Immediately beside such a park, made attractive because of its environment, or the views of sea or landscape it affords to the people of Massachusetts, who are its owners, at once as far as vision may extend from that sanctuary so procured by the Commonwealth, there rise, intercepting, obstructing and shutting off every point of view, those intrusive advertisements erected to the end that they may arrest and divert the view of those who have sought the enjoyment and seclusion for which this public sanctuary was created. Shall you permit this evil not only to exist with such constitutional protection as may now attend it? Shall you go further and permit it to be exaggerated and magnified, so that every time the public's money is put into one of these public sanctuaries you are to expect that immediately commercial enterprise or ill-directed commercial ambition will set to work, protected by the same law that established this sanctuary, to establish conditions which will work to the detriment and to the final destruction, utter elimination of every object for which the public expenditure was made? Safeguard by constitutional provisions those policies of the law that protect private property against the invasion of unwarranted public authority. But both these principles of private right and public interest to which I have adverted may survive, each taking strength from the other, if we hold to provisions that we shall here enact, assuring the enjoyment of private property within its proper limitations, whereby each must use his own property so that others shall not suffer thereby.

I hope this amendment may not pass. [Applause.]

Mr. Choate of Southborough: I shall be fearful that the amendment offered by the delegate from Beverly (Mr. Loring) will have the

effect of destroying the usefulness of the main resolution; it seems to me that it may have, and very probably will have, two results. In the first place, it might well be held that by coupling the obligation to pay compensation with the right to regulate advertising the Legislature has no other right, that is, that any regulation of advertising in the vicinity of public parks or parkways is restricted to a regulation coupled with an obligation to pay, and that that would be most unfortunate; it would leave us in a worse situation than we now find ourselves in. The second result is that which, it seems to me, has been so well pointed out by the gentleman from Lancaster (Mr. Parker). Instead of having any deterrent effect upon the action of landowners it would be an encouragement to landowners to use their lands in a way objectionable and detrimental to the public interests because they might thereby claim compensation. The value of the main resolution I submit lies in its feature as a police regulation, the right to regulate without being obliged to pay compensation.

It is true, it seems to me, that the resolution lies close to the border line. It does not purport to limit the right to regulate to those things which generally are regarded as nuisances in the common acceptance of that word. It is intended to go beyond that line. The question naturally would arise, if the main resolution should be adopted, under a law which might be passed by the Legislature in pursuance of the power given it and when a prosecution had been had against an offender under that law. It seems to me then that the rule that would be applied would be whether the law or regulation enacted by the Legislature was a reasonable one in pursuance of the power that had been vested in it. To take the illustration suggested by the gentleman from Beverly (Mr. Loring) I should say that a court might well hold that a regulation forbidding the exhibition of a board showing a proposed method of dividing up a parcel of land was an unreasonable regulation; while the erection upon the same land of a bill-board with a gentleman in a bath-tub or some other similar advertising sign might be an entirely reasonable regulation. Some assistance as to how the line probably would be drawn is afforded by a case decided by the Supreme Court of the United States which the industry and intelligence of the gentleman from Quincy behind me (Mr. McAnarney) has supplied to me, — the Thomas Cusick Company *vs.* The City of Chicago, 242 U. S. Reports, where an ordinance in the following language was sustained as a reasonable police regulation. The ordinance read as follows:

> It shall be unlawful for any person, firm or corporation to erect or construct any bill-board or sign-board in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property on both sides of the street in the block in which said bill-board or sign-board is to be erected, constructed or located. Such written consent shall be filed with the commissioner of buildings before a permit shall be issued for the erection, construction or location of such bill-board or sign-board.

That affords a sample of the kind of restriction that the Supreme Court has held was within the legitimate exercise of the police power. I should submit that the value of this resolution lay in the factor of its being an exercise of the police power, and to be construed as such.

Without that the measure would leave us in a worse situation than we now are in.

Mr. Clapp of Lexington: Inasmuch as on a number of occasions I have shown a disposition to safeguard pretty strictly the rights of property, I should like now a brief opportunity to say that in my opinion here is a case where we do not need to be jealous of protecting property rights, but rather of protecting the rights of the public and the rights of neighboring property owners. I find myself in hearty accord with what has been said by the delegate from Lancaster (Mr. Parker) and the delegate who has just taken his seat (Mr. Choate). I very much wish that the great zeal which the delegate from Beverly (Mr. Loring) is now showing for a moment in behalf of vested property rights might have manifested itself on other occasions in this Convention. The other day we adopted a wide open proposition with regard to the natural resources of the Commonwealth, a proposition which contained an undisguised effort to broaden the police power of the State, so that the Legislature without regard to vested rights may regulate and control the use of water-powers that have been developed. On that occasion my friend from Beverly (Mr. Loring) did not seem anxious to guard vested rights, but when we come now to a narrow proposition of this sort he is all alert to see that no damage or mischief is done. While he saw nothing to object to in the broad proposition to which I have referred, yet when we come to a constitutional amendment under which the Legislature, without awarding any compensation to the land owner, might say that hereafter he shall not permit the display along the side of a public park of something advertising the merits of Lydia Pinkham's vegetable compound, then the delegate from Beverly (Mr. Loring) sees great menace to property rights, and he likens the act of the Legislature in saying to the land owner: "You shall not allow your property to be used for these flaming advertisements which most people regard as a nuisance", — in making that reasonable curtailment of a man's property, — to the granting of an easement across his land without giving any compensation. It seems to me it is a very far-fetched and misleading analogy.

We all are agreed upon the proposition that cases may and do often arise where the exercise of all the absolute right of ownership is inconsistent with the reasonable use by another man of his property, or inconsistent with the just protection of the rights of the public, and I say this is clearly one of those cases. Here for once I certainly am willing to give the power to the Legislature to do what is right in the premises. I agree with what the last speaker said, that if you adopt this resolution you practically destroy the amendment, I mean you practically destroy the virtue that resides in the main proposition. It is tantamount to a declaration of this Constitutional Convention that the police power never shall be extended to the regulation of what so many people regard as a sort of a nuisance. And what would happen, gentlemen, if this became a part of the law? Under an act of the Legislature some city or town would pass an ordinance or a by-law limiting or possibly prohibiting the use of certain kinds of sign-boards within the town. The possibility or probability of suits being brought against the town very likely would operate to prevent the passage of the ordinance or the by-law in the first place, but, if the

town proceeded courageously to do it then you might expect an avalanche of suits to be brought, and although the damages to be recovered might be small, yet the total expense of that litigation would be considerable, and I think the town should be protected against it.

Finally, let me say that undoubtedly the proposal in the form in which it has been set up might be open, — is open, theoretically, — to the passage of some regulations that would be unreasonable, that ought not to be passed. The illustration which the gentleman from Beverly (Mr. Loring) made of a sign advertising your property for sale is a pertinent one. Well, now, I hardly can conceive of the Legislature's being so foolish as to pass a restrictive provision or law in such shape as would make unlawful the display of a sign advertising a man's property for sale. You surely can trust the Legislature not to do any such foolish thing as that. If it were proper to do so it would be well to elaborate this provision and make it clear in what we adopt that such a law as the gentleman in the second division (Mr. Loring) fears could not be passed, but it is impracticable to go into those details. You hardly can do more than adopt this broad rule, which is to the effect that hereafter the police power may be extended to the protection of the public against the nuisance of these signs. So, inasmuch as it is impracticable to draw the distinctions here, inasmuch as that is a matter of legislation which is in the hands of the law-making power, let us brush aside all of these foolish bogies and adopt the broad principle set forth in the main resolution, and I am sure that no harm, but on the contrary only good, will be derived from it.

Mr. Stoeber of Adams: I believe that no part of the State has suffered more from the misuse of public advertising than the Berkshire Hills. As we pass along the beautiful roadside in these hills, and especially along the beautiful Mohawk Trail, with which you no doubt are familiar, we find hundreds of advertisements put up in all sorts of shapes, advertising almost anything upon the face of the earth from a certain brand of suspenders up to automobiles, pianos, etc. I found on one of the most picturesque and highest points within the limits of the city of North Adams that an enterprising firm manufacturing a certain beverage has placed a monster advertisement. You cannot say there that you have no need to look at it if you do not want to, because the advertisement is in such a position that you simply cannot get away from it. You have got to see it, and you cannot hide from it. The city of North Adams has exhausted every means and every resource at its command to have this advertisement removed, but the advertisement is still there and no doubt will remain there until the firm is compelled to remove it by some such law as we now have under discussion. If I remember correctly, the city of North Adams sent a number of petitions to this firm signed by the citizens of the city, and a later petition signed by the school children of the city, but no attention of any kind was paid to it. Only very recently President Wilson in passing through that part of the State in his special train had his attention called to the advertisement upon that ledge, and he was very sharp in condemning the practice to which this firm has resorted. I certainly hope that this Convention will pass some measure that will prevent such practices in the future.

Mr. Flaherty of Boston: I think the Convention ought to have its attention directed to the nature of the resolution that it is asked to adopt. Document No. 53 provides as follows:

> Full power and authority are hereby given and granted to the General Court to regulate, restrict or prohibit advertising on public highways, in public places, and on private property within public view.

The resolution offered by the gentleman from Winchester (Mr. Dutch), which was substituted for the one I just read, is shorter and is as follows:

> Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law.

The gentleman from Wellesley (Mr. Pillsbury), who took part in the discussion at the earlier stage of the debate on this resolution, expressed the opinion that both of these resolutions contained an unqualified power to restrict, and that carried with it the power to entirely destroy and prohibit. There cannot be any doubt about that question. Unquestionably it is so. If this Convention desires to destroy utterly outdoor advertising, no other better way could be followed than to pass either one of these resolutions. But I do not understand that any of the gentlemen who support this resolution favor the destruction of outdoor advertising *in toto*. The difficulties arise when we come to draw the line, and the very able address of the gentleman from Lancaster (Mr. Parker) illustrates fully the weaknesses, if I may use that expression, of the argument in support of this amendment. The statement of his reasons and the statement of the reasons of every man who supports this resolution is a refutation of their case. My friend from Lancaster (Mr. Parker) says that the public has a right to be saved from the nuisance of ostentatious advertising. I wonder what he means by ostentatious advertising. Some men, and sensible men too, might disagree with him on that question as to what may or may not be ostentatious advertising.

The gentleman from Southborough (Mr. Choate) read a regulation in the case that was quoted here previously during the debate, which was upheld by the Supreme Court of the United States as a proper exercise of the police power. I wish to remind the gentlemen of the Convention and the gentleman from Southborough (Mr. Choate) that that regulation was not based upon any constitutional power, or rather specific constitutional power, granted by the State of Illinois to the Illinois Legislature, but was a regulation enacted by the city of Chicago by virtue of the general power that it had as a municipality, and in pursuance of its functions as a municipality to protect the public rights and the public good, and consequently is simply an instance of the exercise of the police power, that is, the exercise of that power which every State has by reason of its sovereignty to protect its citizens and to do those things which the public good requires. So too in this State we have the example of the Westminster Hotel case, wherein the height of buildings was regulated. It was regulated upon the ground that the public were entitled to have that work of art, as you might call it, or the right to the perspective, maintained as it was laid out by the proper municipal authorities. There is no doubt about the question that a State has the right to regulate in that respect.

The difficulty with the Boston Advertising case, that my friend from Lancaster (Mr. Parker) quoted so fully, was simply a difficulty that arose in the trial of that cause. The question of the reasonableness of the sign in dispute was not raised. Nothing of that sort was brought into question. The plain, simple proposition decided was whether the Metropolitan Park Commission had the right to make regulations that deprived a person of the use of his property. That was the sole question that went to the Supreme Judicial Court, and that was the only question decided. No other question was raised. No question of nuisance, no question of reasonableness of the use by the owner of the adjoining land, none of those things were even brought out in the course of the trial, nor were they discussed in the brief of either party to the trial nor touched upon by the court.

I do not agree with the proposal of the gentleman from Beverly (Mr. Loring). I think it is a provocative amendment, and one which ought not to be adopted. On the other hand, I do not believe that any man in this Convention wants to adopt an amendment that is going to destroy utterly a business that has some real, good uses.

It seems to me that the question is one for the Legislature. There is no necessity, as far as I can see, and I believe I am borne out by the case that the gentleman from Southborough (Mr. Choate) called to your attention, for any constitutional regulation. The question here is a common-sense question. We are not to forget undoubted inherent rights that rest in a sovereign State simply because some persons see fit to abuse them, or because in the abuse of certain privileges that are presumed to exist some persons are affected more than others. I hold no brief for outdoor advertising firms, I really am indifferent to what their fate may be, but it seems to me that if we are here to do the thing right, if we are here to go ahead on broad general principles of government rather than upon specific instances of hardship, then our plain duty on the one hand is to say that we shall not be controlled by hard cases, but rather we shall hew close to the line and recognize things that exist, and on the other we are not going to say that we are going to destroy utterly an industry that has some real purpose and place in our every-day affairs.

Mr. Kilbon of Springfield: I do not wish to take a great deal of time, but I do want to point out in language less effective than that of the brilliant lawyers who have addressed you this afternoon, to people who are no more accustomed than I am to legal phraseology, the fact that the gentleman from Beverly (Mr. Loring) has introduced an amendment that presents to us an alternative perfectly simple and clear to understand. The question before us is this: Shall we give the Legislature the right to prevent men from spoiling other people's property? And the gentleman from Beverly says yes, we will do that, if you please, but we will pay those who are so prevented. Now it is the contention of the minority of the committee on Social Welfare who have been supporting this amendment hitherto and who still support it, that the right to injure another man's property by the use of your own property is not a right which ought to be protected; that the police power ought to go, — and it is the intention of our amendment, the amendment we advocate and which hitherto has been approved by the Convention, to see that the police power shall go, — to the extent of regulating that supposed right.

It is a very simple thing. If the members of the Convention believe that the right of a man to use his property so as to injure somebody else's property or so as to injure the public welfare is a privilege in which he ought to be protected, they will vote for the amendment offered by the gentleman from Beverly. If they believe that privilege of injuring another man's property or injuring the public welfare in certain specific ways is something in which he ought to be protected not at all, they will vote for the amendment as it has stood in the calendar of the Convention. And I have very much confidence that the Convention is going to vote just that way.

Mr. Richardson of Newton: It would not be expected that there would be much left for me to say on any part of this question, especially the legal part, after the matter has been covered by the gentleman from Lancaster (Mr. Parker), the gentleman from Southborough (Mr. Choate) and the gentleman from Lexington (Mr. Clapp), and such is the fact. They have covered the ground and covered it thoroughly and admirably. I simply want to make it plain beyond the possibility of doubt that in the judgment of those who favor the regulation of bill-boards, — not their prohibition, those words have been struck out, but the regulation of bill-boards, — under the police power of the Commonwealth, the amendment offered by the gentleman from Beverly is utterly deadly and fatal to such regulation, and that the effect of its adoption would be to freeze into the Constitution of Massachusetts the decision in the case of Commonwealth *v.* Boston Advertising Company, which is the one decision which stands now absolutely in the way of any legislative regulation of such structures. Therefore those who do favor the regulation of bill-boards in my judgment must vote against the Loring amendment and for the resolution in its amended form as printed in document No. 381.

Mr. Loring of Beverly: I do not expect to be consistent on every occasion, but I do object to being called inconsistent in the case of the natural resources proposal and this one which is now pending. I moved the very same amendment to this measure that I moved to that one, — that just compensation should be paid to anybody whose property was taken. Now I am happy to say that in that other case the amendment was adopted. I do not expect to see my amendment in this case adopted, and if any one is inconsistent I am wondering whether it is the Convention or myself.

The amendment moved by Mr. Loring of Beverly was rejected.

The resolution (No. 381) was ordered to a third reading Tuesday, July 30, and it was read a third time and passed to be engrossed, without further debate, Tuesday, August 13.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 193,925 to 84,127.

XL.

INTOXICATING LIQUORS.

Mr. H. Heustis Newton of Everett presented the following resolution (No. 98):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

On and after May the first, nineteen hundred and eighteen, the manufacture, sale, keeping for sale, importation, transportation and exportation of fermented and distilled liquors or other intoxicating beverages, except as hereinafter provided, are hereby prohibited: *provided, however*, that the sale, keeping for sale, importation and transportation of such liquors for medicinal, pharmaceutical, sacramental, mechanical and scientific purposes may be permitted under such regulations as the Legislature may prescribe.

The committee on the Liquor Traffic reported favorably on the proposition in the session of 1917.

It was discharged from the Orders of the Day Tuesday, June 25, 1918, on motion of Mr. Underhill of Somerville, and was considered forthwith.

THE DEBATE.

Mr. UNDERHILL of Somerville: I should make a little explanation before the motion is put, if the Chair will allow, to the effect that, as the Legislature of Massachusetts during the last session ratified the National Prohibition Amendment, and as the matter is likely to be settled nationally within a year's time, at least, the committee on the Liquor Traffic unanimously have come to an agreement that the favorable report of the committee should be negatived by the Convention and that no further action is necessary.

The committee of course recognizes a splendid opportunity to hand down to posterity their speeches in the Convention report, but with a great deal of self-sacrifice they have concluded to pass up the proposition, and we trust that the members of the Convention will coöperate with us.

The resolution was read a second time, and the Convention refused to order it to a third reading.

XLI.

MINIMUM WAGE.

Messrs. Joseph Walker of Brookline, Carlton W. Wonson of Gloucester, Louis F. Delaney of Holyoke and John C. Twomey of Lawrence presented resolutions numbered respectively 115, 117, 216 and 217.

The committee on Labor reported a new draft, based upon the above resolutions, July 20, 1917, as follows (No. 336):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court may pass laws regulating and restricting the hours of labor.

Debate on the resolution was begun Tuesday, June 25, 1918.

Mr. Joseph Walker moved that the resolution be amended by adding at the end thereof the words "and establishing a minimum wage."

This amendment was adopted, by a vote of 103 to 56.

Mr. Francis N. Balch of Boston moved that the resolution be amended by striking out, in lines 3 and 4, the words "regulating and restricting the hours of labor", and inserting in place thereof the words "establishing a minimum wage".

This amendment was rejected, by a vote of 37 to 107.

The resolution, as amended, was ordered to a third reading Wednesday, June 26, by a vote of 112 to 47.

It was read a third time Tuesday, July 30, in the following form, as changed by the committee on Form and Phraseology (No. 390):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to regulate the conditions of labor and restrict the hours thereof and to establish a minimum wage.

Mr. John D. W. Bodfish of Barnstable moved that the resolution (No. 390) be amended by striking out the article of amendment and inserting in place thereof the following: —

Full power and authority are hereby vested in the General Court to provide for the adjudication of any controversies between employers and employees and to provide against lockouts, strikes or any other cause of involuntary or unnecessary unemployment and to fix penalties and make any other reasonable or necessary provisions to carry out the purpose of this amendment.

This amendment was rejected.

Mr. Roland D. Sawyer moved that the resolution (No. 390) be amended by striking out the article of amendment and inserting in place thereof the following: —

Laws may be made restricting the hours of labor and establishing a minimum wage for women and minors.

This amendment was rejected.

Mr. Francis N. Balch of Boston moved that the resolution (No. 390) be amended by striking out the article of amendment and inserting in place thereof the following: —

The General Court may provide for establishing minimum wages for women and minors.

This amendment was rejected.

The question on the resolution itself being divided the President first stated the question to be on allowing the words "to regulate the conditions of labor and restrict the hours thereof" to remain in the resolution; and the Convention voted in the affirmative, 92 to 17.

The President then stated the question on allowing the words "to establish a minimum wage" to remain in the resolution; and the Convention voted in the affirmative.

The resolution was passed to be engrossed Wednesday, July 31, by a vote of 100 to 38.

The resolution was rejected Wednesday, August 14, 1918, by a call of the yeas and nays, by a vote of 68 to 120.

THE DEBATE.

Mr. Walker of Brookline: The recent Constitutional Convention in Ohio, in order to broaden the police powers of the Legislature of Ohio so that it might deal with the question of excessively long hours and of excessively small wages, passed the following resolution, which is now a part of the Constitution of Ohio:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of employees, and no other provision of the Constitution shall impair or limit this power.

I take it that the last part of the Ohio resolution is merely declaratory, namely, that the Legislature of Ohio may provide for the "comfort, health, safety and general welfare of employees." That may be done by the General Court of Massachusetts at the present time. Therefore it seems to me unnecessary to include those words in the resolution which I propose. To the measure reported by the committee on Labor I simply have added these words: "and establishing a minimum wage." The committee on Labor evidently were of the opinion that the time had come to state explicitly in the Constitution of Massachusetts that the General Court might restrict the hours of labor.

You will notice they did not say the hours of labor for women and children. The General Court already has restricted the hours of labor for women and children, and undoubtedly may do so, and may go farther than they already have gone in that respect. It is not at all certain, however, that the General Court may restrict the hours of men, and if they do restrict the hours of men that they may restrict them to the same extent that they may restrict the hours of women and children. The committee on Labor themselves were of the opinion that the General Court of Massachusetts should have the power to restrict the hours of labor, and in my judgment it is a very wise decision. That question is not in any sense of the word a legal question, and it is extremely embarrassing to the Supreme Judicial

Court of Massachusetts and unnecessarily brings the court into disfavor with a large element in this community when it is obliged to declare unconstitutional a law which restricts the hours of labor. That is a legislative question, it is an economic question and not a legal one, and therefore it seems to me that the committee on Labor did well to withdraw that question from the Supreme Judicial Court and place it where it belongs, in the General Court.

The question which my amendment raises is this: If we are to intrust the restriction of the hours of labor to the General Court should we not intrust the question of a minimum wage also to the General Court? I believe that we should. I do not intend to discuss at length the question of a minimum wage. We already have gone so far in this Commonwealth as to establish a Minimum Wage Commission, and it is operating to-day, but it is not operating under a mandatory statute. It cannot enforce its decisions except by what amounts to "blacklisting." When the Minimum Wage Commission decides that the wage is unreasonably low in some industry and fixes a minimum wage, under the present law, it advertises any firm or corporation which employs women or children below that minimum. It blacklists such concerns. It calls the attention of the public to them. It says: "Look at that concern. It is employing women and children below the minimum wage." And that is the extent of its power. I do not believe that that method comports with the dignity of the Commonwealth. I do not believe that is the proper way to exercise the power of the Commonwealth. I do not believe that this Commonwealth should proceed, or that any commission in this Commonwealth should proceed, to enforce its decisions by means of attracting the attention of the public to a concern and saying in effect: "Don't trade with that concern." That is what it amounts to. If we are to have a minimum wage here we should give the Minimum Wage Board authority to impose a proper penalty for violating its orders. It seems to me that it is obvious that our present policy is extremely bad. I believe that the question of a minimum wage, just like the question of limiting hours, is a legislative question; it is not a legal question. I do not believe that we should bring upon our courts the odium that will come from declaring laws of that kind unconstitutional. I believe that we should do as the committee on Labor recommend us to do, — bring that question frankly into the General Court of Massachusetts and let them decide whether they will establish a minimum wage or not, and if so just what power they will give to the commission, which they set up, to enforce such minimum wage. That is the clean, aboveboard and proper way to do the thing.

I know there is a great difference of opinion in this Convention on the question of permitting the General Court to establish a minimum wage. I know that there are people in this Commonwealth who are determined that a minimum wage shall not be established. There are interests in this Commonwealth that have done what they could to weaken and destroy the Minimum Wage Commission, either by abolishing it or else by seeing that men were appointed on that board who would not act with as much independence and force as the present board is acting. It was only recently that a distinguished man appointed by the Governor of this Commonwealth to membership on the Minimum Wage Commission was turned down by the Governor's

Council, it seems to me for no good reason except that he was in favor, broadly speaking, of the minimum wage, and of applying the principle of the minimum wage to the industries of Massachusetts. He has been appointed since, by the President, to a very high position under the United States Government.

Now, I want to ask this question: Is Massachusetts in earnest about this question of minimum wage or not? It has set up a commission. Are we going to give the Legislature power to authorize that commission to enforce its decisions? I believe that we should. There are two things that I believe must be done in this great country of ours if we are to bring about happiness and contentment among the people. One is, in one way or another, to restrict swollen fortunes. When we allow fortunes to run above $100,000,000, $500,000,000, into $1,000,000,000, and allow them to be handed down intact from father to son, we are doing a thing which in a democracy, it seems to me, is dangerous. We probably shall be obliged sooner or later to deal with that evil by means of inheritance taxes or income taxes or otherwise. Perhaps it is a National question, but that there is a real problem there, the problem of the excessive fortune, I believe is true, and it must be dealt with. At the other end of the scale there is the question of the exceedingly low wage. I do not believe that it is in the interests of the Commonwealth of Massachusetts to permit any industry to exist here which cannot carry on its business and sell its product unless it pays its help such a small pittance in wages as will not furnish a living to the individuals employed.

Moreover, this fixing of a minimum wage operates to help industries that are paying a living wage and to relieve them of the competition of industries perhaps more competent than they to pay a living wage, but which pay less than a living wage. That evil has been pointed out by our Minimum Wage Commission. I believe that it was in the candy industry that it was pointed out that some of the more powerful candy manufacturers, that could afford to pay a larger wage, were paying a smaller wage than other manufacturers less strong financially. It was a case of unfair competition at the expense of the girls who were working in the candy industry. Now, we cannot afford to have any large number of people employed in our Commonwealth whom the industry which employs them is not supporting. That is not good for the community. It tends to use up those individuals, and then to fasten them upon the community, weakened in health, perhaps weakened in morals. It is not a good thing for the community, in other words, to have people in the State employed by industries that do not pay them a living wage. Moreover, it throws the burden of the care and support of those people upon the family, and makes the family less able to send other children in the family to school, to feed them properly and otherwise to care for them.

Mr. CHANDLER of Somerville: I should like to ask the speaker if he would include farmers in that description.

Mr. WALKER: I am dealing now with a constitutional amendment. I believe that the power should be given to the General Court to establish a minimum wage. How far they should go, just how far they should exercise that power, is for them to decide. It is plainly a legislative and not a legal question. Therefore I trust that my amendment will prevail. If it does, then the General Court of Massachusetts

may deal both with the question of limiting the hours of labor and of fixing a minimum wage.

Mr. LOWELL of Newton: This resolution was reported from the committee of which I am a member, and I want to draw the attention of the members for a minute to its terms. It is very short. It reads:

> The General Court may pass laws regulating and restricting the hours of labor.

In other words, they not only may shorten the hours of labor, but, if they wish, they may lengthen them. Of course that seems rather absurd to us now, as nobody has been talking about lengthening hours; but what may come we do not know.

This proposed resolution, in my opinion, I will say very frankly, does not add very much to the present law. It is the law in this State, and has been for many years, that the hours of women and children may be restricted. The last case in this State which held that a law restricting the hours of men could not be passed was a case concerning certain people who were employed on the Boston and Maine Railroad. That was in 1915, Commonwealth *v.* Boston and Maine Railroad. A law had been passed limiting the hours of certain men not engaged in the operation of trains, people like station-masters and people of that kind, to nine hours, if I have the number correctly, and the court held that that was unconstitutional; but they relied entirely on a famous or infamous case of the United States Supreme Court, known as the New York bakeries case, Lochner *v.* New York, or *v.* The People, I have forgotten which. In that case the Supreme Court many years ago said that an eight-hour law for workers in bakeries was unconstitutional. That case has been overruled by the Supreme Court, although the case itself was not mentioned, in a case called Bunting *v.* Oregon, which arose about a year ago. The decision was in April, 1917. In that case a law of Oregon limiting the hours of labor of men to ten was upheld, so that the Supreme Court undoubtedly would overrule straightly in so many words the case of Lochner *v.* New York. Therefore we have this situation: The law limiting the hours of men for this State has been held bad by our court, relying entirely on an old case in the United States Supreme Court which now is undoubtedly out of date, so that this resolution really, as I frankly say, does not add very much to the present law.

Now let us take the amendment proposed by the gentleman who sits next me on the left (Mr. Walker). He proposes to add: "and establishing a minimum wage". You will notice that he does not restrict it to a minimum wage for women, but establishing a minimum wage for anybody else, — for every one. As far as I have heard, there has not been very much talk about minimum wage for men, and it seems to me that it is unnecessary and premature to suggest any such thing. As to the minimum wage for women, I should not object to his adding that, because in my opinion it is unquestionably constitutional now. Our court always has been very far in advance of many courts in upholding all kinds of legislation for the benefit of women and children, and it is my personal opinion that it would uphold a compulsory minimum wage for women, so that that would not add anything, as it seems to me, to the present law. But I am opposed to the amendment as it stands now, because it brings into that question a minimum

wage for men, which is something not now or perhaps not likely to be very much in the public eye or to have very much favor. So that I trust that this resolution will pass in the form that it came from the committee and without the amendment.

Mr. HARRIMAN of New Bedford: In regard to the matter now before the Convention, it has been said that laws have been enacted which, so far as they have gone, have covered to a certain extent the labor of women and children. They have not yet, as has been said, been applied to men. But I want to say now that, so far as many men are concerned who look into the future, they hear a lot about democracy. They say that we are fighting for democracy, and let me tell you that many of the working people of this Commonwealth are commencing to believe it and they are believing that democracy in the future will not consist of participation in political affairs only, but that democracy means that the industries by which the people can earn and do earn their living are public functions, and those people who are engaged in those industries have a certain right and a voice in their management and in the fruits of their own toil. Now, that is the new philosophy, and it is being forced upon the people of the world, whether you like it or not. That is one of the phases of this great war.

And I want to say now that this legislation is necessary. It is along the right line. You have got to recognize industry in your life. It has got to pass from being an individual affair to a collective affair. We have tried to regulate another man's business; it cannot be done successfully. The matter must be owned publicly or it must be owned privately. It is impossible for a man to stand here and say that perhaps in the future as we pass from one stage to another, when we get through this war and when the government is reaching out and going into this and going into that, we shall not want to regulate the hours of labor for men or the wages for men. I have attended hearings, as many of you have, before the Minimum Wage Commission, and I have seen men come up there and say that they were so poor that their business would go to rack and ruin; and yet those men were living in affluence and ease, while their employees, and particularly the women, were not earning enough money to get an honest living.

The regulation is necessary. It is absolutely necessary for the stability of this State, for the stability of our country, that those who toil should get in return that to which they are entitled, enough to live on and take care of themselves and educate their children; and they cannot do it. They can do it through their industrial action, but they do not want to; they are willing to use their political power. You can say to this Convention that there is nothing under the light of heaven that the working-men of this country cannot have, throwing aside politics, if once they should gather in industry and demand it. We have had one example in recent years, and only one, where it was put up to Congress and then to the Supreme Court of the United States whether an eight-hour law was constitutional; and because of a mighty organization of working-men, who held in their hands the destiny of this Nation, a decision was rendered that it was legal. And yet that same court, when the question came before them as to defenceless women and children, particularly the children of this country, has said that the labor of children was legal. And I say now, — I want you to

hear this call, — that if you are going to build for the welfare of this country, if you are going to make peace and prosperity possible in the future, you have got to recognize this fundamental fact, that the working people, those who work in the industries, have a right, not only to a voice in this government, but to participate in the profits of their toil; and you cannot get that to-day in any other way than by recognizing by law the right of the people to regulate the hours of labor and also to regulate the wages that shall be paid in an industry.

I do not stand here and say that a minimum wage is a panacea for all our industrial evils. It is but a step. And yet it is necessary, necessary to curb those men who would live on the exploited labor of the men, women and children of this country. As it has been well said by the gentleman from Brookline (Mr. Walker), a community is unhealthy that allows underpaid labor to exist in the community. What condition exists in Massachusetts? — and it is well that you delegates recognize what the Minimum Wage Commission has been through. Such men opposed that Minimum Wage Commission. They opposed the appointment of a man eminently able to fill that position. And this is what happens in this Commonwealth: A man, or a corporation, if you please, will go into some city or he will go into some small town, taking a few people with him, taking a few machines to make dresses, to sew garments, subletting his work here and there. He will go into those towns and say to those people: "Now, we are going to establish an industry here. We have come from where we had to pay high rent and high wages. How nice it is for your women and children to slip in here and work. Then, if they have to work for less, they are at home. We will build up a large industry, and then the city will profit by our being here." That has been said and done. They have used it not only to exploit labor but also to defeat the organization of the worker in the industrial field. They never have established a large industry, however. As soon as they find they reach their limit, and find they are going to be taxed, or public opinion has been raised against them because of the low wage condition, they fly away to some other place and practice the same thing, going from one end of the Commonwealth to the other, exploiting labor time and time again.

I trust that this resolution will be adopted. I trust that this Convention will take that broad stand, allowing the future Legislatures to meet conditions as they find them. I submit to you: Is there any greater problem, or does it strike the vitals of this Commonwealth any more than it does the welfare of those who labor in this Commonwealth? You can do nothing better than to give to the Legislature the right to regulate the hours of labor and the right, if they choose, to regulate the pay that shall accrue to the workers in these industries, as a step toward this democracy which is on its way. And the only thing that will hinder this is the men and the spirit of men who will vote against this resolution or against like resolutions to still curb for their own self-aggrandizement and to the detriment of the public, the better advancement of the people.

Mr. Donovan of Springfield: The matter that is now before this Convention appeals to me as being probably one of the most important questions that we will have to face, because it appears to go down to the very foundation of governmental policy, not only of our govern-

ment, but of all government. I remember having read a quotation from Edmund Burke, a famous English statesman, who said that "the object of every legislator should be not truth but expediency." I should like to speak upon this matter from the standpoint of expediency.

It appears to me that in this Nation, as in other democratic nations, two forces are at work: on the one hand the growing power of the economic state, — industrialism if you will; on the other hand the extension of the power of the political state. There are many converts to the idea that the industrial, or as it is called also the syndicalist state, eventually will be the governing body. We have as evidence the establishment of the Soviet government in Russia, the establishment of the syndicalist state, the voting direct by economic groups. In England this is the most important internal question that is before the Nation to-day, and all students of government are taking into consideration the trend of the times in that country. We have there, broadly speaking, two opposing views. We have the growth of the labor organizations, which take the view that they need no participation in parliamentary government to get for themselves all that they desire, believing that through the force of their organization, through their power, which in the last analysis decides all policies, industrial freedom can be secured; and we have on the other side the parliamentary group.

In this country the labor movement has taken a somewhat different trend from that exhibited in the older countries, and here we have the labor movement practically committed to the syndicalist position, to the position which holds that the economic organizations, thoroughly organized, intelligently alive to their own interests, by the force of their numbers, voting in consideration of the interest that is common to them all in their own organization, can bring about any change that they may think necessary. We have an illustration, referred to by the gentleman in this division (Mr. Harriman), when he speaks of the Brotherhood of Railway Trainmen, which forced Congress to grant the eight-hour day in the railway service, through the strength of their organization. With them it was not a question of whether the railroad men were citizens, voting citizens of the United States of America; it was a question only of membership in their industrial state, and they voted as citizens of that industrial state for the eight-hour day, and through the power of their organization they brought it about. This growing tendency was referred to in some fear by the gentleman from Fall River (Mr. Cummings), speaking in favor of the initiative and referendum, he holding that the initiative and referendum would give to the people as a whole a weapon that could be used against what he considered the menace of the industrial state, and he said that otherwise the labor-unions were "slowly but surely becoming our masters."

I am rather doubtful as to what will be to the best interests of the working people. I had been a firm believer in parliamentary government until I became a member of this body. In the months that I have sat here I have become more and more inclined toward the syndicalist position as the better position from the standpoint of the working-class, but I have left sufficient belief in the efficacy of parliamentary action by the people as a remedy for the wrongs of society

to be standing here before you to-day advocating the amendment that has been offered by the gentleman from Brookline (Mr. Walker). I believe, and I think that every student of industrial conditions to-day will bear me out when I say, that this is the problem that we shall have to face: Whether the political state will continue, or whether the industrial state, the powerful industrial state that is growing up, will become dominant and overwhelmingly powerful.

It seems to me that the political state can be saved by extending its powers, extending its jurisdiction, extending political citizenship, so that those who are workers in the industries of our country as far as possible, will be citizens of the political state also, and that the political state will reflect their wishes, their economic wants. If that is not done we have no recourse, we who are members of industrial organizations, except to protect ourselves with a weapon that we have in our grasp, and you can take my word for it that we shall so protect ourselves. As is now being seen very definitely, with the growing power of labor, with the increasing intelligence among the workers as to their own welfare, they are going to use the weapon that falls to their hand to protect their interests. I am not saying this as a threat, I am saying this merely as a statement of a fact, which any student in the labor movement will soon learn. He will find that on the one side are those who take the position that the economic organization is sufficient, and on the other those who say that we should seek results through political action. Opposition to political action is characteristic of the I. W. W. movement. The I. W. W. grew from the belief that, because of their having no chance for political action, having no representation in the political state, to attain their object it was necessary to build up a militant economic organization, and seek power through direct action. They have no faith in the ballot-box. Reform through violent industrial strife or peaceful political action, — to me this is the important issue; and I am going to indorse the amendment as submitted by the gentleman from Brookline (Mr. Walker), because I believe that it is expedient under the circumstances to increase and extend the legislative functions of the political state.

Mr. Brown of Brockton: I want to read first just two sentences, or one sentence, from a speech by Senator Hoar, made in the Senate at the time of the passage of the Sherman Act. He says this:

> When a laborer is trying to raise his wages or is endeavoring to shorten the hours of his labor he is dealing with something that touches closely, more closely than anything else, the government and the character of the State itself.

Inasmuch as this measure deals with the hours of labor we may assume that Senator Hoar would consider it a matter of importance. Whenever the Legislature is given power it has the possibility to do wrong and it has it to do right; whether it be right or wrong depends upon the viewpoint of the one who passes judgment. If it has not the power it cannot do anything. I am not at all sure from the standpoint of labor how much advantage they are going to get out of this resolution. It is placing in the hands of the conservatives without any question a power to deal with the hours of labor, and I do not know what they might do if they had a majority. I do not know what the Legislature might not do if it was under the leadership of the gentleman from Wellesley (Mr. Pillsbury), who has indicated what he would

do if he had a chance in a matter of compulsory arbitration that is coming up later.

The gentleman immediately behind me (Mr. Chandler) asked this question: "Why don't you deal with the farmer, or why don't you regulate the hours of the farmer?" Did I understand that correctly? "Why don't you regulate the hours of farmers?" Well, he has touched the basis of the whole proposition. The farmer is supposed to be an independent producer. He owns his product. He holds it in his control. He may or may not sell it, but having sold it is supposed to receive the full price of his toil because there is no middleman. Of course he does not receive the full product of his toil. I have spoken before on that subject. Farmers are not being paid adequately. Their product, measured by the price they receive, is not a living wage and it needs to be remedied and some time it will be remedied. But it will require legislative action to remove unjust burdens.

The financiers here can quote correctly where Massachusetts stands as compared with other States in the point of wealth to-day, but she is pretty near to the head of all the States. Why? Because Massachusetts for forty years and more has been engaged in making money, and nothing else. On humanitarian measures the Legislature has been swayed by the arguments as to whether money could or could not be made under certain proposed legislation. Every time labor has come forward with humanitarian measures it has been met by legislators who say: "Well, I am with you. I believe in that." Of course they believed in it; because their hearts responded to the truth in the plea. And they would add: "But I cannot afford to vote for it, because the financial interests, the manufacturers, are opposed to it." The manufacturers were protecting their own interests. Clearly it is a contest between property and labor. Property is really the fruits of labor. As a rule those who have obtained property do not care to have labor take from property any more than property wishes to give back to labor. So long as this was a community in which men were independent, making their own product and acting as their own distributors, we might safely let this question alone. There were days when the shoemaker was a farmer in the summer and a shoemaker in the winter, for who is there who does not know that forty years or more ago as you passed the farm-house you passed the little shoe-shop on the farm. The shop where Henry Wilson thus worked in Natick is there now. The farmer when he was not busy at farming could add to his income by taking work from the factory to his home, fixing the price of his labor and thus engage in shoemaking. Now, because of the aggregation of labor in the factory in large numbers, shoemaking, like other industries, is in the hands of the few. They control it. Because of these new economic conditions you are confronted with this question which merits more attention.

I think the theory of the minimum wage is sound. What is it? To my mind it is something like this: You are getting a wagon up hill, and the pull back is very heavy. In order that the wagon may not slip back you put a check in behind the wheel, and there it stays until you get ready to go forward. Now, that is the minimum wage. It is a check against the down hill pull, and that is why labor feels that the minimum wage should receive more attention than it does at present.

Let us reason for a moment. Have the labor men a right to organize? You say Yes. Well, what do they organize for? Can you answer it in any other way than to say: "To deliberate and legislate to improve their condition"? That is precisely what they do. They deliberate and legislate on improving their condition, and the way in which they improve their condition is to determine upon a just wage. That has been the controlling reason for the formation of labor-unions. As my friend on the left (Mr. Donovan of Springfield) has well said, although he said it in a different way, there always have been two schools in the labor movement, one political, one economic. The latter has held the belief: "Out with your politics. They don't belong inside of the union. Let us organize until we get the last man, and then we will control wages." That was the situation with one industry at one time in Massachusetts. I refer to the days of the Knights of St. Crispin in the seventies. They had the shoe industry organized so that they controlled even the apprentices and their number; they controlled the last man, and up went the wages. Then what happened? Why, the manufacturers imported the Chinese, and North Adams had a great labor difficulty. Here in Massachusetts with the Kearny agitation in California was the beginning of what finally led to the Chinese exclusion act of the United States.

This was a war between labor and property. When labor sought to get what it thought was a reasonable living, it was confronted immediately by the claims of the rights of property to the free flow of labor. Property, and when I speak of property we will for the moment personate it by the manufacturer, feels that he has a right to get labor at the lowest possible cost. The laborer, on the other hand, and I feel quite sure he is right if we are going to maintain a Commonwealth for the common weal or common good, declares that he has a right to such a wage as shall enable him to support himself and family and something left, as the founders of the government intended. This question is going to be more important in the future than it has been in the past. Why? Because as a result of this war government has been obliged to interfere with that which measures both property and labor, and that is the exchange medium. Conditions have built up a vast volume of credit, or currency, or money, give it whatever name you please, but whatever does the work of money is money; therefore we may as well, — to save a lot of terminology in speaking of the value of the exchange medium, — speak of the value of money. This volume is being enlarged constantly. It is enlarged every time there is an issue of Liberty bonds. The bonds become the basis for enlarging credit; those who are familiar with finances must admit the truth of the quantitative theory and that the inevitable tendency is that prices must rise. You cannot get clear from it. Hold before you a pair of scales; on one side is the volume of credit or money which measures property and labor; and on the other side is the property and labor to be measured; one balances or exchanges the other. As you enlarge the quantity of the circulating medium you affect the price of everything that is measured by it, — property and the price of labor.

When a man works for wages it is only that the wages may furnish him with the commodities which he needs. If while he is at work giving attention to his duties at munition works for the government,

or elsewhere, somebody outside alters the scales so that, for illustration, it costs $2 more for a barrel of flour, then the increase in the price of flour has lowered his wages. Labor-unions are organized to deal with the price of labor. They fix the price of labor. They think they know what they are doing. Having fixed the price, the purchasing power of the price may be changed by others. It is the change in the purchasing power of the wage which forces a conflict between labor and property. It is these conflicts that have created tribunals before which differences can be adjudicated.

The minimum wage is one step in fixing the wage price. A State board determines the cost of living, thereby it is provided that one shall not be obliged to work for less than a living wage. That is a long distance toward minimizing the influence or power of the labor-unions. A man joins a labor-union because he believes it is possible thereby to have his wages raised. Why is it not the duty of the State to protect a living wage? It fixes the wages of a dollar. In this and other States, interest rates are fixed. It may be the minimum or the maximum or the sum that may be charged for a dollar where there is no contract. Well, if you may deal with the wages of a dollar why should you not deal with the wages of a man? Why not give the Legislature the power to deal with this important subject of the cost of living as related to income received by either farmer or laborer? It is not receiving the attention which it should receive. A contented, prosperous people as a whole, — not a part, — is the basis of our whole superstructure of government. There cannot be a contented Commonwealth unless the men and women in it are earning an income sufficient to provide for support.

I have said that Massachusetts has been more concerned in the making of money than she has been in the making of men and women. True, Massachusetts has its share of great men. We should not have had this Constitutional Convention if we had not had great men. They are here, of course. There may be exceptions to the general rule. [Laughter.] I think we have gone out of the business which was so prevalent here in the early days, — that of making grand men and grand women. We have got to have conditions under which children can be born into this world and properly reared, and given sunlight, which God Almighty intended they should have; to the end that when they come to manhood there may not be so many young men walking toward the penitentiary and old men toward the poorhouse. Too many now are born wrong and are misfits because their fathers and mothers, perhaps, if not their preceding fathers and mothers, were busily engaged in making money or trying to get a living under adverse conditions. It forced them to neglect the more important duty commanded upon them by the God of their fathers and their loyalty to their country, — the duty of making proper men and women. The minimum wage is a question of authorizing the Commonwealth to provide that a man or woman may not be employed at an under-wage.

Why do labor men belittle a man who does not conform to the union scale of wages? Come, is there any justification for that? Suppose that you are at work for a living wage and you are supporting yourself and family, and a man comes forward and offers to work for a cheaper wage than you are getting and throws you out of a job. Is

he your friend or is he your enemy? Is his right to work for a low wage superior to your right to a living wage? When you have answered that question you have an idea of how the labor men view the man who will not join their craft to create and maintain a living wage. It is legislative work; it is the work of building up a Commonwealth. That should be the work of the Legislature. Men and women ought not to be obliged to combine in labor-unions in order to protect natural rights.

I was neither a dissenter nor a joiner in this resolution reported by the committee of which I am a member because I felt that I was more interested in other matters that were pending before other committees at the time when my committee was acting upon this. But I stand for the minimum wage amendment and the recommendation offered by the gentleman in the second division from Brookline (Mr. Walker). I hope the amendment will prevail and then the resolution will be ordered to its third reading and later divided. [Applause.]

Mr. BRYANT of Milton: I hesitate to say anything on this amendment because I was not a member of the committee that has reported it, nor am I one of the minority which believes it should not pass. But it seems to me the situation of this amendment has not been made entirely clear by the gentlemen who are anxious that we should adopt it. To begin with, I should like to say that before this assembly adopts and recommends a constitutional amendment it should have something more said in its favor by the chairman of the committee that recommends it than that it "will do no harm." That is not what we are here for, unless I mistake our function. We are not here to pass things that "will do no harm," but to discover things that will do good and to pass those, and, I believe, to pass those only.

Now the constitutional situation on the question of regulating the hours of labor, I believe, is fairly clear, and I found my belief not on a long study of the question, I admit, but largely on the recent decision of the United States Supreme Court that has been cited here. That case decides in effect that any regulation of the hours of labor is perfectly within the constitutional power of a State, provided only it comes within what fairly may be called a health regulation. That is, the Legislature must have some excuse for passing the law, there must be enough basis in it for the Supreme Judicial Court to say: "Well, a reasonable Legislature may well have thought that this was for the benefit of the community, for the benefit of the health of the laborers." That is all the Supreme Judicial Court asks of the Legislature. If it can get by that very simple test the Supreme Judicial Court will say: "The law is all right." And the language of the delegate from Brockton, who so eloquently portrays the difficulty in factories where women sometimes are forced to work when they are in a condition in which they should not work, shows that he possibly does not appreciate the present situation of the law. Nobody can deny, I think, that under our present Constitution and without any amendment the Legislature can pass all necessary laws to keep women out of factories when they are about to become mothers. They can pass any kind of law along that line. They can pass any law, in short, which applies or which by any stretch of the imagination can be made to apply to the health of operatives. No constitutional amendment is needed for that.

Mr. BROWN: I should like to ask the gentleman if he thinks the Legislature would be justified in doing that if it had not the power to make provision that the person should not starve if prevented from working.

Mr. BRYANT: That is a little different question from the one to which I was addressing myself. I was addressing myself to the question of the constitutional amendment contained in Resolution No. 336, which is:

> The General Court may pass laws regulating and restricting the hours of labor.

The gentleman from Brockton has asked me a question relative to the minimum wage, which is a very different question, and which I shall not attempt to deal with at this moment. But I was saying merely that the Legislature at the present time has power and full power and more than full power, — because everything is implied in its favor, — to pass all laws that are necessary to regulate hours of labor as far as the health and safety of the operatives are concerned.

Now what more do the proponents of this legislation want than that? If we were framing the Constitution all over again and there were no Constitution, would we not put in that provision and be satisfied with it, — that the Legislature can pass any law relating to the health, morals or safety of the public? Would we want to go beyond that?

Possibly the reason is this: We are at a great crisis now in American history. We have not got enough labor to go around. We cannot do the things we want to do. We cannot make the steel, we cannot carry on the private enterprises we want to undertake, because there are not laborers enough. We cannot build the houses we want to for private people because there are not laborers enough. And yet, if I am not mistaken, carpenters and stone-masons are not working on Saturday.

Mr. O'CONNELL of Salem: Might I ask the speaker if he has any practical statistics to prove that there is a shortage of labor in this country at the present time?

Mr. BRYANT: Does anybody need any practical statistics to induce him to think that there is a shortage of labor at the present time when two million men are in the service?

Mr. BROWN: I desire to say to the gentleman that good authorities in the labor movement feel that there is not the large shortage he claims in economic loss; that the incoming of the man of mature years who was thought to have been put on the scrap-heap and the incoming of women have supplied many of the places left vacant by the soldiers. In Massachusetts at the present time the daughters of manufacturers by hundreds are taking their place in manufacturing. In one manufacturing establishment all the Normal School girls and graduates in the vicinity are applying for a chance to work. Those who normally are dependent on the work are now claiming there is no need of so many. I think it is a question whether in production we have met the economic loss of which he speaks. We have lost a certain amount of economic power, but we have developed such a wondrous amount of economic power that was dormant that I think it will require more than a statistician to prove where the balance is at the present moment.

Mr. BRYANT: I am very well aware that there are girls running

elevators in a good many of the public buildings in Boston. Why? Because the men have left to go into the army or to go into making munitions. Why, it seems to me obvious on the face of it. I have been doing a little talking for this Thrift Stamp movement, this War Savings movement, and if any of you gentlemen have talked about that or heard any of the speakers I think you have heard emphasized the economic situation of the country to-day as respects labor. You cannot take two million men out of making things that we want every day and not have a shortage of labor in this country. Does not the gentleman know that there cannot be a pound of steel bought in the country to-day by a private enterprise, but that all the steel output has been taken by the government? And the reason that that is so is because there are not men enough to make steel except the men who have to make the steel which the government wants.

Mr. Brown: The gentleman has asked me a question and I desire to answer it. I have learned by observation that when the government fixes the price the product is not delivered at any price, but when the government permits producers to fix the price the quantity of the product commences to develop. Now I think a natural law governs that condition. The steel supply and the copper supply are short because the price is not sufficient, and it will be raised. Coal is short because dealers say they are not getting a living price. When they get their price the coal will come.

Mr. Bryant: I am not going to weary the Convention with trying to argue about the entire economic situation of the United States. I have my own theories about why coal and copper are short and I suppose everybody else here has his, and I am not going to try to inflict mine on the rest of you. But neither am I going to argue before any employer of labor in this assembly, — I do not care whether it is simply one stenographer or whether it is thousands of operatives, — I am not going to try to argue that there is no shortage of labor at the present time. I think the thing speaks for itself and if the facts that everybody knows are not sufficient to convince a man that that is so, why, no words of mind could convince him.

With all this shortage of labor, when we cannot get carpenter work on our houses, when we cannot get a stone-mason to build and when wages are going up because of this shortage, what do we find? We find that carpenters and stone-masons are not working on Saturdays. Now I have just as much sympathy, — at least I hope I have, — with the laboring man and just as much desire to see everybody's wages as high as they possibly can be as I believe my friend from Hopkinton (Mr. Carr) has.

Mr. Carr of Hopkinton: I should like to ask the gentleman in what way the passage of this amendment by this Convention would affect the present labor situation of to-day, and if it would not be more likely to affect the labor situation after the adoption of this amendment by the people, and action later by the Legislature, and might not then the soldiers have returned home and the situation require legislative treatment.

Mr. Bryant: I have gone perhaps too long a way round. I will answer the gentleman's question. I was suggesting this: That I cannot agree with the economic theories of most of the labor-unions, which hold that because carpenters do not work on Saturday there is more

work for everybody else. I am not going to try to prove that I am right or that they are wrong, but I cannot agree with that doctrine, — that because a man does not work there is more work for somebody else, — and I cannot conceive of any other reason why work should be limited on Saturday. It certainly is not a health reason, because a man can work six days a week at the carpentering business and preserve his health. But I was suggesting merely this: That if this amendment means anything, it means that it goes beyond health, beyond any reasonable provision that the Legislature can make. And where does it go? Does it mean what the labor-union means when it says to a man: "You shall not work on Saturday"? Is that the kind of legislation they mean to make the Legislature pass after this amendment has been passed by the State? If so I think it would be better to know it now. I think this is the time to discuss it.

Mr. Donovan of Springfield: I should like to ask the gentleman who said that. Who do you mean said, "You shall not work on Saturday"? "Thou shalt not work on Saturday"? [Laughter.]

Mr. Bryant: I do not know who said it originally, but I know who said it to me, and they were carpenters and masons who said that under the laws of the union they could not work on Saturday.

Mr. O'Connell of Boston: Does the gentleman as a lawyer draw any distinction between the carpenter not working on Saturday and the courts not permitting lawyers to try their cases on Saturdays? [Laughter and applause.]

Mr. Bryant: Why, gentlemen, have I got to state to this assembly, which is one-half lawyers, that the trial of cases is only a very small proportion of a lawyer's business and that those lawyers who try cases all the time have to have some time for preparation? There is no profession and I believe no business that works more consistently on Saturday than those engaged in the law business. [Applause.]

Mr. Harriman: The speaker criticizes the labor-unions for their arbitrary attitude. I should like to ask of him if he knows of any more closed shop arrangement than the lawyers. They have not any labor-union, but I should like to know if there is any other occupation that is as hard to get into as the legal business.

Mr. Bryant: I regret the statement of my friend from New Bedford, because it shows he does not appreciate the real situation. There is no closed shop in the lawyer trade. Any man, any woman, can pass the bar examination and practice law freely throughout the confines of Massachusetts. [Applause.]

Mr. James J. Brennan of Boston: The gentleman from Milton in the fourth division said in reference to the argument of the gentleman from Dorchester in the second division (Mr. O'Connell of Boston) that the time that he gave up on Saturday for preparing his cases was essential from a lawyer's standpoint. I should like to ask him if the time that the laboring man who is affiliated with the union, who under the conditions of his union was compelled, almost, as he said, to refrain from work, — if the time was not necessary for preparation for his next week's work, and God knows some of them work a great deal harder than lawyers. [Applause.]

Mr. Bryant: I do not know. I am not a carpenter, and I do not know what a carpenter does on Saturday morning to prepare for his

work on Monday morning. He may have very important work. I will leave it to the common sense of the Convention to decide.

As I was saying, this amendment goes beyond anything that I think we would have established as an original provision if we had been drafting the Constitution. Why should we put in the hands of the Legislature, without being told of any particular thing that needs to be done, any particular abuse that cannot be adjusted here under our present Constitution, — why should we extend the power in this broad and unlimited and practically unconstitutional way? Because, as far as I can make out, this legislation wipes out from the Constitution all restrictions of any kind and enables the Legislature to say to the man who is not in organized labor and who wants to work more than organized labor desires to have him work, — it says to him: "No, you can't work, we will stop it." And organized labor will go to the Legislature, I suppose, as they come here, and say: "We are not threatening you; we are just telling you what is going to happen if you don't pass this statute." I have heard that a number of times from my friends who represent labor in this assembly and it does not prevent me from voting as I think I ought to vote, and I do not think it is a very fortunate statement to make. But if we give this broad and unlimited power to the Legislature what kind of legislation can they pass which they cannot pass now except some such unfair proposition which may be what organized labor thinks is for its benefit but is distinctly not for the benefit of others who want to exercise their right to labor, and which I believe, — this is my personal belief and I do not ask anybody else to join with me if he does not feel so already, — which I believe is not for the benefit of organized labor itself?

In regard to the amendment which the gentleman from Brookline has offered, everybody would like to see everybody else get a fair living wage in this Commonwealth. What we really differ about is how to go about it, and it is a more difficult question than I can struggle with before you. But this fixing of minimum wages is not a solution of the difficulty, I believe. It is all very well to fix a minimum wage; it is all very well to fix a maximum price for commodities; it is all very well to regulate everything that we shall do, what we shall pay for everything, what everybody shall pay us. But the curious fact is that it does not work in the long run. You can do it for a while, but after a while it does not work. You can provide that everybody shall get at least $10 a week in this Commonwealth. It would be a good thing. I would vote for it if I thought it would work. But everybody here who has given the matter careful investigation knows that it would not work. You cannot legislate an economic, a proper condition for the community. You cannot make the community perfect by passing legislation. The community must become better by its own efforts. And saying that so and so shall get $10 or $8, or whatever the minimum point is, may be one of the necessary things to do, but it is not a solution of the problem. The expedient can be applied now, as I say, as far as health and morals are concerned, but I think that the pending amendment is too broad to put it into our present Constitution without knowing what it is put in there for, when the chairman of the committee that recommends it is able to say only: "Well, it won't do any harm." I thank you. [Applause.]

Mr. KNOTTS of Somerville: I have no lengthy speech that I desire to deliver, but I should like to hold two pictures before this Convention, and I think, looking upon these two pictures, we easily may see some connection between them and this amendment offered by the gentleman from Brookline. At the present time I am living in West Medford, that very beautiful strip of country along the Mystic Lake which sparkles in the sun. Yesterday afternoon I beheld a charming sight. I saw a mother and her three-year-old son. Luxuriant and golden was his hair and blue were his eyes, and he was full of life. His mother, a strong, capable, efficient woman, had gone forth with her son from the home that the husband had built and under great trees that God had planted and developed through the slow and tedious processes of a hundred years, in which the birds were singing and where the air was sweet and pure. They were playing in a pile of silver sand and she was teaching her son many things and putting many elements into the life of that three-year-old boy that one day, doubtless, will make him a strong, effective and useful citizen of this State. Her husband was somewhere in this city in some great industrial institution as a superintendent. What think you of the chance of their son?

There is a lady who is more popular, I think, with me, and has more influence with me than any other woman alive. And yesterday afternoon while I looked upon that picture she had gone to help weigh babies in a neighboring city. This morning she was telling me that she assisted in the weighing of eight children. Seven of these children were under weight. They were underfed. She told me the district of the city from which they had come, a community where the three-deckers lay bare in the sun, and where no trees lifted their proud heads, and where no pure air swept through the streets and where no birds were singing. What think you of the chance of those children? I am not offering these two exhibits as a complete or final solution of this question. I am well aware of what the gentleman from Milton (Mr. Bryant) says, — there is great weight in it, — that it is necessary for a people to rise out of whatever condition they may be in, whatever environment they may be in, by long, tedious processes of education and enlightenment. I agree to that. But I should like to point out to the gentleman from Milton and to this Convention what I am sure you all will appreciate, that there are conditions which are inimical to the long, tedious processes of education and enlightenment; and on the other hand there are conditions of environment that are conducive to them. And I am sure that it is possible through legislation to help make the conditions of life helpful to the processes of education, reinforcing the struggle of a people to rise.

I know full well at the present time you can grow roses and carnations and all kinds of beautiful things out here without much difficulty, but you cannot do it in Milton next winter when the fine snows sift down like powdered glass, — you cannot do it then unless the gentleman from Milton or somebody else makes the conditions under which the carnations and the roses can grow.

I believe that we can help conditions by legislation. I believe that we can give the long, tedious processes of education a better chance. And I believe that between these two contrasted conditions of life and the amendment of the gentleman from Brookline there is a very

close connection, that the amendment will help; and therefore I am in favor of any measure that will help give everybody the kind of chance that we ourselves want for ourselves and for our children. [Applause.]

Mr. Walker of Brookline: I have but a word more to say. I am very much tempted to discuss the question of minimum wage on its merits. But I do not believe that we have the time to do it and I am not sure that it would be wise for me to attempt it. I do wish, however, to point out to this Convention this: That we already are dealing with that question in Massachusetts to-day. We have got a Minimum Wage Commission in operation. It is a very practical problem here; we already have started in. People are discussing that question not only in Massachusetts, not only in the United States, but they are discussing it all over the world. Have we not been reading recently much about the program of the Labor Party of England? Now the question is this: Is that question to be discussed in the halls of legislation, or is it to be discussed before the courts of this country, which courts are not themselves free to discuss it as we would discuss it in the Legislature? Let us remember that although every judge on the court might think it was wise to establish a minimum wage by law and, if it was a new question, might uphold it, yet we all know that the Supreme Judicial Court is bound by precedents. The court must follow precedents, else law would have no stability. They must consider not only the reasons for such a law, they must look not only to present conditions, but they must look to past decisions of the court as well.

Now I appeal to you, the conservatives, because this is not a radical proposition, — far from it, — I appeal to the conservatives to think of this question, and think of it earnestly. I believe that the question of the hours of labor and of the minimum wage should be discussed and decided in legislative halls, and that that very troublesome, very difficult question should not be left with the courts. If it is left with the courts, this question of an economic nature and a social nature, mark my words, it will be the worse for the courts, because the people will lose confidence in the courts if they are compelled to nullify necessary social welfare legislation. Therefore let us be broad-minded in this matter. Let us trust this matter to the General Court of Massachusetts. They are going to proceed conservatively. They are not going to do unwise and rash things. They will work the problem out gradually year by year. But if we tie their hands, if we do not allow them even to discuss the question, if by constitutional restrictions we put the General Court of Massachusetts into a strait-jacket and restrict its power to discuss and decide these great economic, industrial and social questions, we shall make, in my judgment, a serious mistake,

Mr. Balch of Boston: My friend from Brookline who has just taken his seat (Mr. Walker) has placed me, and I fear other members of this Convention, in a peculiar and difficult position by his action in welding together here what seem to me two different propositions. As I understand it, we now are about to be forced to vote yea or nay on two propositions together: First, shall we permit the Legislature to deal with the matter of minimum wage? And, second, shall we permit them to deal with the matter of regulating the hours of labor?

And we cannot say yea to one and nay to the other. And yet there must be others who, like myself, are in favor of one and opposed to the other. I am, and for more than a year have been, in favor of the minimum wage. My reason is this: I concede the truth of much that the gentleman from Milton (Mr. Bryant) has said to us as to the impossibility of creating by law economic conditions or interfering by law to more than a certain small extent with economic laws. Nevertheless, in spite of a theoretic objection, I believe the time has come when the community not only is entitled to say, but is forced to say: "We shall interfere, — we at least shall seek to interfere, — with the so-called economic laws to this extent, that we forbid any one to employ another human being at such a price as almost irresistibly will force the employed human being to sink below a certain level of human culture." And I believe the State is justified in saying to the employer: "If your business is such that it cannot yield that wage scale, either you must run your business enough better to make it yield it or else the business must go." Now, when you come to regulating the hours of labor you have stepped into a very different field indeed. In the first place, you are interfering with individual liberty to a very much greater extent. You are stepping outside the economic field into the field of personal habits, of actual personal liberty. I know for my part I should as much resent having the State say to me: "It is now five o'clock; we forbid you to work any longer," as I should resent having the State come and put me to bed or call me in the morning on the ground that a certain hour had struck. I believe that others will feel that way. I believe it is a deplorable interference with actual details of a man's running his own life.

Furthermore, I do not believe that the agitation for the eight-hour day is in fact a humanitarian movement. It proceeds, in the first place, on the false theory that work is an evil, whereas I believe work to be the great saving element in human life, and without it many of us would go to pieces, both in mind and in morals.

In the next place, I do not believe that the demand for an eight-hour day, so called, is in fact a demand for an eight-hour day. In the case of the railroad brotherhoods we had a movement purporting to be an eight-hour day movement. Was it so in fact? No, it was not. It was a movement to be paid ten hours' wages for eight hours' work. Very good; that was a legitimate economic end to be attained. I for one do not blame the railroad brotherhoods for seeking it. But when some of the railroads attempted in fact to enforce an eight-hour day the railroad employees were the first to object. To be cut short with eight hours' labor was the last thing they wanted. What they wanted was to earn more money by getting overtime for everything over eight hours. If that is so, do we want to go out of our way to authorize our Legislature to tinker and meddle with the personal habits of the people under the guise of seeking to produce humanitarian results, but actually simply for the purpose of raising wages? I for one answer that question in the negative. I say we do not.

I therefore am opposed to giving the Legislature any more power than it now has in the way of regulating the hours of labor. The Legislature already, I understand, has power to regulate the hours of labor in dangerous and exceptional and exhausting occupations.

They already have, and have exercised, the power of regulating the hours of labor of women and children, who are comparatively politically helpless at present. But when it comes to regulating the hours of labor of grown-up, sane men, capable of organizing for self-protection, capable of forming and modeling their own lives, I say No. And yet I must vote for that if I wish to vote in favor of the minimum wage, which I heartily favor.

I am looking for some Moses to point out to us the way in which we can get these two wholly separable questions separated. I ask the gentleman from Brookline (Mr. Walker), if he is able to do so, to give us an opportunity to vote separately on these really, I think, inconsistent propositions.

Mr. Bryant: If I have not exhausted my time I wish to say simply a word. I do not wish to misstate my own position on the minimum wage. I do not think it is a solution of all our difficulties. I think it probably is a partial solution and I am not against the minimum wage. I wish to state that very distinctly. I wish to state also that the Legislature has full power over the minimum wage as far as it has gone, — that is, as far as health or morals or safety of the laboring people is concerned. That is all I meant to say.

Mr. Balch: Since I was on my feet a moment ago I have been informed rather authoritatively that in order to attain the end I seek, — namely, the separation of these two matters, — I have only to move that the same amendment offered by Mr. Walker of Brookline be offered, not as an addition to, but as a substitute for, the original matter; which would result, as I understand it, in first laying before us the question of the minimum wage, and then as a separate matter the eight-hour day; and I make that motion.

Mr. Walker: I have such a high respect for the report of the committee, in which I entirely agree, that I should hate to see my proposition substituted for theirs. I should like to see them both put.

The Presiding Officer: Does the gentleman in the first division offer that as an amendment?

Mr. Balch: I move to amend by striking out in the article of amendment the words "regulating and restricting the hours of labor", and inserting in place thereof the words "establishing a minimum wage", so as to read:

ARTICLE OF AMENDMENT.

The General Court may pass laws establishing a minimum wage.

This amendment was declared to have been adopted, by a vote of 68 to 42.

A point of order, that a quorum was not present, having been declared to be well taken, a motion to adjourn was entertained and the consideration of the resolution was continued until the next session, Wednesday, June 26.

Mr. Walker of Brookline: At the request of some of the members of the Convention, I ask for unanimous consent to make a brief statement in regard to the parliamentary standing of this matter before the Convention. I find that there are members of the Convention who feel that this matter really contains two separate propositions, one relating to the hours of labor, the other relating to the minimum wage. I find that some members of the Convention are very much in favor of giving the General Court power to deal with the question of minimum wage, but are quite opposed to the General Court dealing with

the question of hours of labor. It seems to me an entirely proper request that these two separate propositions not only be brought before the Convention separately, but that they appear upon the ballot as two separate propositions. It has been suggested that the easiest, the simplest way to accomplish this object will be to adopt at this time the amendment which I have suggested. The two propositions at the next stage may be divided into two separate resolutions and we may vote then on each separately. I suggest, therefore, that we adopt my amendment at this time, and at the next stage I shall move to divide the propositions.

Mr. Williams of Brookline: Is the question open for discussion at the present time?

The President: The question is open for discussion.

Mr. Williams: I trust that course will not be adopted. I feel very strongly that it is an unwise move. If the matter is open to debate I should like to call the attention of the Convention to the fact that if this proposition in reference to restricting the hours of labor prevails it seems to me it does away with the right of contract on the part of any individual, — I mean it does not necessarily do away with it, but it makes it possible to do away with the right of contract on the part of the individual with his employees. It makes it possible for the General Court to pass laws doing away with the right of the farmer to contract with his employee to milk before seven or eight o'clock in the morning, or makes it impossible for lawyers to contract with their stenographers to work overtime except under certain conditions. All kinds of questions could arise which would make the adoption of this resolution impracticable and unwise. We had better leave the General Court with the powers it now has over the hours of labor, that is, of the employees of corporations, and of women and children. The minimum wage will take care of itself. We can dispose of the first proposition now, and dispose of it with the question before us, and not take our chances on another reading.

Mr. Dennis D. Driscoll of Boston: I hope the request of the delegate in the third division (Mr. Walker) will be granted, both as a matter of courtesy and in view of the necessity of recognizing the good work being carried on by the Minimum Wage Commission. The question of regulation of hours of labor is a question worthy of more discussion than has been had by the delegates to this Convention. I trust that this Convention to-day will do nothing that will retard or interfere with the work of the Minimum Wage Commission. The good work they have done in the past for children and women of this Commonwealth is worthy of credit. The delegates to this Constitutional Convention should give an opportunity to have that amendment adopted and referred to the people. The question of the regulation of hours of labor is one that could be discussed either side or either way. It is to-day up to the trade-union organizations of this Commonwealth to regulate their own hours of labor through their trade-unions. It is a question that needs more enlightenment from those who are interested in this amendment to many of the labor men who sit here as delegates in this Convention. I trust that every delegate in this Convention will adopt the suggestion of the delegate in the third division (Mr. Walker), and, when the minimum wage proposition reaches final action, that some way may be arranged that the

subject-matter can be divided so that no technicality can be raised nor the enforcement of any rule be urged by anybody as an indication that the delegates to this Convention were not liberal enough to encourage the work being done by the Minimum Wage Commission of this Commonwealth.

Mr. Donovan of Lawrence: I am interested in this measure, because I have sat on the committee of Labor when four or five measures, all pertaining to these matters, were presented to us. This one or two line amendment is offered, not as a compromise, but offered in the belief of those who consented to it as for the best interests of all concerned. The word "restrict" is intended to be used in peaceful and normal times, so that no man, woman or child shall work any unnecessary hours. The word "regulate" is there in order that in times of stress or necessity, or times in which we live now, a man may work longer than the hours under which the word "restrict" is used. The resolution therefore offers advantages to both sides. It offers to the labor-unions of this State in peaceful and normal times a humane working day; it offers to those who employ in times of necessity, when things must be made quickly, the opportunity for State legislation to have men work, if necessary, longer hours. It is unnecessary for me to go into the virtues and the vices of capital or labor, but I feel that this statement coming from me should be known to both sides, that this measure is not a compromise, but one offered for the best interests of both laborer and employer.

Mr. Pillsbury of Wellesley: I do not expect to impress the majority of this Convention by any statement or argument, but I think its attention ought to be called to the fact that each of these propositions is a stab at the industries of Massachusetts, and that the inevitable tendency of either of them will be to drive our industries out of the State and into some locality where the people know better than to quarrel with their bread and butter.

Mr. O'Connell of Boston: I should like to ask the gentleman who just sat down if he will be good enough to instance a single illustration that will justify his remarks that this law would stab any industry in Massachusetts.

Mr. Balch of Boston: I should like to offer a few words on the parliamentary situation here. I should like to review that situation very briefly indeed. The proposal before us is the regulation of hours of labor. Supposed friends of that measure loaded it down with amendments dealing with the question of minimum wage, a wholly separate matter, with wholly separate arguments applicable *pro* and *con*. There are very considerable differences of opinion in this Convention as to those two propositions. Unquestionably the desirable thing is that that false union of two wholly separate matters should be dissolved. Apparently the parliamentary rules which govern us are such that it is impossible at this stage. Now, what is the solution suggested by the gentleman from Brookline (Mr. Walker)? It is that in order to prevent the unpleasant consequences of that mistake the Convention should swallow both measures, whether they are opposed to them or not, and that those who really are opposed to the regulation of hours of labor should vote for it just the same, in order to help out the mistake that has been made. It seems to me that is an illogical solution. It seems to me that that is suggesting that those

who did not make the mistake should be the ones to bear the penalty. Why should not those who made the mistake bear the penalty, so far as there is a penalty? The penalty is not apparently a very heavy one; the penalty is apparently only a postponement of this matter until the next stage. But it does appear to me that the logical thing to do is for those who are innocent of any error in this matter to have the advantage of their position, and let us come as near separation as we can. I hope, therefore, that instead of adopting the suggestion of the member from Brookline (Mr. Walker) that we should vote for things we do not believe in at this stage, in the hope of considering them separately at the next stage, we shall vote as we do believe at this stage as nearly as we can. I trust, therefore, that those who believe in the minimum wage regulation and who do not believe in the hours of labor regulation will vote for my amendment, in which case, as I understand, the only unfavorable consequence to the very grave question of the hours of labor regulation will be that we shall have to discuss its merits at the next stage instead of at this stage.

Mr. Brown of Brockton: How can the Legislature deal with the hours of labor and not have in mind the wage? Suppose that the proposition before the Legislature is to shorten the hours of labor. If it is made to appear that the wage that would be earned in certain hours is so small that a man cannot get a living, would you shorten them? The gentleman in the rear of this division (Mr. Williams) speaks of contract, the sacred right of contract for one man to buy another. I deny that there is any such sacred right. Your courts have held very plainly that contracts in violation of public policy are void. Therefore the question at once arises here, the question of public policy, and that is the whole question, public policy, the matter of housekeeping of the State, as to how the house shall be kept, and your minimum wage proposition goes with the proposal to deal with the hours of labor. The whole subject must come in purview when you undertake to deal with either provision.

If I correctly interpret the logic of the argument of the delegate in the first division (Mr. Dennis D. Driscoll) I ask: Are we not in our unions dealing with the hours of labor? Do we not shorten them? Do we not increase wages? Is it against the public policy? Labor cannot admit it for one minute. Labor cannot come to the State House and ask for anything that is not for the common welfare, — at least, I never did and never will. Now, I again reiterate what I said yesterday. We in the labor-unions are dealing with the hours of labor, are we not? That is legislative. We are legislating as far as we are able to affect the whole status of society, and we are very pronounced about it. We know that we are right, and we go almost any length in order to protect natural rights. Well, then, should we in some way arrange to have such powers given to the Legislature? Have we such a cause that if the Legislature does wrong it can be made to do right? My contention now is that until you give this power to the Legislature it may do neither right nor wrong; but if you give it power, as I said yesterday, yes, it may do wrong, but then it will be our duty and we ought to have the power to set it right.

The gentleman in the first division pleaded yesterday for liberty. He wants the largest possible individual liberty. Well, I would have

been glad to have had him for a moment yesterday undertake to define liberty. A man finds his liberty oftentimes in limitations. But I call the attention of the gentleman from Boston to this fact, that because of certain conditions which society has permitted to obtain, a man's liberty, including his fundamental right to unfold and to be what God intended that he should be, is encroached upon by certain other combinations of individuals. To be free from this oppression the man calls upon government, whose duty it is to protect the weak, to pass some legislation to restrain the combination from affecting him.

The gentleman from Wellesley (Mr. Pillsbury) would not answer the gentleman from Boston (Mr. O'Connell). He did not give one case in which capital has been driven from Massachusetts by humanitarian legislation. And capital is beginning to discover that the largest production comes from the happiest workman. The administration at Washington is proceeding along that line. In this very morning's papers the Government is handing down the decision that fundamental is the idea that the man must be contented. And that is coming, by the way, from an ex-President, Mr. Taft, — good enough authority for Republicans, — and the other man, Mr. Walsh, is good enough authority for the other side. They are handing down as fundamental that the safety of the whole democratic structure at the present moment is in the proposition that the workman must be contented and that you cannot get a proper production out of him until he has got the wage that he ought to get. Will you agree to it in this Convention? As I said yesterday to the conservatives, there is as much power for the conservatives in this resolution as there is for labor. Labor trusts the representatives of the people because it knows its cause is just. It knows that the safety of a true democracy and a true republic is in the happiness of those who are at the base. This happiness is the problem to be solved. Whatever we may do on the second stage I hope that we will at this time pass the resolution to its third reading. Then we can divide it.

Mr. Dutch of Winchester: I hesitate a good deal to say anything on this question, because I recently have been appointed to the Minimum Wage Commission. But having stated that fact so that you can bear it in mind in connection with what I do say, I am tempted to make a few observations, because this question has been precipitated here without adequate discussion and without certain information which is important.

As has been stated, the Massachusetts law as to the minimum wage is one which does not empower the commission to enforce as such the wage which is determined upon. The sanction of the law is publicity. The constitutionality of that law has been brought in question. The case was argued before the State Supreme Judicial Court last December and the decision has not yet been rendered. In spite of the fact that the constitutionality of the law was challenged early, the commission proceeded and, — this is important, — to such an extent secured the approval and the regard of all classes that it was able to proceed and put in force, so far as publicity enforces them, wage determinations in many industries, although in any case they could have been held up by court proceedings. That is important. In other words, this is not, properly handled and properly administered, a matter of antagonism between employers and employees. Many of the recent deter-

minations of the wage boards which are appointed and represent all parties have been unanimous.

Now the difficulty is this: This test case which has not yet been decided may well not operate as a test case as to whether you can have a compulsory law under our Constitution. And yet there is only one other State in the Union outside of Massachusetts which has minimum wage legislation which is not compulsory in nature. And the employers themselves, of the better sort, — and that means the bulk of them, because the bulk of them are a good sort, — in my opinion will be seeking for their own protection the compulsory law and they will want it to be constitutional. And the reason is simply this: Your better people, — and as I say again, that is the bulk of the people, — in these industries want to have proper conditions; they want to pay the living wage. The better class, for example, of your dry-goods stores know that you want to have the salesgirl properly paid and they will pay that wage. They gladly comply with the decree which has been issued. The great bulk of the stores have done that. But what has happened? A few unscrupulous stores, taking advantage of conditions, working with ignorant people, have failed to comply. They are constituting unfair competition, a decidedly unfair competition. They are operating in a parasitic manner. They are throwing the burden of the support of employees on the general public and thereby they are competing with the great bulk of the manufacturers and merchants who want to do the square thing. And so I predict that it will be the manufacturers who will come in to get the compulsory law or proper teeth put into the law so that it surely can be enforced and prevent that unfair competition. It is to bring that out that I have spoken, to show that the law is working now to the general satisfaction of employers, that it has not driven a single industry out of the State and is not calculated to, and furthermore, that it enables us to bring into play what is now, I take it, the accepted theory of industry, — that so far as it can, in the case of an established industry, it should bear its own burden. I say so far as it can, which takes into consideration the competition of other States; but so far as it can, — and many industries are purely local, — each industry should bear its own burden. That is the theory of the Workmen's Compensation Act. If inevitably you have certain accidents in the making of that desk, then they are part of the cost of that desk and the people who buy that desk should bear that burden. That is all there is to workmen's compensation. Similarly, the industry that makes that desk should support the people who are engaged in it if conditions are stable and factors in the industry are permanent in their character. They should not hand over the burden of supporting those people to the charities of the general public or, as is unfortunately the case in a certain measure, to immoral means of support.

We are in this position from what has happened: I think a great many are in doubt as to how to vote. These propositions should be entirely separate. The gentleman from Milton in his speech indicated that his mind was entirely at odds on the two; he felt one way on one, but at least had an open mind on the other. Now how are we going to accomplish the result of being able to vote separately on these questions? I take it we can in this fashion, — I have con-

sulted the President of the Convention: If you believe in the minimum wage, if you believe that we should have that authority if it is wanted, whether or not you believe in the other part, vote for Mr. Walker's amendment, then you will have both before you. Then, I take it, the next question which will be put by the Chair will be on the amendment of the gentleman from Boston in this division which seeks to substitute the minimum wage for the whole proposition. If you are in favor solely of the minimum wage, you will vote for Mr. Balch's amendment. If you are in favor of both propositions you will vote against his amendment. So that, if the result of all this voting is that the two propositions go on to the next stage, they can be separated then and kept entirely separate, as they should be. If, of course, you approve Mr. Balch's amendment, merely the minimum wage will go forward to the next stage. If you are against the minimum wage, whether or not you are against the other proposition, of course you will defeat Mr. Walker's amendment.

Mr. Williams of Brookline: I hope the members will not lose sight of the proposition that is before them, — a serious proposition. They are asked to recommend an article of amendment in twelve words: "The General Court may pass laws regulating and restricting the hours of labor." That is too broad; there is no limitation whatsoever. You authorize the General Court to interfere with the rights of contract of every one of us gentlemen sitting here with every one whom we see fit to employ; to dictate to us, under the law, of course, when our employees shall go to work, — our employees as individuals, when they shall start work and when they shall finish; to interfere with domestic service; to interfere, as I said before, with the farmer and every individual who has occasion to employ any help. To-day, — I have been asked to repeat this statement, — to-day the General Court has control of the hours of labor of the employees of all corporations, because the corporations are creatures of the Legislature. The General Court also has the right to regulate the hours of labor of women and children, under its general police powers, for the protection of health. Now this proposal goes so much farther that it does not seem to me that I can vote to advance any such proposition to a third reading. It is a practical question. We have here to-day a fairly good attendance. This resolution may land in the third reading with a small attendance, less than a quorum. They tried to put it through last night in the last few minutes of the day in the absence of a quorum. It seems to me now is the time to stop this proposition, if the delegates believe, as I do, that it ought to be stopped. My friend the delegate from Brookline in the second division (Mr. Walker) brought this baby in here by offering this amendment regarding the minimum wage. Now let him take care of it. The way to do it, in my opinion, is for him to withdraw his amendment, then we can pass on this main proposition. There will be plenty of ways in which he can introduce the question of minimum wage later.

Mr. O'Connell of Boston: The objection of my friend from Brookline (Mr. Williams) in this division that this law possibly might regulate domestic labor certainly does not impress me. If I am any judge of the situation concerning domestic labor, and if there is any legislation possible in this Commonwealth that can regulate the condition as it applies to domestic labor, then I for one would God speed them

in their efforts. I do not believe any other method will be able to regulate it, and I doubt if even the Legislature may be able to do it.

I gave notice yesterday afternoon, after listening to the debate of yesterday, that I should offer an amendment which is printed at the top of page 2 of the calendar. I felt that the wording that I then made of it was comprehensive enough to cover all the difficulties suggested. On reflection this morning, and after listening to what the gentleman from Brookline has said, supplemented by what the gentleman from Winchester has said, I believe that we ought to vote separately on these propositions. Therefore at this time I shall not press the motion that I had intended, but will reserve it for future action, guided entirely by what we may do on the propositions that we are now to vote on.

[The amendment of which Mr. O'Connell of Boston had given notice was as follows: Strike out lines 3 and 4 of the resolution and insert in place thereof the words: "Provision may be made by law regulating or restricting the hours or conditions of labor or establishing a minimum wage."]

Mr. CHANDLER of Somerville: It seems to me the members of the Convention have made up their minds how to vote, and I move the previous question. [Laughter.]

Mr. COLEMAN of Boston: The remarks of the gentleman in the first division concerning the danger of either of these measures driving industries out of Massachusetts leads me to just a word of response, although I feel that nothing I could say would impress or convince this Convention. Nevertheless I want to call the attention of the Convention to another fact, and that is that any industry in Massachusetts which cannot or will not guarantee to its employees those conditions which will give them an honest and a decent living, or otherwise a minimum wage, and provide hours for work that will assist in the development of the health and character and strength of its people, ought to go out of Massachusetts. [Applause.] Massachusetts does not exist for the support of any particular industry which is not able to take care of itself. Massachusetts is an organized State for the purpose of guaranteeing, assuring and protecting the health, happiness and welfare of its people; and if there is any industry that cannot do that, Massachusetts is better off without it than with it.

Mr. DONOVAN of Lawrence: I think that I covered what I wished to say in favor of this resolution in the first few minutes that I talked. I think that the members understand now just what this measure means. As I say, in summary, it is this: That for scores of years labor and capital have been at each other's throats. To me it seems unnecessary, and I think a great many other men believe the same. The people who suffer the most are those who are waiting for the products of that labor and that capital; and although people disparage war and are sorry that this country has to go to war, and things of that sort, it seems to me that they forget that capital and labor have been at war in this State for scores of years and we do not see any end to it. This is placing in the hands of our representatives the problem of solving the hours of labor. The word "restricting" is there, — that in ordinary, peaceful times the hours of labor may be made humane and satisfactory to man, woman and child. The word "regulating" is there, in order that in times of stress and necessity, if the Legislature of this State deems it necessary

that the hours of labor should be extended for the good of this Nation, for the benefit of every man, woman and child in this State, then those hours may be extended. But we leave it to the representatives who sit in these halls as to what the hours of labor shall be. As to the minimum wage I yield the rest of my time to the gentleman from Brookline, Mr. Walker.

Mr. Walker of Brookline: The case for the minimum wage has been so extremely well stated by the gentleman from Winchester (Mr. Dutch) that I feel no further words of mine are necessary.

The amendment moved by Mr. Walker was adopted, by a vote of 103 to 56.

The amendment moved by Mr. Balch was rejected, by a vote of 37 to 107.

The resolution, as amended, was ordered to a third reading, by a vote of 112 to 47.

It was read a third time Tuesday, July 30.

Mr. Dennis D. Driscoll of Boston: When the matter which is now before the Convention for its action came up a few weeks ago I informed the delegates to the Convention that as a matter of courtesy to the gentleman in the third division (Mr. Walker of Brookline) on whose motion the minimum wage had been attached to it, I hoped they would pass the resolution along to its next reading. I also said at that time that there were two sides to that question of regulating the hours of labor by a constitutional amendment; that we could take either side, the employers' side or the laborers' side, but it was a dangerous proposition. I want to say to the delegates to the Convention that since that time I have been in communication with the officers of the American Federation of Labor and with some of the officers of the labor movement in the city and State, and it is true, as you always find in labor organizations, the same as in your churches and in your fraternal societies, that there is a difference amongst the membership. As I said a few weeks ago at the Convention, the working-men of this country are men of all beliefs, thought and different minds. There are men who believe that the best process of regulating the hours of labor, wages and so forth is through legislation and through the government. There are other men in the labor movement who do not believe that. There are men who believe that the method of political propaganda and of socialistic ideas through parliamentary or political power brings everything to success. The men who differ with them in the labor movement are often put in what we call the "pure and simple" class. I always have been found in the pure and simple class in all the experiences of my life. And I may be making a mistake, but I do not think I am, in opposing this whole matter here to-day. I have given the opportunity to every delegate in this Convention to answer my arguments. I do not wait to hear their arguments and pick from them, but I give you my practical experience of my dealing with the labor movement, and the correspondence I have had I am going to read to the best of my ability to the delegates to this Convention.

The regulating of hours of labor has been a success between the employer and the employee. When the introduction of this matter came about it did not come from the labor men of this Commonwealth, and the delegate who sat in the second division (Mr. Donovan of Law-

rence), who is at better duty to-day in defending his country, — I am proud of him for it; he is a gentleman for whom I have the highest respect, — introduced this resolution on regulating the hours of labor. The argument made on that was that by adopting this constitutional amendment, because the employers and employees had each other by the throat, this would prevent it. I do not know how much they have each other by the throat in this Commonwealth, but I think it would bring them more closely together to get each other by the throat with both hands in political and parliamentary tactics than any law we have to-day in this Commonwealth.

During the week's vacation taken by the delegates to this Convention, in my opposition to this subject I wrote a letter to the president of the American Federation of Labor, who had just come from St. Paul from the convention of the American Federation of Labor, and I informed him of my opposition to this question and said that I should like to hear from him on that subject. I also wrote a letter to the first vice-president of the American Federation of Labor, James Duncan, who is located in Quincy, Mass., and after his return I received a reply from him. The letter from the Massachusetts State Branch of the American Federation of Labor I have not with me. I cannot find it in my desk and it is not in my closet, so I must either have it in my office or at my home. They are opposed to this matter and a copy of that letter I received I mailed to every delegate who sits here who carries a union card, so that they would have the same information I have.

I want to explain to the delegates this: Do not for a minute think I do not believe in legislation or laws for the benefit of women, minors and the people of this Commonwealth, and if you can get it through legislation and successfully as we have in the last twenty years it has done a lot of good. It never has been declared unconstitutional and the laws have done some good in this Commonwealth. And coming as it would come it is a question that I will try and explain later. I am going to read the letters I have received from these gentlemen as they came to me so that the delegates will know every word. I have copied these in large type so that I can read them myself, because my eyesight is a little bad.

(On letter-head of American Federation of Labor, Executive Council.)

A. F. of L. Building,
Washington, D. C., July 5, 1918.

Mr. Dennis D. Driscoll, *Secretary, Trades Union Liberty League of Massachusetts, Room 2, Hibernian Building, 184 Dudley Street, Boston, Mass.*

Dear Sir: — Your letter of recent date in regard to the amendment pending before the Constitutional Convention of Massachusetts received. The power which that amendment would bestow upon the General Court, namely, to regulate and restrict hours of work and establish a minimum wage, would write into law power that the Supreme Court of the United States has already declared constitutional in its decision upon the Adamson Eight-hour Law. The Supreme Court has also upheld minimum wage legislation for women embodied in a Washington law and an eight-hour work day enacted for Oregon. I therefore feel that the courts would hold that the Legislature has the power contained in the amendment whether it is enacted or not. After all, such a law would be dangerous in depending entirely upon the attitude and character of the men elected to office. Office-holders determine the spirit of government and all administrative work.

As you know, I have always been opposed to the regulation of wages and hours worked by law. I feel that these matters can best be done through voluntary or-

ganizations of the workers, and the standards established are under the control and direction of the workers themselves. If the workers find it necessary to alter standards they have it within their power to make such modification and take grievances up with their employer as they may deem necessary. When these standards are established and fixed by law they can be altered only through legislative enactment. As you well know the ideals and purposes of wage-earners do not always prevail in the State Legislature. If the proposed amendment is not adopted those who do not desire the enactment of legislation regulating and restricting hours of work and establishing a minimum wage have the benefit of the doubt, but if the amendment is adopted there is positive evidence of authority that even courts cannot ignore.

Very truly yours,

SAMUEL GOMPERS, *President.*
American Federation of Labor.

I have here also a copy of the letter from the first vice-president of the American Federation of Labor:

(On the letter-head of the American Federation of Labor, Executive Council.)

OFFICE OF FIRST VICE-PRESIDENT,
QUINCY, MASS., July 12, 1918.

Mr. DENNIS D. DRISCOLL, *Room 2, Hibernian Building, 142 Dudley Street, Boston, Mass.*

FRIEND DRISCOLL: — Accept my thanks for your inquiry, thereby bringing to my attention a proposition pending before the Constitutional Convention providing that "the General Court may pass laws regulating and restricting the hours of labor", and with an additional amendment which reads "and establish a minimum wage".

With reference to making the establishment of a minimum wage a constitutional provision, will say that among the virtues which lurk around this specie of legislation is also found the predominating qualification which is not a virtue, namely, that when by constitutional provision or by legislative act a minimum wage rate is established, employers and especially corporations, attorneys who give them advice or who plead in courts, and judges, nearly always apply to such a situation the limit that the law allows; that is to say those parties conclude that employers and the public are entitled to everything which the law will permit. In this frame of mind and in this direction the tendency would be not only to not pay a wage rate higher than the legislative requirement, but would tend where wages might have already been higher to reduce the rate to the workers receiving the higher rate or to those who might be hired in their places to the legislative minimum.

If the Legislature passes a law for State employment, thereby making the sovereign State of Massachusetts the employer, and that wages should be graded upwards from a minimum, good and well; but if the Legislature by constitutional provision was to be given authority to enact a minimum wage rate for employment other than by the State and, therefore, beyond what is commonly called police powers of a State, I fear that the above-mentioned deduction would be the result.

About the more general provision, namely, that "the General Court may pass laws regulating and restricting the hours of labor", will say that the subject-matter had been carefully canvassed, discussed and voted upon by several conventions of the American Federation of Labor and always in one direction, namely, against general State regulations restricting the hours of labor. So distinctly has the American Federation of Labor in convention gone in evidence upon the subject that in the last three conventions the element in favor of this specie of legislation did not again submit the subject for debate and vote. In fact, since the American Federation of Labor Convention held in Philadelphia, November, 1915, the western States which tried this specie of legislation exemplified to the organized workers in those States that an error had been made in submitting the subject of general restriction to legislative regulation. The specific action taken by several conventions of the American Federation of Labor may be expressed in the action of the Philadelphia convention, as follows: "The American Federation of Labor, as in the past, again declares that the question of the regulation of wages and the hours of labor should be undertaken through trade-union activity and not to be made subjects of laws through legislative enactment excepting in so far as such regulations affect or govern the employment of women and minors, health and morals; and employment by Federal, State or municipal governments."

One of the objections to restriction of the hours of labor by legislative enactment is that when such might be undertaken workmen in any trade or occupation who con-

sidered they were entitled to a shorter work day would at every turn be confronted with the legislative regulation. Employers or corporations whom it might affect would look for redress through the courts in hope that the decision would give to the corporation everything which the legislative enactment would permit and, therefore, the workers who for their own good would be looking for a reduction of the working hours per day would not only have the action of the Legislature providing the prestige of the State but perhaps the decision of a judge against them, and which would be an unequal burden. It is not in disrespect to legal procedure and to judicial decisions this statement is made, for our judges as a rule are conscientious men, giving decisions on the testimony and circumstances as presented, but too often perhaps because of precedents. I think it will be admitted by the liberal minded lawyer and judge that the atmosphere of a court-room suggests that in decisions of the kind the court would give everything that the law would permit. Thus the tendency to circumscribe and nullify the efforts of those who might be looking for betterment is apparent.

The reason we prefer to have trade-union activity determine this subject is that thereby decisions are more easily obtainable and progress more in evidence. The law's delay often causes chaos in such contentions, for very often the opportunity to obtain the betterment will have been lessened in waiting for a decision, while by trade-union activity committees on both sides enter into negotiations and in up-to-date trade associations procedure employment continues and the committees arrive at a conclusion recognizable by both. Thus progress is made in the shortest possible time and with the least possible friction. The decision also has the advantage of being voluntary action by the two parties.

Under a legislative regulation less of the voluntary element would be in evidence and much of a compulsory course would be the result. Nor do such results very often bring redress. In the parts of the world where this species of legislation has been tried the advantages which have come to workmen have happened tardy indeed. Besides, when legislative restrictions apply there needs to be the customary penalty for failing to conform to the law. This means fine or imprisonment, or both.

Are we ready here in Massachusetts to apply a fine or imprisonment to a worker because he or she refuses to accept hours of labor or conditions which are objectionable? Moreover, the average worker would have difficulty in paying the fine, and, therefore, imprisonment would be his lot, while the corporation would have less difficulty in paying the fine and imprisonment would not be applied. Lawyers will tell you that without a penalty provision a law would be practically worthless, and there you are.

In New Zealand this species of legislation had its trial, especially in the shoe industry, and after all the forms provided, including a labyrinth of appeals during which the opportunities of the workers were nearly crucified, had been observed but with a decision against the corporations, instead of complying with it they ceased to manufacture and imported boots and shoes from elsewhere, consequently the legislative regulation was not obligatory on the manufacturer, nor the penalty when he refused to accept the decision. If the decision had been in favor of the shoemaking corporations and against the workmen and had the latter failed to conform to the decision rendered, they would have been subject to fines or imprisonment, or both, and to have had their names as citizens tarnished for violation of the law, and imprisonment (for they could not pay the fines) under the provisions of the act.

If the Constitutional Convention favors anything of the kind it should be made to apply to that which comes under the police powers of the State and to employment by the State or municipality, or, of course, to a situation affecting health and morals. The labor movement of our country has included working conditions affecting women and minors under justifiable legislative regulations. The term minors is principally used because of their legal status, and as far as women are concerned when we have constitutional and legislative authority for women to be voters coequal with men they will have established for them a franchise status equal to men and will in their own way, supported by the organized labor movement, declare for conditions and employment suitable to themselves and will then and there be removed from what might be called State paternalism.

Trusting that this information and these expressions may be of some service to you and perhaps to the Constitutional Convention, I have the honor to remain

Yours respectfully,

JAMES DUNCAN,
First Vice-President.

Now, I do not think, as many delegates to this Convention may think, that if adopted this law would keep away the trials and tribula-

tions of organized labor from our courts. I believe that if this amendment was adopted it would bring more trouble to the courts and keep more trouble going on before the people. Perhaps it may lead to what many men disagree with me upon, to the passing of the union organized wage-earners of this State into a political machine. That I am opposed to publicly and privately, because they are organized for a purpose in the interest of the protection of their families, their homes, their wages and the shortening of the hours of labor; for all these things and for still another thing, — for education. While I believe that every working-man and woman should be interested in public questions in the State, yet the adoption of such a constitutional amendment as presented before the delegates will force the workingmen more strongly than ever into politics. And like other parties who have their strikes, when they organized and became another party, whether it was by the name of Progressives or otherwise, it was a strike within a strike. And while men would go on the public platform and favor the adoption of this situation, they would come here as the champion of labor, the farmers and the people in the introducing of all this legislation and use it as their fight in the interest of their political propaganda.

We have now in Massachusetts a Minimum Wage Commission established by law, under chapter 706 of the Acts of 1912, amended by Acts of 1913, chapter 673, Acts of 1914, chapter 368, and Acts of 1916, chapter 303. That is for the purpose of establishing a minimum wage in this Commonwealth for women and minors. The commission have done a lot of good, with all the opposition of manufacturers or the people, — I have copies of the letters here in my possession that were sent out in opposition to their work. They are yet in their infancy and without a doubt, with the continuation of the law as it now stands, much greater good may be brought about. And I do not believe that there is any need to-day to amend the Constitution so that we shall be able to establish a minimum wage for men. We do not want any Minimum Wage Commission for the men of this Commonwealth. We want the men amongst men, part of the human family, and to prevent strikes and to prevent the Minimum Wage Commission from interfering in the trade-union movement, because the trade-union movement, through their trade organization, will establish their minimum wage, and they defy any commission to lower their wages established between their employer and themselves. And that would be the trouble of the establishment of a minimum wage, in the end of the matter relating to the men, and it would be better for the delegates to this Convention to defeat the whole proposition.

The phrase "regulating the hours of labor" goes further than that. You regulate the hours of labor and by law you say you exempt from labor laws the gentlemen connected with these officers in the State House, to begin with; you exempt from the labor laws of this Commonwealth the officers in the prisons of this Commonwealth; and if you are going to regulate the hours of labor by constitutional amendment it does not prevent any man of soreness or any man of good-will or otherwise from coming to the Legislature and fathering some bill for the enactment of laws regulating the hours of these men or the men in the State Prison. That is the reason, among many other reasons, why this matter should be defeated.

Now, according to rumor, there is great trouble in the labor movement. I have had a little experience in the labor movement of this Commonwealth, and I could tell the delegates to this Convention that the law never can do what the heart does back of the law. And when the Civic Federation was formed in this Commonwealth, with the biggest men in this Commonwealth on it, the biggest lawyers and financiers and the biggest attorneys and the biggest representatives of labor in this State, we kept peace in this State until this war. We had Mr. Tuttle, president of the Boston and Maine Railroad, at its head; Mr. Hayes Robinson, one of the most diplomatic men for such a position you ever met in your life; President Eliot of Harvard College on one side and myself on the other. Yes, we prevented more strikes by bringing the employers and employed together and letting them settle their difficulties. It was bringing them together that kept peace. Because I was a blacksmith and the other man came from Harvard College, he was no better than I was and never will be, only he had a better education. We brought about these things and there was no law to do it. And that is what we need. We need more coöperation. We need the representatives of capital to sit down and meet with the working-men and women. All we need is justice and we do not need any law to bring it about.

I am going to show you how it was done. You may talk about the brilliancy of your education. The building laborers and the hod-carriers of this country, ninety-five per cent of them Italians, have an organization begun through a friendly agreement which killed the padrone system that the Legislature never could kill. They were called together in the north end in 1902 by a priest, Dominic Alexander, and myself, and we brought all the men together. We prevented the padrones from robbing them of $3 each for getting a job. We put a stop to their meeting the men in the North Station and not having the men's tickets. We organized the men and they have a beautiful international association to-day and a monument built in Quincy. They paid $70,000 for it and do not owe a nickel on it. They have $90,000 in their treasury and they have just paid $60,000 for the last Liberty bond issue. They have brought about these improvements in their condition through conference and not through law. The foreigners among their membership number about ninety per cent. If you want to see the monument go to Quincy and see it. You will see some of the men there employed. What can be done without law through peace can be done in other departments of labor without fear.

Talk about compulsory arbitration, — what does the man mean by compulsory arbitration? Does he mean that if we are going to strike, the Legislature will say we must arbitrate it, and if we do not accept the decision they will put us in jail? You have not jails enough to hold us, because there are men who are ready to take that heroic stand, and if you try to enforce any decision that is unfair they will go to jail. Many of them are ready. That is the kind of compulsory arbitration you will get. It will be a disgrace to this Commonwealth. You will have men who are looking for that kind of capital say that they must go out and fight for this cause. We want in Massachusetts the best men, as I said a few weeks ago, — the man who represents capital and the man who represents organized labor, and the Governor, — and I challenge the present Governor or the next Governor

to issue a call to them to meet in his office and study these problems. Then we must give some power to the State Board of Arbitration so that we can prevent strikes and have peace and get the people together and take action that will relieve the unrest that is now prevalent. And I say to the delegates of this Convention that the labor movement through their executive board have passed a vote in opposition to this proposition and have requested us to make that announcement, and that all that is desired to be accomplished by this amendment can be done by legislation, and what can be done by legislation we do not need to amend the Constitution for at the present time. And I trust that this Convention will defeat this measure now before it and encourage and assist to keep peace in this Commonwealth which will bring about justice to all concerned. [Applause.]

Mr. Bodfish of Barnstable moved that the resolution be amended by striking out the article of amendment and inserting in place thereof the following:

Full power and authority are hereby vested in the General Court to provide for the adjudication of any controversies between employers and employees and to provide against lockouts, strikes or any other cause of involuntary or unnecessary unemployment and to fix penalties and make any other reasonable or necessary provisions to carry out the purpose of this amendment.

Mr. Bodfish: Some of the words which I have heard from the representatives of organized labor in this convention have troubled me and made me consider our industrial situation with some care, and I find it so serious that I feel we are justified in again considering the proposition to provide for the adjudication by peaceful means of the controversies between employers and employees. This question, in normal times, would be recognized as one of paramount importance, and it to-day is overshadowed only by the great struggle in which we are engaged to establish the reign of law throughout the world.

History shows that within every form of government introduced among men since the beginning of time there always have been those who have been ready to rebel against and resist established authority if and whenever their opinions were not accepted. Our government, notwithstanding its liberality, has been no exception to this rule. The mob spirit has been with us from the foundation of the State. It is manifested by lynchings, lockouts and strikes. It has found voice in this Convention. The commendation here the other day of those responsible for Shays's Rebellion called to my mind certain rash utterances of one of our most brilliant early statesmen, made before he was sobered by the responsibility of the office of Chief Executive of our Nation. I refer to Jefferson, and to these words of his, spoken also of Shays's Rebellion:

God forbid that we should go twenty years without a rebellion. The tree of liberty must be refreshed from time to time by the blood of patriots and tyrants. It is its natural manure.

How different was the attitude of Lincoln, even regarding that question which lay nearest his heart, the question of the emancipation of the Negro race. You will recall that in his youth, when he witnessed for the first time the auction of a chattel slave, he registered in his heart the resolve that if he ever had the opportunity to hit that damnable thing he would hit it hard. You will recall that then came the Dred Scott decision, and it seemed as if the institution of slavery had become National, and some of the arrogant holders of slaves boasted

that they would call their slave-roll under the shadow of this hill. But what did Lincoln do? Lincoln said: "We will abide by that decision so long as it has the force of law. We regret that that decision has been made, but since it has been made it must be reversed and we intend to reverse it, and we intend to do it peaceably." And he said: "Not bloody bullets but peaceful ballots only are needed to give the victory to the right."

Not so with men like John Brown, who were ready to take the law into their own hands because their opinions were not at once accepted. Not so with men like Jefferson Davis, who was ready to disrupt this government because the majority of the people decided that his views were not their views. And not so with the labor delegates to this Convention. You will recall the question that I put to Mr. Moriarty the other day. I asked him if he preferred black-lists and boycotts, strikes and lockouts to some peaceful methods of settling labor disputes, and he answered in substance as follows: That labor wanted to get its demands by peaceful methods if it could, but if it could not, then they intended to use force to obtain their ends. He insisted that it was their right to do so.

That is the spirit which has been abroad in our land from the beginning and which caused Butler to prophesy that the day would come when the blood would flow in the streets of New York and Boston more freely than it ever flowed in the streets of Paris. That was the spirit which caused Washington to say, in the early days of our Nation, that notwithstanding a successful termination of the war, leaving a fair field for our people to cultivate, yet he feared that we lacked the spirit of wisdom and justice to cultivate it; he feared that there was too much jealousy, too much local feeling.

That was the spirit which led Abraham Lincoln to say:

> At what point, then, shall we expect the approach of danger? I answer, if it ever reaches us, it must spring up among us, it cannot come from abroad; if destruction be our lot, we must ourselves be its author and its finisher.

That was the spirit of the employers a few years ago. Who is there among us who cannot remember their arrogant assertions, that their property was their own, that they would do with their own what they pleased, that they would make such discriminations as they pleased, that they would fix the conditions under which they would hire men, and men would work for them or not as they chose, that they could work for some one else if they pleased? Who is there among us who does not remember those assertions?

What did the labor men say to us then? Who is there who does not remember the speeches of Debs, Haywood, Mitchell and the rest? They said: "Look at the unjust conditions of labor, the menace to health, happiness, life and limb." They said to us: "Look at the hard conditions under which we work long hours with scanty pay." But most of all, they impressed upon us this consideration, that they always were ready to arbitrate their demands, because their demands were just, and it was only when the capitalist refused to arbitrate that they resorted to the strike.

It was because of these representations that labor won our support, and it was because of these representations that we have made organized capital recognize that its rights are inferior to the rights of the whole people. But what has happened? What has happened to

organized labor? Gaining strength through the support of public opinion in their just demands, they now say that they will dictate to us the terms on which they will settle their disputes with their employers.

The only objection which I have heard to the proposition for adjudicating the controversies between employers and employees by peaceful methods, the only objection, I say, which I have heard from the representatives of organized labor here, is that they believe they now have got the strength to impose their will upon the rest of us, and that they intend to do it. If that is their only answer we may as well accept the challenge here and now, and teach them, just as we are teaching organized capital, that they must yield to the welfare of the whole.

It seems to me that that cannot be the sober second thought of organized labor. It seems to me that they cannot come here and ask us to authorize the General Court to pass laws in their interest, and then oppose the proposition to let the General Court handle the whole situation. Why should we empower the General Court to pass laws fixing the hours of labor for carpenters any more than for farmers? Why should we authorize the General Court to fix hours of labor for employees any more than for employers? To-day, under the police power, we can regulate hours and wages and all other conditions of labor, so far as the health of the people requires such regulation. Any other differences which arise between employees and employers ought to be settled in like manner as the differences between the rest of us are settled, — by peaceful arbitration. The delegate who preceded me (Mr. Dennis D. Driscoll) said that he would challenge the present Governor or any Governor to give to the State Board of Arbitration full power to settle these matters. That is exactly what we are asking for in this amendment which I have moved. Read it. Do not be misled by a straw man called compulsory arbitration, which one of the delegates set up here the other day and knocked down, thinking he had hit the main proposition when he had not touched it at all. The words "compulsory arbitration" do not appear in the amendment. That term is used because it is a familiar term.

Now, what is meant? The resolution itself simply empowers the General Court to provide for the adjudication of controversies between capital and labor, and to provide against strikes, lockouts, and involuntary and unnecessary unemployment. What have we heard our friends of labor say about involuntary unemployment? They tell us all the working-man has is his labor; if he cannot sell it he has lost it, and he must starve. We seek to prevent that involuntary unemployment. We seek to keep labor employed. We seek to keep them earning money and to avoid the loss of that which, if it is not used, is lost.

For these reasons I believe that the amendment which I have offered should be adopted. It seems to me that this Convention will be remiss in its plain duty if we go hence without having dealt with this most vital, most perplexing of all questions which have confronted the Commonwealth for the past two generations. It seems to me if we deal with this question broadly, and now give to the General Court, not only the power to deal with hours, wages and other conditions of labor, but also to deal with every controversy that arises between employer and employee, — it seems to me if we do

this, we shall win the esteem, not only of the present, but of all future generations.

Mr. Sawyer of Ware moved that the resolution (No. 390) be amended by striking out the article of amendment and inserting in place thereof the following:

Laws may be made restricting the hours of labor and establishing a minimum wage for women and minors.

Mr. SAWYER: I shall speak very briefly as to this amendment; and if the other gentlemen of the Convention will follow my example, offer their amendments and speak equally as briefly, we may take a vote on this thing to-night.

I noticed that the official pronouncement offered by the representatives of organized labor laid special emphasis upon the phrase "adult males." My amendment takes them at their own word and exempts the adult males, and makes the provisions of the resolution before us apply to the women and to the minors. The gentleman who has just spoken (Mr. Bodfish) has said that when it affects health we, under the present Constitution, may pass laws restricting hours of labor of women and minors, and also act in other ways. But let us write it clearly into the Constitution that the Legislature has full power, not to adopt any subterfuge, but full power to deal with this proposition, and to treat with it and put children who are not yet mature, under 21 years, in a class by themselves, and to put upon the statute-books a law which shall restrict the hours of labor; say that there is a maximum labor beyond which women and those not mature shall not go; and to establish a minimum wage.

I hope the representatives of organized labor, who have laid that emphasis in their objection to this proposition upon the words "adult labor," will accept the amendment and allow it to go through for the women and the minors.

Mr. Balch of Boston moved that the resolution (No. 390) be amended by striking out the article of amendment and inserting in place thereof the following:

The General Court may provide for establishing minimum wages for women and minors.

Mr. BALCH: I wish to call attention to the somewhat peculiar situation that exists owing to the multiplicity of amendments offered here. I may refresh the memory of the Convention by calling to mind that in an earlier debate on this same subject we started with two propositions before us, — one the restriction of the hours of labor, the other the minimum wage. I may recall to their minds that then, through the motion offered by the gentleman from Brookline in the third division (Mr. Walker), those two propositions were inextricably knit together and made one proposition, so that no one could vote against one of them without voting also against the other.

I will recall to you that an attempt was made at that time to get these two unlike propositions, which have become confused, separated again, but that in the parliamentary tangle which ensued it proved impossible at that time to get them so separated. At that time the hope was held out that at this stage, which we have reached now, these unlike propositions again might become separated, as I believe, and as many others believe, that they should be. I am told, whether

correctly or not I do not know, that it is unlikely that the amendment printed in the calendar under the name of Mr. Walker of Brookline actually will be moved, while I am told further that Mr. Dean of Fall River is not here to move the amendment printed under his name. If that information is correct the result will be that the Convention, at this stage, will not have an opportunity to pass upon these separate matters separately.

Furthermore, besides the wish to procure a vote on the single and sole proposition that I believe in, namely, the minimum wage, I am actuated by the same motives which the gentleman from Ware (Mr. Sawyer) has just explained to us. I should have been inclined to stand for the amendment offered by the gentleman from Ware if he had not performed the feat of going backwards again, and again uniting these two wholly separate propositions. My amendment is precisely the same as a part of his. Its purpose, therefore, is absolutely simple. It is to bring before this Convention one single question, and that is the question of setting a minimum wage of the minimum scope, namely, for women and minors only.

As the gentleman from Ware has stated, since organized labor appears to have taken a definite stand, I presume that it can almost be taken for granted that the minimum wage proposition in its stronger form, covering adult males, will not be passed by the Convention. It does not follow from that, however, that the Convention will not uphold the excellent work now being done by the Minimum Wage Commission, but the legal validity of which is strongly questioned in some quarters, by dealing with the question of a minimum wage for women and minors.

I trust, therefore, that the Convention will consider at the proper stage of debate this single question, whether or not it wants the minimum wage system as confined to women and minors. And I hope it will consider this uncomplicated by consideration of wholly different questions involved in the regulation of hours of labor, and the still more separate question involved in the amendment offered by the gentleman from Barnstable (Mr. Bodfish) for compulsory arbitration. We certainly should have an opportunity to consider that simple minimum wage for women and children proposition on its merits.

Mr. Harriman of New Bedford: I should hesitate to again address this Convention were it not for some of the things that have transpired, particularly the attitude that has been taken by some in this Convention that those who labor have no right to strike. To me, and to all of you, you must realize, there comes a time in the life of a man when he has a right to strike. No advance in civilization has been made except as men have taken their right to rebel against the conditions which were not for their well-being. I say now that the workers in this State or in any State or in any part of the world have the right to cease work when they, in their opinion — and their opinion alone should guide them — should strike for better conditions.

I say now that the labor movement objects to these because we object to slavery, and it would be slavery. I think the line should be drawn clearly. It is the assumption of some that labor and capital are equal, that each should be treated alike. I do not agree with that. I believe that labor is of more importance than capital. I will

cite no better authority than that quoted by the gentleman from Barnstable (Mr. Bodfish). The gentleman from Barnstable quoted an authority, and let me quote an authority to support what I contend. It is to this effect:

> It is the effort to place capital on an equal footing, if not above labor, in the structure of the government.
>
> It is assumed that labor is available only in connection with capital; that nobody labors unless some one else, owning capital, somehow, by the use of it, induces him to labor. This assumed, it is next considered whether it is best that capital shall hire laborers, and thus induce them to work by their own consent, or buy them, and drive them into it without their consent.
>
> Having proceeded so far, it is naturally concluded that all laborers are either hired laborers, or what we call slaves.
>
> Labor is prior to and independent of capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is superior to capital and deserves much the higher consideration.
>
> A few men own capital, and that few avoid labor themselves, and with their capital hire or buy another few to labor for them.
>
> Let them (the laboring class) beware of surrendering a political power they already possess, and which if surrendered will surely be used to fix new disabilities and burdens upon them, till all of liberty shall be lost.

Who said that? Abraham Lincoln said that, and Abraham Lincoln laid down his life that the colored man might be free, and Abraham Lincoln could see then, as the laboring man claims to see, that labor is prior to capital, and the industrial force of the worker cannot be shackled by legislative action.

Quotations have been made from New Zealand. I hold in my hand the year book for New Zealand for 1917, — where they say all is peace and prosperity and where the workers are pleased with things, and all disputes are settled by the Board of Arbitration. Listen to this, I pick only one or two:

> Waterside Workers. The waterside workers throughout the Dominion, dissatisfied with their conditions of employment, decided to work no overtime between 5 P.M. and 8 A.M. Various other matters were in dispute, but serious developments were averted by an agreement with the employers.

Not with the board, but with the employers, as it should be.

> Drivers. The drivers of Auckland, dissatisfied with the minimum rate of wages allowed by the award of the Board of Arbitration, gave notice of their intention to strike, and the trouble very quickly spread throughout the Dominion. A conference, presided over by the acting Minister of Labor, failed to come to an agreement, and the settlement of the dispute was left to the Cabinet —

Thrown into politics by one man or two men; the board was unable to settle it.

> — which granted an increase by way of a bonus on the minimum rate of wages fixed by the award.

Now, compulsory arbitration does not work. It works in some cases, of course it will work, but it will not work for the good of the whole. Labor is perfectly justified in coming here to defend the strike, and that is giving them only what they have got. I glory in the right of a man to strike. I glory that he has the right to rebel and cease work when it will be for his benefit and the benefit of the cause of labor. It is proposed, probably, to have a board, the same as they have in Australia and have neutral men picked. I never saw, I never fixed my eyes upon, a neutral man. I never knew a man who was broad enough or had ability enough to sit on one of those boards,

but who, while he might be honest and might absolutely be true to his convictions, yet had his convictions.

Do you mean to tell me that any board of arbitration would take a man of my stamp, a laboring man, and make him the deciding factor? Of course they would not, and I would not blame them. Neither would the other side. This condition presents itself. Until the State is willing to assume the entire burden of the running of industry these disputes have got to be settled between individual employers and their employees. I submit to this Convention, since the labor movement has adopted that method, in a case here and there it does not work, but as a rule they are successful, — the individual dealings between the employers and employed in their various industries. Until this Convention or until this Commonwealth is willing to go the entire limit, and take over and run our entire industry, then and not until then can you talk compulsory arbitration. You cannot have compulsory arbitration in the shoe business. In New Bedford, for instance, if you fix a minimum and maximum wage in that industry, and leave the shoe manufacturers in some other part of the Commonwealth untouched by any such conditions, it will ruin the manufacturer because of competition. To have it work you have got to have one rate for all the industry, the same industry, throughout the Commonwealth.

I say again, until you are ready to go the limit and give the Commonwealth power to control business, to regulate the earning capacity of capital, until you are willing to do that, then and not until then can you say with any force that working-men should be obliged to abide by a decision arbitrarily made by any court. It is contrary to American principles of freedom, — the word "compulsion" in these things. We live by industry. Through the eyes of industry we see the welfare of our Commonwealth.

Mr. ANDERSON of Newton: I should like to ask the gentleman if he does not recognize another party besides capital and labor; that is, those people in the community, that large portion of the community, who belong neither to capital nor labor. I ask whether they have not some rights in this matter.

Mr. HARRIMAN: I should like to answer the gentleman that I never saw such a human being in my life. I know of no such person. He either works for a living or else lives upon the work of another man. There is no neutrality about it whatever. I do not know that class. I may say there are thousands of men who do not belong to organized labor. Now, I belong to organized labor, but I say here to-day I believe I am not pleading alone for organized labor, for the labor movement. Let me say to the gentleman in the third division (Mr. Anderson) this: Those men who are organized in industry can protect themselves to a certain extent. Those men who are organized in an industry can protect themselves to a certain extent, and those who are organized in an industry do; but the great mass who are unorganized and refuse to come in and help their fellow-workers are necessarily suffering because they do not take advantage of helping themselves by helping other people.

Mr. ANDERSON: Take, for instance, the case of a great strike, such as a strike on the Boston Elevated Railway, where capital on one side and labor on the other side are engaged. Does the gentleman

recognize the fact that the great public, that does not belong on either side of the controversy, has any rights?

Mr. HARRIMAN: I certainly recognize it. I also recognize that they do not walk and some had to walk. I also recognize that the great spirit, the great sentiment, of the people throughout Boston and throughout the entire Commonwealth was with the workers in industry.

Mr. ANDERSON: Would the gentleman recognize the third party in such a strike as that? Should not that third party be represented in the arbitration?

Mr. HARRIMAN: Yes, sir; they were interested, certainly they were interested, but with any kind of judgment they could not decide the controversy between those two parties. In that case, let me tell the gentleman, if the men who had been at the head of that corporation had been willing to sit down and talk with the men, as they ought to have done, there would not have been any trouble. But if it had been compulsion, let me say to you, sir, it would not have been settled as it should have been settled; for you cannot conceive, neither can I, of any arbitration board that will recognize what the average Legislature and juries refuse to recognize, that the laborer is entitled to the full product of his toil. I believe that is the root of the evil. I believe that is the fundamental difference in this Convention, — that those who work are entitled to enjoy the fruits of their labor. Under this system, of which I have complained before, it is impossible to do it. There are men who live upon the surplus of the labor men, and because of that we have the conditions of to-day. I do not apply this in any offensive sense; but those men have found labor growing because it was right, found the power of labor growing because there was a consciousness on the part of the average worker that he was not getting enough to live on, and at least he was entitled to these things. They have grown, and they have made inroads upon the so-called vested interests, and the vested interests are now coming here backing such legislation as this because they know they cannot beat down this industrial effort, and their only hope is on the political side. And I believe, sir, they are doomed to disappointment. I believe it is better to leave arbitration as it is to-day, until, as I said before, you, and those who believe that we ought to have arbitration, will go the limit, take over the industries of the Commonwealth, run them for the interest of everybody, and I am sure under those conditions we are perfectly willing that should be arbitrated. You cannot regulate another man's business.

Mr. SANFORD BATES of Boston: If I understand the gentleman's contention aright he has claimed to be able to demonstrate the fact that there are but two classes in the community, labor and capital. I should like to ask him to which class the doctor belongs who has purchased, at the expense of a small amount of capital, an outfit of surgical apparatus and medicines; and some night, this doctor, we will say, is called to attend the child of the gentleman who is speaking to this Convention and finds, owing to a strike on the trolley cars, that he cannot get there, and the gentleman's child dies as a result of it. I should like to ask him to pursue his theory of the two classes far enough to tell me to which class this doctor belongs, — labor or capital?

Mr. HARRIMAN: My opinion is he belongs to the laboring class absolutely; and while I should be very sorry should he fail to come to my house, I certainly am convinced that while under certain conditions it might be possible for a man's crops to be ruined because it did not rain, I do not think the question is well drawn, or the comparison. If I could not get one doctor I would get another, and I should say go and get a doctor who did not have a great deal of business and who was willing to walk, who did not live too far away, — probably it would fall to him.

I believe that the physician belongs with the working-man. Any man belongs with the working-class who produces something of value to the community. I believe the capitalist class is a small portion; but to-day they have control of our courts, control of our legislation to a great extent, owing to the fact that the working people do not take their politics as seriously as they may. For that reason I fear at this time any such legislation as is proposed by the gentleman from Barnstable (Mr. Bodfish).

Mr. LORING of Beverly: I do not intend to speak for the capitalist class, but I do want to say a few words for one who has employed a good deal of labor over a great period of time. I may say in starting that I agree absolutely in what the gentleman in the first division (Mr. Dennis D. Driscoll) has said about this. It seems to me perfectly futile to try to regulate a natural law, an economic law, by a legislative enactment. You may do it for a time, but sooner or later your enactment becomes obsolete and you have done a great deal of harm in the meanwhile.

Take, for instance, at the beginning of this war, if the hours of labor and the conditions under which it was performed had been regulated by inelastic laws passed by the Legislature, where would you have been? Where would the employer have been and where would labor have been? Neither of them could have done their jobs and the whole thing would have fallen down.

Without going much over the ground, which has been covered so ably by the member from Boston in the first division (Mr. Dennis D. Driscoll), it seems to me that we ought not to pass this amendment to the Constitution; that the laborer and that employers understand what is needed best in their own industry, and that if they are let alone they can settle these questions to much better advantage than any legislative committee or any Legislature, which sits only once a year, and which does not know very much about business or about any particular businesses anyway. I hope that neither the amendment nor the resolution will pass.

Mr. WEBSTER of Haverhill: I realize that perhaps one attempting to discuss a matter of such importance as the one now pending should be equipped with some measure of preparation for that discussion; nevertheless, I am emboldened to the hope that the expression of my views may not be less welcome to the Convention because of some measure at least of spontaneity, of absence of labored preparation, and technical research and examination.

To my mind the honorable member from Beverly (Mr. Loring) who has just taken his seat, as he usually has the happy faculty of doing, has suggested considerable food for our thought. I listened with a good deal of interest to the remarks of the honorable gentleman from

Boston who sits before me (Mr. Dennis D. Driscoll), and particularly because I believe from his position his views are entitled to a certain weight with us. I hold, sir, to the somewhat old-fashioned theory, it may be, that a man who has devoted the best years of his life to the study of a certain subject is entitled to a little weight of authority when he chooses to discuss that subject. It does not matter to me whether his language always falls in line with the canons of Lindley Murray and his illustrious successors or not; I believe the speaker is entitled to our consideration. I think he has touched upon an essential phase of this matter when he suggests that in all ordinary matters of dispute between employer and employee the men who are concerned day by day with that particular industry may be supposed to have means of getting together as intelligently as the public at large, or any legislative body, commission or junta appointed or authorized by the general public. That may be an untenable proposition, but it is my honest opinion. I am no blind follower of the recommendations of organized labor here, although I take some pride in the fact that I have affiliated myself with labor organizations so far as I have ever concerned myself with any activities which came within the scope of their operations and jurisdiction; but their opinions nevertheless would have weight with me, and I would recommend that any gentlemen who choose to get a viewpoint upon the ability and the disposition of the members and representatives of organized labor upon which to inform themselves, and make painstaking research into these industrial, sociological and economic questions with which we all are concerned, — I would advise them to attend, if they never have had that privilege, a session of the Boston Central Labor Union.

Now, just by way of a little exposition of my personal viewpoint, if I may be allowed. I believe that we should allow, in all the minor disputes, the freest opportunity for the individual employers and employees to get together; and nine times out of ten it will be found, as we all know from our own experience, that that will be sufficient. But, sir, if propositions of such general magnitude are involved that their deliberations will not avail to clear up the situation, then I apprehend that appeal to some greater tribunal than even the Legislature or our State Board of Arbitration is indicated in the premises.

In advocacy of that belief, sir, I would turn the attention of members to what perhaps has received but scant attention thus far, and that is the daily press record of the industrial situation in this State to-day. Does any gentleman, deprecating, as we all must, the delay in necessary vital industries which at present obtains, — does any gentleman think it lies in the power of any tribunal which may be appointed in Massachusetts to adjudicate the fundamental grounds of dispute in those strikes that now are headlining more or less the daily papers? I, for one, have no such belief, especially at this time. And may we not believe that many principles of economic truth which we to-day accept as sound simply have been emphasized and commended to us by the extraordinary conditions brought upon us by this world conflict in which we are engaged? May we not believe that it is to a National tribunal that we must appeal, if appeal must be made to other than the general operation of economic law? I hope that the Convention will withhold from what appears to me a meddling with affairs which on the one hand are too small for our attention,

and on the other hand transcend all possible scope of our authority. I believe, sir, that this is a Nation, and that economic law is as true in California as it is in Massachusetts, and that the general propositions governing the conduct and the relation of labor and capital must conform to those laws not only here but everywhere.

But, sir, we have seen in the past that but limited benefit has accrued to Massachusetts or other forward-looking States from much of our State legislation.

We have passed laws shortening the hours of labor, forbidding the labor of women and children under certain conditions, and what has been the result of that? I appeal to the common sense of any manufacturer of Massachusetts if it has not been to penalize Massachusetts industry. We thought we had found a relief for that condition in Federal legislation which the Supreme Court but recently has overturned. Now we have another uphill fight, perhaps, like the eighteen-year struggle for the income tax amendment, to get that by the Federal courts. But we cannot deal with these tremendously broad questions by any petty creation of a State tribunal or by State legislation, and I hope, sir, that we shall absolve ourselves from any further consideration of the matter.

Mr. BROWN of Brockton: I am a member of the committee and I have spoken on this resolution. In speaking before I left myself in a position where I either could retreat or go forward. I called attention at that time to the fact that there was danger, but only in the fact that there always is danger in delegating power. When you delegate power to the Legislature it may do what you want, it may do what you do not want. There came before the committee three resolutions, all of them friendly to labor, all of them seeking to do something for labor, in the way of having better conditions. Some desired to prevent decisions from the court declaring remedial legislation unconstitutional. There came out of the committee finally, as the phraseology reads at the present time, this very innocent looking proposition: "The General Court shall have power to regulate the conditions of labor, to restrict the hours thereof, and to establish a minimum wage." The General Court was to have that power. Now, we have heard the delegate in the first division speak for the American Federation, and, so far as he presented the case, we hear what was said at Washington. You say that capital and labor will not lie down together. Why, you have seen a most wondrous exhibition of it right here in this Convention this afternoon. You will find the delegate from Boston (Mr. Dennis D. Driscoll) presented his side as he saw it, and exemplified it; then you saw the very mild tone and lovable manner in which the delegate from Beverly (Mr. Loring), head of one of the largest corporations, was in full accord with the labor advocate in the first division. Thus labor and capital do lie down together in this proposition. In effect both say: "Let us alone, and we will take care of it." On the one side labor thinks it has got the power so that it can get what it wants, and on the other side the gentleman from Beverly thinks he is better off without any more legislation than he has in trying to settle the dispute.

Then comes the question of the gentleman from Newton (Mr. Anderson). What about the third party, what about the general public? Then, to complicate the situation, there comes the gentleman

from Barnstable (Mr. Bodfish), the one who always wants a broad constitutional provision. On more than three occasions has he risen here to simplify matters by wanting a broad constitutional provision. And our committee having reported this broad constitutional provision, that general power be given to the General Court, the gentleman from Barnstable (Mr. Bodfish) comes forward and complicates the whole situation by interjecting here a proposition which some think is compulsory arbitration and some think is not. Consequently, when we begin to discuss this resolution we are diverted by differences about strikes and compulsory arbitration.

There came before our committee the gentleman from Brookline, Mr. Walker, and another gentleman on Social Welfare, Mr. Wonson, Mr. Donovan and others. I neither dissented nor agreed with the report of the committee. Some labor men say we do not want this legislation because our labor-unions would not grow. I am here, a member of this Constitutional Convention, representing all the people, not any part of them. I am here for the common welfare, as I understand it. The question is: Can anything be done to improve the conditions of labor? Will this resolution be of any assistance?

I believe the Legislature should have this power. I am going to speak my own opinion. The legislative and executive committees of the Massachusetts State branch, the Boston Central Labor Union, Samuel Gompers and others have been heard. The question is: Shall we delegate to the Legislature the power to deal with the conditions of labor in this Commonwealth and to restrict the hours of labor? That is all there is to it. I say that is important enough to give it more consideration than it has now. What can be done to better conditions now existing? Cannot the whole people, represented in the Legislature, regulate or change the conditions that are causing trouble? How is trouble created? If there are economic conditions that ought not to continue, then the Legislature should have power to effect a change. This resolution practically gives to the Legislature full determination where now it has determination only by the exercise of the police power.

The discussion of the resolution was continued Wednesday, July 31.

Mr. Brown of Brockton: I rise at the present moment to hesitate about going forward. All inside the chamber I assume are with the proposition. There is no use talking to them. I want to talk to those who are against it and they are all on the outside. I think I should like to reserve what I want to say until I can get somebody whom I can convert. That is about the way I feel about it. There are not enough here to carry the resolution anyway, even if they all vote. I want to inquire whether there is any way by which those who are not here can be compelled to come in.

The President: The Chair knows no way by which members can be compelled to come in to listen to debate.

Mr. Brown: So far as the attitude of the American Federation of Labor is concerned, I see no authority here for any one to declare that he is speaking for organized labor. At the very best all he could express would be the opinions of the Executive Committee of the State Branch, and it might be questioned whether they were within their proper sphere. All matters that are before this Convention were

pending last fall. The State Branch of the American Federation of Labor met and considered what matters they wanted to come before this Convention. All matters that were before this Convention were before that Convention, including this matter, — including this matter in a more objectionable form so far as organized labor is concerned than it is now, — and not a word was said about it. All that they thought necessary to occupy their attention with was the initiative and referendum and the resolution on prohibition. These were pushed to the front in their Convention and they took position on them. That Convention apparently thought it had accomplished all that it cared to accomplish. Now, at this late hour, the legislative and executive committees come forward and declare that organized labor is opposed to this resolution. I deny their right and question their judgment. This measure as it stands here at the present moment provides:

> The General Court shall have power to regulate or restrict the hours of labor and to establish a minimum wage.

Well, now, why does the member in the first division (Mr. Dennis D. Driscoll) rise to tell us about "pure and simple" trade-unionists? Labor is not so simple as he would like to have it appear. The attitude of labor at the present time is: Elect your friends and defeat your enemies, — and has been for a number of years. Labor is in politics. What does labor come up here every year for except to improve the conditions of labor? What was the tour bill? What is the nine-hours-in-eleven bill? What is the one-day-in-seven bill? These measures but restrict the hours of labor. Opposition to this measure says they do not want the Legislature to have that power. Why do they not propose the converse of this proposition and come in with the phrase: "The Legislature shall have no authority to regulate or restrict the hours of labor or to deal with the minimum wage"? Where then would the Executive Committee of the State Branch be on such a proposition? In entirely a different position. This matter here ought not to be thrown overboard. We are getting too much in the habit here of throwing matters overboard. It is becoming a matter of form. The Convention passed this resolution to a second reading. It must have had merit in it or it would not have gone as far as that. It was debated on both sides; it was passed by a large majority. It was not opposed in any such narrow way as it is now. Read what they say in this circular. The circular does not apply to the resolution that I have just read; it does not touch it. The proposition to improve conditions and to deal with the conditions that surround labor and to restrict the hours of labor if necessary and to deal with the minimum wage if necessary, — all those are humanitarian measures. They are measures that are necessary if you ever are going to establish industrial peace and true democracy in this Commonwealth. Any right to strike that comes up for which my friend in the first division (Mr. Dennis D. Driscoll) contends so eloquently is not restricted or involved in this proposition. The Bodfish amendment is foreign to the purpose of the committee. It is exactly opposite to the purpose of the committee. The committee reported this resolution on several propositions that wanted to harmonize labor and capital. They urged that the Legislature might have power to get both sides together, and out of deliberation might come harmoniz-

ing conditions. I notice that the member in the first division is very insistent to give more power to the Board of Arbitration. How? The Legislature can delegate no more power than what has been delegated to it by the people. I question much if the Legislature can invest the Board of Arbitration with any more power than it has at the present time. Any compulsory feature must be absent from the powers of the Legislature. Otherwise so wise a man as the delegate from Wellesley (Mr. Pillsbury) would not propose it here in his resolution. The joint committees on Labor and the Judiciary sat together and considered certain resolutions. No labor man appeared against them. There was due notice. The Legislature is to exert, so far as it can, its good offices to harmonize. I hold that the member in the first division has read letters that do not apply to the resolution that I am talking about. This resolution does not "regulate hours of labor." That is eliminated. This resolution gives the Legislature power to regulate conditions, restrict hours and establish a minimum wage. It is remedial for labor, not oppressive for labor.

Mr. Dennis D. Driscoll of Boston: Is it not true that in the gentleman's presence the officers of the Massachusetts State Branch of the American Federation of Labor requested the delegates attending this Convention to assemble together at said meeting by request of the Executive Board of the Massachusetts State Branch of the American Federation of Labor and the legislative committee jointly requested every man carrying a union card to bring about the defeat of said subject in the vote at this Convention?

Mr. Brown: It is true that they did call a meeting. It is equally true that some labor delegates were out of this Convention upstairs two or three hours debating there instead of in here. It is equally true that labor there was split in the middle on this resolution. The gentleman who asks the question does not have his colleagues in the first division (Mr. Harriman and Mr. Whitehead and Mr. Donovan), he does not have his colleague in the second division (Mr. Ross of New Bedford) and he does not have this delegate who is talking. I do carry a union card and I served 25 years in the labor movement trying to humanize by harmonizing conflicting conditions. In a well-governed republic men should not be obliged to organize and pay dues in order to get their natural rights. The law should protect them against encroachments and this resolution gives the Legislature power to create such conditions. Labor is not responsible for conditions which perhaps are open to criticisms made. Labor is seeking only to defend itself against attacks which are constant. Whatever takes place takes place because conditions incited labor to do just what it is doing. Again I say, in a well-organized republic there should be no necessity to act as they are obliged to act to get their just wage and conditions. Privileges given to capital, great privileges which I will not go into at the present time, forced labor to organize and is responsible for all that has happened or will happen. One man standing alone is powerless to make an advantageous individual contract, and so many men and women combine together for collective bargaining. That creates two organized camps. What are you going to do about it? Where does the Legislature come in? Do you say that you will not authorize the Legislature to create just legal conditions? Strikes come because of conditions; they are

fundamental conditions. They are either right or wrong. The Legislature can educate; it can bring the two camps together; it can show whether conditions are humanitarian or otherwise. It is true that the State Branch committee, acting I know not why, — I do not know that they were delegated by the State Branch Convention to come down here and be overwise on this resolution. They are as liable to make mistakes as anybody. Why does the gentleman talk about labor not going into politics? What does it do? Walks up here and wants to carry measures through the Legislature, and if it cannot carry them through takes the record of every member and sends it up and down the State, and then he says: "Labor is not in politics"! Indeed you are in politics. What are you here for? You are in politics up to your head and you ought to be, and so ought every other man. Here is the place to have it decided. We have no cause that will not trust itself to a representative body of the people; we champion no cause that is afraid of itself and does not dare go before a representation of the people. I hold that the cause of labor is so just and so essential to the common welfare that to state it as it ought to be stated is to command the attention of all representatives of the people. It has received such commendation and we want to go forward on the same line. Labor should have legislation on the conditions under which it labors. These conditions should be investigated. I hope the members will lend their influence and stand upon the report of this committee just to the extent that the Legislature, if there is any question about it, shall have power "to regulate the conditions of labor." Do you not believe in that? Do you not want humanitarian conditions for men and women — men as well as women? We might well commence to look out for the fathers. "The General Court shall have the power to regulate the conditions of labor and restrict the hours thereof." What for? To conserve the health of the men and the women [reading]: "and to establish a minimum wage."

Mr. Bodfish of Barnstable: The gentleman says that the purpose of this proposition to limit hours is for the health of the workers. I should like to ask if he does not know that the Legislature now, under the police power, can regulate hours of labor for the health of the people.

Mr. Brown: I know that I was on a committee which was joined also by a committee on Judicial Procedure or whatever you call it, and that out of that committee, — on which, by the way, there are lawyers, — there came this report which the lawyers drafted. What does the gentleman want to infer? That they were giving useless work to this Convention, that there was no necessity for it? Surely not. Some doubt must arise here as to what the Legislature can do, and there is a doubt, — there is a doubt, there is no question about it, as to what the Legislature may do. This removes any doubt. It makes the representatives of the people in this Legislature a grand peace-making body democratizing industry, holding the power between oppression and liberty; and are we going to be swerved either by capital or labor to deny this power to the Legislature? It is the common welfare we are after here. I deny the right of any committee to interfere with my oath of office here. Conscience leads me and I follow where it leads. I have stood and shall stand for what I think is for the good of the common people. It is true that labor met and

divided, and there are I think in this Convention as many on one side as there are on the other on this resolution, if they stand by the convictions that they had in that meeting. Minimum wage? Labor organizations have taxed their members and brought them to the Legislature to sustain this minimum wage. Labor has fought every attempt to amalgamate that Minimum Wage Commission with any other commission. And now do they desire to deny the power of the Legislature to establish the minimum wage? Where is the consistency? I am willing to be judged by what I am saying here. Pass this resolution to a third reading. Give labor its hearing, give capital its hearing and let the Legislature decide what is for the honor and the peace of this Commonwealth, and you will have acted wisely. [Applause.]

Mr. Dutch of Winchester: Again we find the issues somewhat confused under this docket heading. When this proposition was before the Convention about a month ago there was no open opposition in the Convention to the proposition of the minimum wage except by the delegate from Wellesley (Mr. Pillsbury) in a very short speech. So far as I have followed the debate this time there has been no opposition to the minimum wage proposition as confined to women and minors, as is the present Massachusetts statute. And yet while there is no opposition to the proposition as thus confined, there seems to me to be considerable danger that that narrow proposition will suffer because we have it mixed up here to a certain extent with other and more controversial matters in the labor question.

There has been some circularizing of the Convention against the minimum wage. It has been charged that the minimum wage proposition is a most socialistic proposition. I think perhaps my attitude in this Convention to date, as expressed on the record, is sufficient to indicate that I believe that charge is absolutely without basis. I have no use for socialistic propaganda. I have expressed that opinion on several occasions. On the other hand, I believe that we shall find that minimum wage legislation has in it a considerable ground for opposition to socialistic propaganda. It is a means by which, by proper standardizing and equalizing, we can get rid of inequalities and matters of injustice and start the individual in such a way that he properly can be told to rely upon his individual initiative to get him further and not to rely on the State for his old age pension and all that sort of thing which we have voted down.

As I remarked before when this matter came up, there has been some doubt as to the constitutionality of the present law, because the Supreme Judicial Court has held the case under advisement since last December. Most of us believe that the law will be upheld and that they will be glad to render a favorable decision on the present law, which is not a compulsory law. As I pointed out before, we are the only State, except one, that endeavors to work without a compulsory law. And I believe it will be the manufacturers, it will be the employers, who will be the first to seek a compulsory law. There has been a good deal of misunderstanding. I am indebted to my classmate, Mr. Lunt, who is counsel for some who oppose the minimum wage and who circularized the Convention, for very kindly sending me a copy of a letter which he received from the employers' representative on the commission in the State of Washington correspond-

ing to the Minimum Wage Commission. That man representing the employers tells Mr. Lunt that while at first the employers were suspicious and were opposed, the bulk of the employers of that State have come to favor that legislation, — and it is compulsory there, — have come to favor it on the very ground that I pointed out a month ago; that is, because it protects the bulk of them. As he says: "It is good business protection, as it eliminates the sweat-shop and other unscrupulous competition." And again he says:

> There are still some manufacturers who are opposed, but as I said before, the majority are now satisfied that the law in its operation is fair and believe that it affords protection against unreasonable competition.

So I believe it is short-sighted for the employers to oppose a provision which will make it clear beyond peradventure that the Legislature can make the present policy of the Commonwealth one really to be enforced by a compulsory law.

The Massachusetts method of operating the minimum wage is something different from that in other States, and in that point of difference it has had the approval of eminent economists who have opposed the operation in some other places. Professor Taussig has been quoted in opposition to certain minimum wage legislation, but I am credibly informed that he heartily approves the form that it has in Massachusetts and the method in which it has been operated in this State. There never has been a representative of the public, I am told, on the Minimum Wage Board, the board created to recommend minimum rates of wages, — there never has been a representative of the public who has not come through with a hearty belief in the good operation of our law. We never have had a petition by an employer to revise a rate which has been established. We never have had an application to court by an employer under section 6 of the act, which permits an employer to go to court and get a review if he believes that the rate established will prevent him from making a reasonable profit, — "reasonable profit," the words of the act. There never has been such an application. As I before stated, while the working of the law was held up in some cases and could be held up in any case by an employer resorting to court pending the Supreme Judicial Court's decision, the commission has been able to go ahead and do business through the coöperation of the employers, getting numerous unanimous reports and the best of coöperation. So that we have a situation unlike that which I think many believe to exist.

We must remember that this is not a new thing. It is not like a non-contributory insurance proposition. This method has been established by the Legislature of Massachusetts since the passage of the legislation in 1912. It is not a new proposition here. I am entirely aware that, whether for proper reasons or not, the Minimum Wage Commission has not enjoyed the full confidence of the Legislature or of the employers of Massachusetts in general. That Commission consists of a representative of labor, — employees, — a direct statutory representative of employers, and a third member to represent the public at large. And I may say, as I have said before, that, having been appointed recently a member of that Commission, without obligation to anybody, as one who never sought the position and therefore is untrammeled, I am going to endeavor to make it my business that so far as I am concerned the work of that Commission shall be so handled that

whereas, whether rightly or wrongly, it previously has not had that confidence, it shall get, through proper information and careful operation, the confidence of you gentlemen, the confidence of the legislative body and that confidence of the employers of Massachusetts which I believe the board itself deserves. And therefore in this present situation on this docket number, whereas there seems to be great conflict on other points involved here except one, I believe that one should be saved. That one can be saved in the form in which the amendment of Mr. Balch of Boston puts it. The amendment of Mr. Balch of Boston substitutes for the whole business here, for the original proposition and for compulsory arbitration, — substitutes for them a simple proposal making clear the constitutionality of what has been the policy of the State; namely, that you may provide for establishing minimum wages for women and minors. So I trust that at least that simple proposition may be substituted and saved, whatever may be your opinions on these other matters.

Mr. Gaylord of South Hadley: I believe this question has been discussed thoroughly in all its phases, and I believe the members of this Convention are prepared to vote on it now, and it seems to me it is time that the previous question should be moved. Therefore I move the previous question.

Mr. Sawyer of Ware: I want to say very briefly in answer to the gentleman who has just spoken (Mr. Dutch) that the proposition of the social welfare of women and minors is one proposition. We cannot separate the minimum wage from the limiting of the hours of labor. The two things go together. If we are going to put in the Constitution an article empowering the Legislature to deal with the welfare of women and minors, why, let us go the whole distance and give the women and minors protection in the hours of labor, conditions of labor, as well as the conditions of wages. It is quite absurd for us to scuttle around in any social welfare legislation in this matter and leave only the minimum wage proposition. I hope that the amendment that I moved yesterday may prevail and be substituted for the original resolution.

Mr. Donovan of Springfield: I trust that the previous question will not be ordered at this time. It seems to me that this is one of the most important measures now before us. Most other matters of great importance have been disposed of, and in my estimation this will call forth quite a bit of discussion that ought to be heard by this Convention. For my part I should like to express myself at some length upon this matter, but if the previous question is ordered there will be no such opportunity.

The main question was ordered.

Mr. Avery of Holyoke: I think we have done right in ordering the main question, but this is one of the most important questions we have had, because it deals with the "National minimum." If anybody has been in the streets of London, Glasgow or Edinburgh and seen those stunted specimens of humanity coming along the street he will recognize one reason why Great Britain has fallen down in part in this war, because the real men of Great Britain have had to do the fighting for those poor specimens of humanity that they let grow up there.

Now, so long as our lives go along happily we do not seem to think that the lives of those unfortunate people affect us, but they do. They lower the social level, they strike at your home and they strike at my home, and this question here to-day affects that question of the National minimum of human life. The British Labour Party, in its four pillars that it proposes to put into the National House on the Street of To-morrow, puts this first, — the universal enforcement of the National minimum. This is an attempt to give the Legislature of Massachusetts power in this State to do something along this line. The conservatives here say that labor and capital can do this themselves. Some of our labor friends say that labor can look out for itself. But labor is looking out for itself. The capitalist is looking out for himself, all in a fair way and in a very broad-minded way. But cannot the State look out for all the people better than any of these special interests, and should not the Legislature, — and we are not legislating here, we are giving the Legislature power, — should not the Legislature have power to pass some kind of compulsory act which will say, after this war is over, when the labor market may be flooded, when the relations between man labor and woman labor will be all confused, that there is a minimum of comfort, of life, of well-being, that human life should not go below? And that is what is wrapped up in this proposition. Well does this document of the British Labour Party say:

> The first principle of the Labour Party, — in significant contrast with those of the Capitalist System, whether expressed by the Liberal or by the Conservative Party, — is the securing to every member of the community, in good times and bad alike (and not only to the strong and able, the well-born or the fortunate), of all the requisites of healthy life and worthy citizenship.

Now, there is a good deal more wrapped up in this proposition than may appear. It is the National minimum, the standard of human living, and our Legislature does need more power than it has at the present time. [Applause.]

Mr. Walker of Brookline: There are a couple of amendments on the calendar under my name which I have not moved because I felt that it was useless to take up the time of this Convention in moving and advocating those amendments. I will say that my amendments, if both passed, would amount to the same thing as the adoption of the amendment offered by the committee on Form and Phraseology. In that amendment both of my amendments are incorporated.

I am surprised at the reactionary attitude of some of the labor men in this Convention on this proposition. It is discouraging to see the labor men and the obstructionists in the Convention joining together to kill this obviously, — what seems to me obviously, — wise proposition. But nevertheless they have combined, and I suppose it is useless to discuss the matter further. I wish simply to go on record as saying that I believe it is essential to the welfare of all the people in the Commonwealth of Massachusetts that this resolution in the form proposed by the Committee on Form and Phraseology be passed by this Convention. Now if the labor men wish to take the responsibility of killing it, they may do so.

I also cannot refrain from saying that I do not believe we are getting the best that we ought to get out of the conservative members of this Convention. Too many very able men here are content to be simply

obstructionists. They have no constructive ideas to offer to this Convention, many of them, — I do not mean all of them. We have got some of the best minds in Massachusetts here, and what do they do? Whenever an attempt is made to give necessary power to the Governor to make him a real Governor and the head of the administration, they say: "No, we may have a demagogue for Governor and we can't give him any power." When we want to give power to the Legislature to deal with questions of taxation, questions of the social welfare, they say: "No, the Legislature is not to be trusted; don't give it any power. If you give it power to do good it will do ill." That is their attitude. If we attempt to give the people themselves power over the Legislature, power to determine the laws under which they shall live, they again say: "No, the people will be led by demagogues; no power should be given to the people." Such is the attitude of many of the ablest men in Massachusetts who sit in this Convention around me. They are not helping, they are obstructing.

Now let me say that, in my judgment, the resolution as submitted by the committee on Form and Phraseology should be adopted. If that is not done the next best proposition is the proposition offered by the gentleman from Ware (Mr. Sawyer), who proposes that the Legislature may regulate the hours and the wages of women and children. That is all. But if you cannot go even as far as that, then do at least adopt the proposition offered by the gentleman from Boston, Mr. Balch, which says that you may establish a minimum wage for women and children, in accordance with the policy already adopted in Massachusetts.

It has been said that our minimum wage law is non-compulsory. That is not quite true. There is one form of compulsion that the Minimum Wage Commission does use, and it is an improper form, in my judgment. What do they do? They black-list the manufacturers who do not obey their orders. They black-list them, they boycott them or hold them up for rebuke. That is what they do. Now I urge you to provide that the General Court may empower the Minimum Wage Board to impose a proper, reasonable penalty to enforce their orders, and we have at least done something, but do not leave it in such a shape that the only way that the Minimum Wage Board can act is through the boycott and the black-list. That is what it amounts to to-day. So I ask this Convention, especially the conservative men, to think for a moment and see if there is not something here that ought to be done. I trust that the Convention will rise above both labor organizations and the obstructionists and pass the resolution recommended by the committee on Form and Phraseology.

Mr. Donovan of Springfield: I want to take the occasion to state to the Convention that a difference of opinion exists between representatives of the labor movement of Massachusetts. The labor member from Boston has expressed one view, and I do not want the members of this Convention to get the impression that the labor organizations are unanimously in opposition to giving power to the General Court to regulate the hours of labor and to establish a minimum wage.

The opposition to the amendment expressed here is probably the majority opinion of the organized labor movement of America. Personally, I do not subscribe to that view. I represent a different school

of thought in the labor movement, and it is the position held by a great many of the members of organized labor in this country, and particularly by the organization of which I am a member; that is, the International Association of Machinists. Our position is more nearly represented politically by the British Labour Party, reference to which has been made by the gentleman in the second division (Mr. Avery). The reconstruction program of the British Labour Party expresses in a general way what I think is the best thought upon this matter from labor's viewpoint. I will read a few short extracts from some of the progressive magazines to indicate what American liberals think of this labor program.

"The Public" says:

> The program of the British Labour Party has electrified liberal America as the speeches of President Wilson have electrified liberal Europe.

"The New Republic":

> Probably the most mature and carefully formulated program ever put forth by a responsible political party. It is the result of an exhaustive criticism of the whole English experience in social legislation during the past four generations.

"The World To-morrow":

> In this report, British labor appears to assume definite leadership in the creation of the political and economic framework of the new world.

One more, from "The Nation":

> The historical significance of this document appears to be that it presages a new stage in the development of the democratic ideal. Perhaps it is the beginning of the long-delayed economic sequel of the achievement of the French Revolution, in which case it may very well turn out to be the Magna Carta of the new democracy.

And this is what the British Labour Party states as its program in regard to the establishment of a National minimum:

> Thus it is that the Labour Party to-day stands for the universal application of the Policy of the National Minimum, . . . aiming at the enforcement of at least the prescribed Minimum of Leisure, Health, Education, and Subsistence.

That shows that there is no unanimity of opinion in the labor movement of the world on this matter.

I personally take the view that we should give to the Legislature power and authority to act upon these matters, and, if the legislation proposed be considered contrary to the interest of the labor movement, organized labor should oppose such legislation; but I believe that power should be given to the Legislature, and for that reason I am going to support the amendment presented by the committee on Form and Phraseology. If that does not carry, I shall take what I consider the next best, which is the amendment offered by the gentleman from Ware (Mr. Sawyer).

If I have sufficient time, I should like to touch a bit upon compulsory arbitration.

The amendment offered by the gentleman in the fourth division (Mr. Bodfish), which would provide compulsory arbitration, if that were necessary, I would oppose, not because the amendment as drawn would mean necessarily that compulsory arbitration shall be mandatory, but that it would be dangerous, in my estimation, to give any sympathy to a proposition that might result in compulsory arbitration. I feel that the experience that we have had with the existing State

Board of Conciliation and Arbitration, and particularly its attitude in the General Electric strike at Lynn, makes one who is devoted to the best interests of the working people much opposed to giving power to any such body. I do not mean that a board might not be formed that would be free from the evil that exists in the State Board of Conciliation and Arbitration, but the unfairness of the attitude of that Board in the General Electric strike, as shown by its proclamation issued in yesterday's paper, inclines me more than ever to the belief that, by all means, we must keep out of the hands of such boards the power to arbitrate industrial disputes and to compel the workers to submit to its award.

Mr. LUMMUS of Lynn: In the year 1905, in the case of Lochner *v.* New York, 198 U. S. 45, a bare majority of the Supreme Court of the United States decided that, under the Federal Constitution, a man has a right, a constitutional right, to work in any occupation not involving extraordinary danger to health, just as many hours as he pleases; that his employer has a right to employ the man as many hours as he can; and that no Legislature has a right to interfere.

At that time, you will remember what a chorus of denunciation met that decision. It was denounced as reactionary, as capitalistic, as contrary to the interests of labor, as tending to reduce workmen to industrial slavery; and I do not remember that, at the time, that decision was supported by any representatives of organized labor. On the contrary, my memory is that they joined unanimously in the chorus of protest, and it was prophesied freely that that decision could not stand, and soon would be overruled.

I understand that the purpose of the resolution introduced here, which now is before the Convention, is to insure that, now that Lochner *v.* New York practically has been overruled by the Supreme Court of the United States in Bunting *v.* Orgeon, 243 U. S. 426, so that no Federal constitutional provision now interferes with the regulation of these matters by the Legislature, there shall be in the Massachusetts Constitution nothing that will prevent the Legislature from acting.

It now appears that in the opinion of some of the representatives of organized labor the decision in Lochner *v.* New York was not capitalistic, was not reactionary, but, on the contrary, was in the interest of labor and in the interest of progress. I confess that my mind has been somewhat confused by this sudden turning of the wheel, and I should like to inquire if any gentleman present can show just why that which was reactionary and capitalistic in 1905 has now become a labor doctrine.

Mr. LOWELL of Newton: I trust that this Convention will pass the resolution in the form in which it has come from the committee on Form and Phraseology. I am very glad to see that not all members of labor organizations are against that proposition.

What is the proposition, roughly? Merely that the Legislature should have control over this whole situation of the relations between employer and employee. Now, some one must have control of it, — some public authority. It seems to me that, in this stage of the world, we are not ready to say that any class or classes of the community should be able to exercise their own sweet will with no one to say them nay. And so this proposition merely says that the Legislature may regulate the conditions of labor and restrict the hours and estab-

lish a minimum wage. In other words, it merely says the Legislature shall have power to control the situation.

In my opinion, that is right. We should give that power to the Legislature, and make it certain by putting it into our Constitution so that there shall be no question but that the Legislature has the power to do this thing. One important reason for so doing is that no one knows, no one can foretell, the exact form in which disputes may come up within the next few years. The world is changing rapidly, and the situation may change entirely around from disputes as to length of hours to disputes as to payment, and so on. But the public authority, the Legislature, it seems to me, should have the power to do that thing. If we are to have efficient government in this State, it seems to me we must have in this instance a branch of government with power to control the situation. So I trust that every member of this Convention will vote for the measure as it comes from the committee on Form and Phraseology.

Just a word about the amendment offered by the gentleman from Barnstable (Mr. Bodfish), which has been taken generally to mean compulsory arbitration.

If the gentlemen will take the trouble to read a very able book on "Labor Legislation," written by Dr. Commons and by Mr. Andrews, they will find that the compulsory part of these systems throughout the world has not been the successful part. Such success as has attended the systems throughout the world has arisen from the fact that the respective governments have gone voluntarily into this thing. Compulsion has not succeeded.

In Australia, where the system of compulsion is most highly developed, they have within the last year and during these times of war had a tie-up of all the shipping industries of the entire Commonwealth, and very serious trouble was raised because these people would not abide, — and it is a labor Commonwealth; everybody is labor in Australia; the whole Commonwealth is governed by what we should call the "labor men", — the laborers would not stand by the compulsory arbitration principle which they themselves put in the system. So that in Australia, which is pointed to as the place where everything is happy on account of compulsory arbitration largely, the thing has not been settled.

Mr. Shea of Dalton: I should like to ask the gentleman in charge (Mr. Lowell) if the clause "to regulate the conditions of labor" would give power to the Legislature to provide for compulsory arbitration. That is, what is the meaning of that clause "to regulate the conditions of labor"?

Mr. Lowell: As I understand it, as I interpret it, that means merely regulating the conditions under which the laborers work, because there comes next the provision about minimum wage, and that means the wages. That special clause does not add anything to the power which the Legislature now has to pass laws requiring good ventilation in factories, or fresh water, or removal of dust, and things of that kind. I do not interpret that phrase myself as meaning anything regarding arbitration, compulsory or otherwise.

Mr. Bodfish of Barnstable: I should like to ask the delegate if he objects, here in Massachusetts, to providing for the adjudication of controversies between capital and labor, between organized capital

and organized labor, which they themselves cannot settle without cessation of work?

Mr. LOWELL: Personally, I am entirely against the Australian system of compulsory arbitration. From what little I know of it, I think that the Canadian system, which has been adopted in Colorado, has a great deal to recommend it. But it is my opinion that that is clearly constitutional now.

I merely wish to say, in closing, that it seems to me that the Legislature should have this thing in control. I am not willing to have the power of the State over this great group of labor and capital pass into private hands.

Mr. WALKER of Brookline: As has been suggested here, there are really two separate propositions contained in the resolution as recommended by the committee on Form and Phraseology. It seems to me that those two propositions can be separated, and I therefore ask that they be separated before the vote is taken.

The PRESIDENT: Mr. Walker of Brookline asks for a division of the question. The Chair is of opinion that there are two questions and will divide the question. The first question will be whether or not the words "to regulate the conditions of labor and restrict the hours thereof" shall remain as a part of the resolution. The second question will be whether or not the words "to establish a minimum wage" shall remain as a part of the resolution. The Chair asks the members to refer to Convention document No. 390, where the proposition is printed at the bottom of the first page — Convention document No. 390, the last paragraph.

The first question before the Convention is, Shall the words "to regulate the conditions of labor and restrict the hours thereof" remain as a part of the resolution?

The proposition prevailed, by a vote of 92 to 17.

The PRESIDENT: On this question 92 have voted in the affirmative, 17 in the negative and the words remain as a part of the resolution. The question is, Shall the words "to establish a minimum wage" remain as a part of the resolution?

The proposition prevailed.

The amendment moved by Mr. Bodfish of Barnstable was rejected.

The amendment moved by Mr. Sawyer of Ware was rejected.

The amendment moved by Mr. Balch of Boston was rejected.

The resolution (No. 390) was passed to be engrossed Wednesday, July 31, by a vote of 100 to 38.

It was considered again by the Convention Tuesday, August 13, the question being on submitting it to the people.

Mr. LORING of Beverly: In this measure the title reported by our committee, and as it now stands, is misleading. There was an amendment which added the minimum wage, and that should appear in the title, in order that when it comes to the ballot the title shall not mislead the voters. I have suggested a title which I have handed to the Clerk, and I would ask unanimous consent that the resolution may be amended as to its title.

The title was amended as suggested.

Mr. Dennis D. Driscoll of Boston: I am not going to take up much time of the Convention. I said my little piece against it. No matter what the opposition has said of my speaking as a labor man or at the request of the officers of organized labor of the city or State, I want to call the attention of the delegates to this: The reading of the resolution as it will go before the people will be as follows:

The General Court shall have the power to regulate the conditions of labor and restrict the hours thereof, and to establish a minimum wage.

I am suspicious of the word "conditions" according to the way the measure is now put together. As I said, why should I take up all the valuable time of the delegates in this Convention and argue on a question that I spoke on the other day, but I am going to read this letter. It sustains the talk that I made a few days ago. It is true that all my life I have been loyal to the labor movement. I pray to die that way, and I never have brought any legislation like this before your Legislature or your Constitutional Convention and never will. The letter is on the official paper of the Massachusetts State Branch of the American Federation of Labor.

Massachusetts State Branch American Federation of Labor,
Boston, Mass., August 6, 1918.

Mr. President and Delegates to the Constitutional Convention:

The Executive Board and Legislative Committee of the State Branch of the American Federation of Labor, at a meeting held July 23d, voted unanimously against document No. 336, now before the Convention as document No. 390.

Notwithstanding the attitude of some members of the Convention, we still maintain that position, and we respectfully request all delegates to the Convention to vote NO on the enactment clause.

Very truly yours,
Martin T. Joyce, *Secretary*,
Massachusetts Branch A. F. of L.

Legislative Committee.
Charles J. Hodsdon, *Chairman.*
John Macdougall, *Secretary.*
Henry Sterling.

At the meeting of the Boston Central Labor Union I was present when this question was brought before them and explained to them, and as I said there I say now. I refused to make any recommendations. "It is now in your hands. You represent the local unions of this city, and I have nothing to say against any man who disagrees with me." It was the unanimous vote of every lady and gentleman sitting in that meeting to oppose this and ask for its defeat. I did not ask the Central Labor Union for a vote of thanks for my stand on the question. It was at the request of the officers of organized labor, — and I loyally and all my life have tried to fill requests which are honest and aboveboard, — that I came before the delegates to this Convention, asking, in accordance with their request, for the defeat of such legislation. It reaches further than the men who indorse the question think, and when it comes to the question of submitting it to the people, organized labor of the State rallies to bring about the defeat of such enactment. I am not going into its fine points. Those who believe in it must know there is some good in it some place. I asked the delegates at the last meeting for a roll-call, so that we could all go on record and could carry on that slogan which every man preached and which many of you men who sit here, and who are ex-members of the House of Rep-

resentatives and of the State Senate, have spoken to me about. The labor movement should treat every man alike, whether he carries a union card or not, and the action of legislation should not be only in the interest of the organized wage-earner throughout this Commonwealth.

It is about adjournment time. I hope that the delegates to this Convention will not be in any haste in voting on this matter now, at 4.30, a minute or two before adjournment in accordance with the rules of the Convention, but that all the delegates who are opposed to it, who profess to have the interests of the workers of this Commonwealth at heart, will be here to-morrow morning at 10.30, those who are in favor likewise, and show to the people of this Commonwealth what their position is. True, the representatives of the organized labor movement of this State make this request. They have that right. They are the executive board, and between convention and convention they transact all business. In the day of my youth I was led to fight the best friend I ever had in my life for not carrying out the wishes of the organization. Now I stand here for the same reason and make a personal appeal to you to give me a roll-call to test the friends of the labor movement of this Commonwealth. Let us treat those who oppose us as I treated my friend from boyhood, who had grown up with me and went against the request of the organized labor movement. I am making that statement to you plainly, and I am holding nothing back, but am showing my reasons for asking for a roll-call. I am a delegate to the next convention, I have the courage of my convictions, and I should like to read to the people of this Commonwealth the names, as shown by the roll-call, of those who refused to grant the request made by the officers of organized labor of this Commonwealth and which they think is in the best interest of the organized wage-earners. I trust that the delegates to this Convention will remember the request, and I am going to take time to-morrow morning to get it into their hands again.

The debate was resumed Wednesday, August 14.

Mr. Powers of Newton: I fail to comprehend why a constitutional amendment is necessary to confer upon the Legislature authority to regulate the hours of labor and fix a minimum wage. If we have not the right to do it under the police power of the State at the present time, we certainly will not have the legal right to do it after the adoption of this amendment. Under the police power of the State we have a perfect right to regulate the hours of labor so far as they are necessary for the health of the employee. This we have been doing for years, regulating the hours of labor of women and children. Other States, like Pennsylvania, have regulated the hours of labor of minors. If we adopt this amendment we still shall be under the restriction of whether it is repugnant to the fourteenth amendment of the Federal Constitution. If it be true that hours of labor ought to be regulated for men in all employments on the ground of health, then we have the right to do it to-day.

The leading case upon this subject, and a somewhat recent case, is what is known as the Lockner case, which came up in New York under a statute prohibiting the employment of men in bakeries for more than sixty hours a week. That statute was sustained by the Court of Ap-

peals in New York. It then went up to the United States Supreme Court, and that Court held that it was repugnant to the fourteenth amendment to the Constitution. I desire to take just one moment to read an extract from the opinion of the United States Supreme Court, which appears in 198 U. S. Reports, page 45. The opinion was rendered by Justice Peckham. The Court says:

> The statute necessarily interferes with the right of contract between the employer and employees concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is a part of the liberty of the individual protected by the fourteenth amendment of the Federal Constitution. Under that provision no State can deprive any person of life, liberty or property without due process of law. The right to purchase or sell labor is a part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers existing in the sovereignty of each State in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. It is manifest to us that the limitation of the hours of labor, as provided for in this section of the statute under which the indictment was found and the plaintiff in error convicted, has no such direct relation to and no such substantial effect upon the health of the employee as to justify us in regarding the section as really a health law.

Now, we may pass this amendment, but we add nothing to the authority which the Legislature has to-day. In other words, we may exercise that authority to-day without any amendment if we have the right to exercise it. If we have not the right to exercise it as a reasonable police regulation, then we would not have the right to exercise it by reason of the terms of a constitutional amendment. And what is true of the hours of labor is true also of the minimum wage, because the idea of the minimum wage is that no person shall work for a sum less than is necessary to maintain life and health. It seems to me that this Convention would make a great mistake to put into the Constitution a provision which in no way adds even in the slightest degree to the authority which the Legislature may exercise under the police power at the present time.

Mr. Chase of Lynn: Notwithstanding the heat of yesterday this Convention did quite a lot of work. As I look over the calendar I see that nearly all of these measures have been thoroughly debated, and I believe short speeches on all of these subjects from the members who want to talk will be all that is necessary. If this is done, I believe that this Convention can wind up its work this week. I move the previous question.

Mr. Lowell of Newton: I merely want to say one word on this measure before us. I think every one here knows my attitude on it.

The gentleman from Newton (Mr. Powers) has quoted a case in the Supreme Court. Unfortunately for the gentleman, that case was overruled by Bunting *v.* Oregon last year. Now, this is a question of in whom shall lodge the power to take care of the relation between employers and employees. It is a doubtful question now whether the Legislature has that power here in Massachusetts. The latest case in Washington would uphold, as far as the Constitution of the Supreme Court goes, such legislation if passed here, but it is a doubtful question whether such legislation is valid under our own Constitution. It is merely a question of who shall rule. Shall the labor organizations and the capitalists together? Shall they fight it out with no one over them, or shall the people of Massachusetts through their Legislature have the power to tell them what they shall do? If you wish the people

of Massachusetts to have this power, vote for this amendment to the Constitution. If you wish labor organizations or labor men and capitalists to have that power, vote against it.

The main question was ordered.

Mr. LORING of Beverly: I am so unfortunately constituted that an ounce of personal experience is worth more to me than a pound of theory. I went to Kentucky some years ago to look at some seams of coal, having no idea that I was going to do anything more than take a pleasant excursion. These seams of coal were thin seams, as they call them. They were about three feet thick. As a general rule it pays to mine a thick seam of coal, because you do all your digging through pay dirt; that is to say, when you dig your galleries and when you make your chambers you take out coal that you sell. When you mine a thin seam you take out the coal that you sell, but you have to take out a great deal of the country rock, and a great deal of dirt you cannot sell, and therefore it is much more expensive.

But I was fascinated with this seam, which cropped out of the side of the hill forty feet above the bottom of the valley, although I looked round on the adjacent mines, and all of them were struggling for an existence. There was with me there a gentleman from Connellsville, who was up in the most scientific way of mining coal and getting out coal, and between us we were enthusiastic enough to believe that if we mined by electricity instead of by hand power and by mules we could mine those thin seams to advantage; and having a son who did not take to the law but did take to working with men, I went into that scheme to mine that coal. We spent a great deal of money in making this a first-class modern mine, the only one in the region. There were a number of other mines on that stream at that time, and we had just got to producing well when the war came along and the price of coal was fixed by the coal operator, Mr. Peabody, and Mr. Lane, representing the government, at $3.50 a ton. Our contract was at $1.50 a ton, so it did not affect us very much anyway. Still, that was the price that was fixed, $3.50 a ton. Then the Secretary of War and the Secretary of the Navy stepped in and undid that bargain, and with the assistance of a professor from a college in this State they fixed the price at $2 a ton. The immediate result of that was that eleven mines right in my neighborhood, that were all producing coal, shut down. Why? Simply because they could not get out the coal at the price that was fixed. The theory was that the miners who were engaged in those small mines would go to the big mines, where the coal could be got out cheaply; but they did not do it, they wanted to stay at home, where they had lived all their lives, and the result was the deplorable shortage of coal, from which we all suffered last winter.

That is the long and short of it, and that is my personal experience in price fixing. It was an object lesson to me. It did not affect me one way or the other. Our mines could make lots of money at $2 a ton. We did not care, but it was all those little fellows who were working on that thin seam in the old-fashioned way who could not do it.

Now, that is just on all fours with your minimum wage. The gentleman from Winchester (Mr. Dutch), who is on the Minimum Wage Board, says that if an industry cannot pay the minimum wage

that is theoretically fixed, then that industry can get off the face of the earth and clear out; it is not wanted. I tell you, gentlemen, that is what brings on these crises. When you fix a price for an article at which it cannot be produced, and when it is a vital thing, like coal, then it does get off the face of the earth and you go cold all the winter.

What the gentleman from Newton (Mr. Powers) has said is very true, that this act, so far as regulating the hours of labor and the conditions under which they are performed, does not amount to anything, because the State now, under its police power, has ample authority to take care of every sort of condition of labor, or the various hours of labor which are deleterious to the working people of the Commonwealth. If they are not deleterious to the working people of the Commonwealth, then the Legislature ought not to interfere with them. If they are deleterious to the working people of the Commonwealth, why, then the Legislature has ample power now to go in and do what is necessary in the premises. So that to my mind it leaves this question hanging wholly on the question of the minimum wage; and to my mind the fixing of prices, while it may be useful in times of war, in times of peace is a mistaken policy, and it is better to allow these matters to adjust themselves by reasonable trade laws, which, after all, cannot be done away with by any enactment of the Legislature.

Mr. Powers: In reply to my colleague from Newton (Mr. Lowell), with reference to the Oregon case, I want to call attention to the head note. At the head of the opinion of the court it says:

> Upon the question whether a 10-hour law is necessary or useful for the preservation of the health of employees in mills, factories and manufacturing establishments, the court may accept the judgment of the State Legislature and State Supreme Court where the record contains no facts to support the contrary contention.

In other words, the Oregon case holds that in certain employments where health is affected, and where there does not appear anything to show that the exercise of police power is unreasonable, the decision of the Supreme Court of the State shall stand. That case in no way refers to the Lockner case, which I quoted this morning, in no way overrules it, but, on the other hand, it carries out the contention which I made this morning, and that is that under the police power of the State we may go just as far as we can go under the terms of any constitutional amendment.

Mr. Brown of Brockton: It is strange that we should take a matter reported from a committee, and waste hours in debating it, spend the State's money in printing documents, only to find when it reaches the final stage that because some fine legal mind rises here and tells you that it is unnecessary, the matter is killed. Why was it discovered at this last hour? We had the same performance the other day on the homestead resolution; finally it was narrowed down to a constitutional principle, and then after it was so narrowed it was defeated because it added nothing to the present authority. I think that is not to the credit of the Convention. If it be true that the Legislature has this power, and no additional power is granted, then why was it reported? If the Legislature is given certain powers clearly, without question, under the Constitution, then they may experiment. Any action the Legislature might take would not be final. If they make a mistake, as the gentleman from Beverly (Mr. Loring) says, they

could try again; but shall we do nothing? Shall we not at least try? If we do everything that we can do have we not fulfilled our duty, and should we do less when we place the whole matter with the Legislature with power to act? It says to the Legislature: "Take this whole subject. Hear both sides. See if you cannot evolve something." I hope this resolution will go forward as largely as it went forward the other day.

Mr. Richardson of Newton: The moderate conservatives in this body have now another opportunity of either facing their duty and doing it like men and doing something progressive, or holding back in the traces and being plain, simple obstructionists, nothing more or less. I very much hope that the sane and safe and progressive recommendations of this committee will be upheld by every conservative in this body, and that this resolution will be passed to be submitted to the people. It is only recognizing, gentlemen, the condition that actually exists in this State. The fight between capital and labor that we have been talking about so long is right here now, among us at this very moment, and rapidly taking a form which, unless averted by progressive legislation, — "timely concession," as the gentleman from Waltham (Mr. Luce) said the other day, — is likely to be, before we get through with it, worse than any war with Germany. Those may be strong statements, but I am firmly convinced that they are true. I am making some study of this subject these days, and I think this is the most serious problem that confronts the country at the present time, without a question. Legislation of this sort must and will be upheld. The trouble at the present time is not with the interpretation of the Constitution, either of the United States or of Massachusetts, by the United States Supreme Court; the trouble is with the interpretation of the Massachusetts Constitution by the Massachusetts Supreme Judicial Court. Very likely such legislation as this in Massachusetts even now would be held constitutional by the United States Supreme Court, but you have got to travel some distance before you get to that tribunal. I submit, gentlemen, to the lawyers in this body, that no lawyer really can read carefully and make a study of the Lochner case and then read the case of Bunting *v.* Oregon, decided last April, without coming to the conclusion that the Bunting case does definitely overrule the Lochner case, and that the Lochner case is no longer law; although I agree that the Supreme Court does not say so in so many words, but that is a sort of practice which I think unfortunately is too common with the Supreme Court. The Bunting case decides definitely that a State wide ten-hour law applying to all industries is constitutional under the Constitution of the United States of America. It does not restrict it to any particular industry at all. The gentleman from Newton in this division (Mr. Powers) is wrong about that.

Now, gentlemen, let us pass this resolution. It gives the Legislature only the power which it ought to have, and we owe it to the people of this Commonwealth that they shall have an opportunity to vote upon this next fall.

Mr. Pillsbury of Wellesley: I am indebted to my friend in this division who has just spoken (Mr. Richardson) for telling the moderate conservatives, as he properly calls them, what they ought to do, and it is of especial interest to me, as I claim to be one of that class. But

I venture to believe that there is still one thing remaining to be said, and it is that ordinarily no disease is to be cured by the application of quack remedies. This resolution appears to me a remedy which will not reach the roots of the disease, and therefore will not cure it. For that reason among others I have to vote against it.

The Convention refused, Wednesday, August 14, 1918, by a call of the yeas and nays, by a vote of 68 to 120, to submit the resolution to the people.

XLII.

ONE DAY'S REST IN SEVEN.

Mr. Dennis D. Driscoll of Boston presented a petition of the Massachusetts State Branch of the American Federation of Labor relative to establishing one day's rest in seven for employees, accompanied by the following resolution (No. 261):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Except in cases of extraordinary emergency caused by accident, fire, flood, or danger to life, property or public health, no person, partnership, association, corporation or employer shall require or permit an employee to do on the Lord's Day the usual work of his occupation unless such employee is allowed twenty-four consecutive hours without labor during the six days next ensuing.

The committee on Social Welfare reported, July 13, 1917, the following new draft (No. 323):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have the power to enact laws prohibiting, under such regulations and with such exceptions as it may deem expedient, the employment of any person on the Lord's Day unless such person is allowed one day's rest in every period of seven days.

This resolution was rejected June 26, 1918.

THE DEBATE.

Mr. MAHONEY of Boston: Mr. Flaherty is engaged on the exemption board in South Boston and is over there doing his duty. I see on this report "Mr. Flaherty of Boston dissents," and I should like to have that discharged to-day and placed in the Orders of the Day for to-morrow.

Mr. LUCE of Waltham: Once more it devolves upon me to object to postponement. This is a matter that can be settled, it strikes me, by the gentlemen of the Convention who are able to attend; and on the general principle that postponement is undesirable I trust that it will not prevail.

Mr. LOWELL of Newton: I hope postponement will not prevail, for this reason: There is now on the statute-books and has been for five years a law giving this very thing. No one has suggested, as far as I know, that it is unconstitutional. It seems to me that in a very short discussion we can decide whether or not it is necessary to put into our Constitution something which has been law for five years without any attempt to declare it unconstitutional.

The motion to postpone was rejected.

Mr. CLAPP of Lexington: I have no especial opposition to the measure, but a pertinent point, in addition to the one just made by

the delegate in the third division (Mr. Lowell) occurs to me, — the well-known principle that the greater includes the less. The broad resolution which has just been passed giving the Legislature unlimited power to restrict hours of labor seems to me entirely adequate to accomplish what is sought by the present resolution. For that reason it is wholly unnecessary.

The resolution was rejected.

XLIII.

HISTORIC PLACES.

Mr. Henry M. Hutchins of Dedham presented the following resolution (No. 247):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Full power and authority is hereby given and granted to the General Court to authorize the Commonwealth or any city or town to make such complete or partial taking of, or to impose such restrictions on, any property of historical or antiquarian interest, belonging to any individual, corporation, or association, as will maintain it in its condition, appearance or location, restore it to, approximately or wholly, its ancient condition, appearance or location: *provided, however*, that whenever any property is completely or partially taken, or is restricted, hereunder, the owner shall receive reasonable compensation therefor.

The committee on Public Affairs reported, July 11, 1917, the following new draft (No. 322):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The preservation and maintenance of ancient landmarks and other property of historical or antiquarian interest is a public use for which the General Court may authorize the Commonwealth or any city or town to take such property, or any interest therein, by purchase or otherwise.

Debate was begun Wednesday, June 26, 1918.

Mr. Robert P. Clapp of Lexington moved that the resolution be amended by striking out, in lines 5 and 6, the words "General Court may authorize the Commonwealth or any city or town to take", and inserting in place thereof the words "Commonwealth may take or authorize the taking of".

This amendment was rejected.

The resolution was ordered to a third reading, Wednesday, June 26.

It was passed to be engrossed Wednesday, July 31, in the following form (No. 393):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

The preservation and maintenance of ancient landmarks and other property of historical or antiquarian interest is a public use, and the Commonwealth and the cities and towns therein may, upon payment of just compensation, take such property or any interest therein under such regulations as the General Court may prescribe.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 183,265 to 81,933.

THE DEBATE.

Mr. CLAPP of Lexington: This matter cannot be said to be one of the most important before the Convention. Still it is one, I think, in which we all show an interest. It is one of the few propositions, I may say, which received the unanimous support of the committee on Public Affairs.

An incident occurred in the town where I live, Lexington, which seems to me to illustrate the necessity or the desirability of passing this resolution. We have there an old monument or landmark, call it what you will, to which come from all parts of the Nation every year thousands of people to view it; as many as ten thousand pilgrims come there each year. That is the old Hancock-Clark house in which John Hancock and Samuel Adams were sleeping on the night of April 18–19, 1775, when aroused by the midnight ride of Paul Revere. Some years ago this piece of property, the land and the building, was owned by an individual in Lexington who refused to sell it. She came to the conclusion that it was an incumbrance or something undesirable to be existing there near her residence and as she owned the property, she said she was going to raze the building to the ground. Through the patriotism and enterprise of members of the Lexington Historical Society the building itself was saved. They bought it, but unfortunately, they were not able to buy the land. They had to remove the building some little distance from its original site, so that although it is preserved to-day as a monument having valuable historical associations, to which many people in the country, as I have said, come to pay a visit every year, yet it has lost some of its charm and interest by the fact that it has had to be removed to a site where it did not stand on the occasion of the 19th of April, 1775. Now if our Constitution had embodied a provision such as we seek to introduce, it would have been possible to have taken this land by eminent domain and to have preserved the building on its original and proper site. I need not enlarge upon the subject or cite any more illustrations. There will come readily to the minds of all of you instances where, in the past, it would have been desirable to have this power; and I think that there will be increasing opportunities for its exercise in the future. I wish to add that I am not seeking the passage of this resolution in order to accomplish any purpose that I or my friends have in the town of Lexington, where there are so many interesting historical works and monuments. The resolution in fact was suggested by the delegate in the third division from the town of Dedham (Mr. Hutchings), which also is rich in historical association. I think that the resolution, although it was drawn by myself, may be improved in its form. As it stands it would be competent for the Legislature to authorize only the Commonwealth itself or the city or town concerned to take the property.

Mr. LOWELL of Newton: I should like to inquire whether it is now settled that a city or town or the Commonwealth cannot take land for this purpose?

Mr. CLAPP: I do not know of any decision by the court upon the point, but it has been my understanding and opinion that under the Constitution as it stands this could not be done. I think, at all events, there is sufficient doubt about it to make it proper to remove it.

Now as I was saying, the resolution, as it stands, simply would permit the Legislature to authorize the Commonwealth or the city or town concerned to take the property. I think it should be broader so that the power to take, — on payment, of course, of due compensation, — could be given by the Legislature to a local historical or antiquarian society. To go back to my other example, if this property of which I have spoken in Lexington were to have been taken it should have been taken most properly by the historical society of that town, for that society would be the organization best adapted to take care of it and preserve it. And therefore I wish to move an amendment such that the Legislature either may exercise the right of taking itself or may delegate it to a city or town or to any incorporated historical society in such city or town. I move to amend by striking out, in lines 5 and 6, the words "the General Court may authorize the Commonwealth or any city or town to take", and substituting the words "the Commonwealth may take or authorize the taking of", so that the article of amendment shall read as follows:

The preservation and maintenance of ancient landmarks and other property of historical or antiquarian interest is a public use for which the Commonwealth may take or authorize the taking of such property, or any interest therein, by purchase or otherwise.

Mr. Creed of Boston: I should like to ask the gentleman who has offered the amendment if that is not an unusual step, — for the Commonwealth to delegate power to a society to take land, even for historical purposes.

Mr. Clapp: I do not think so. It is a well-recognized principle that the power of eminent domain, whenever possessed by the General Court or the Commonwealth, may be delegated. Take, for example, the building of a railroad; the power in that case is delegated to a private or a quasi-public corporation. And so here, if the power be given to the General Court and Commonwealth, it may be delegated to a municipality or, as I think most properly, to any corporation or society that may be organized for the purpose. That corporation or that society, if exercising the power delegated to it, would have to make due compensation for the property. As I said before, I think the most proper body to take a local landmark such as we are talking about would be the antiquarian or historical society in that locality, should there be one, and I myself cannot see any objection to giving the General Court the discretionary power to let that right be exercised through the municipality or through such local society.

Mr. Creed: I should like to ask the gentleman if the society would not have influence enough with the town, if the historical monument was of sufficient importance, to get the town to take it?

Mr. Clapp: That might be so. According to my ideas it would be better for the town if the expense could be met, if possible, by the local society rather than by the town as a whole. Perhaps I may refer to another illustration which occurred in recent years in the town where I live. There was the old Buckman Tavern, situated opposite the old Battle Green. About four or five years ago the owners of that property came to the conclusion that they wanted to sell it and they came very near making a sale to a land syndicate which would have developed it for commercial purposes. But thanks to local civic spirit and pride, an organization was formed which succeeded in getting the

historical society to raise a substantial part of the purchase price, — the whole cost was about $40,000, — and the town was good enough to raise the balance; so that this property was saved, and under an act passed by the Legislature the care of that monument, — that old Buckman Tavern, Captain Parker's rendezvous just before the day of the battle, — has passed into the custody and care of the Lexington Historical Society. In that case, I repeat, the cost was met in substantial measure by the society itself. I think that in such cases the best policy for the community in which the building may be located would be to have the expense met by local enterprise; and it certainly would be a mistake to put a constitutional limitation here such that the local society, if it should be able to raise the funds, could not be permitted to exercise the right of eminent domain.

Mr. SULLIVAN of Salem: As most of you know, I come from a congressional district which abounds in these landmarks of historical and antiquarian interest. It has been estimated that we have in Salem alone very close to fifty thousand visitors or tourists a year in normal times who come to look over the many points of historical interest. We have about fifty places they like to see. I will mention just three of them which come within the category which would be reached by the passage of this document No. 322, which, by the way, I think should be amended by adopting the amendment proposed by the gentleman from Lexington (Mr. Clapp). One of our historical points of interest in Salem is the "Witch House," so called. Many of you have visited its antique interior. Look at its exterior to-day! Look at the old cuts and prints and see how it looked in its original form. Look at it now, with a wart on one side with a Chinese laundry in it and another one on the other side with an apothecary shop and another one with a restaurant baker's shop in it. You cannot do anything with its present owners. It ought to be restored. It is liable to burn up any day with those places of business that are in there now. The fire risk of the Chinese laundry and bakery shop is great. It would be impossible to replace that particular landmark which thousands of people go to see every year, and yet the present owners of it will not do anything to restore the building to its original form. They simply drag down the money from visitors for entrance fees to see the interior upstairs and get the money out of the stores and other tenants of the additions and "sit tight." We ought to have it within our power to preserve that particular landmark and other historical buildings for the benefit not only of the people within our own State but the thousands who come from all over the Nation to look at them, to hear about and see some of the things that happened or were built in those early times. It is a part of their education to be able to do so.

We have another landmark, the so-called Grimshawe house, immortalized by Nathaniel Hawthorne. A few years ago the owners would not sell it, or rather would not do business with the local historical societies or any of the people who wanted to preserve such places of historical and educational value. It was sold to some aliens and there it is now, a third-rate rooming-house, largely if not entirely patronized by persons who have been in this country only a short time and who have but little knowledge or regard for our historical ideals or points of interest about which every boy or girl

attending the English grammar schools in this country is familiar. I have in mind a similar case to that of which the gentleman from Lexington (Mr. Clapp) speaks. The owners finally decided they were going to sell the building. They did not want it. They would not let us buy the land and building where it stood originally, and although it was a more valuable landmark in its original location, we had to go to work and take it to pieces and then build it up again in another location far removed from where it stood originally.

I think all over New England, and particularly in Massachusetts there are a lot of these historical places and in some cases the people who happen to own them or hold the title to them, are not interested, do not realize the educational value there is to present and future generations in restoring and preserving these things, and there ought to be some way of getting at them and having historic property held for the interest of the public, as it can be held by the adoption of this resolution.

Mr. Sawyer of Ware: This resolution violates my Anglo-Saxon sense of justice. The other day we had a group of people who objected to bill-boards, and we passed a resolution which invaded the rights of private property to suit the case. Now we are going to pass a resolution that if there is another group of people who have a certain interest in the property of another man, why, we will invade that and take it away from him. The very first article of our Declaration of Rights says that all men shall have the right of "enjoying and defending their lives and liberties; of acquiring, possessing, and protecting property." What is the largest motive for acquiring and possessing and protecting property? It is that a man may pass something along to his children.

Suppose that Daniel Webster had left a son now well along in years, who lived on his historical farm at Marshfield, and we had this resolution adopted into our Constitution. A certain group of people might incorporate themselves as a historical society, and convince the Legislature that Daniel Webster's son could not pass along the Marshfield farm to his grandson, and would take away the farm. In other words, if you pass this resolution we are going to give the Legislature, or the people, by the use of this power in passing a law, the right to take away a man's property if it should so happen that his property was of a historic character. It is discrimination.

Again, I think this remedy is useless. Until the Supreme Judicial Court has decided that it is needed for any real useful public purpose to have such an amendment, we ought not to pass it. The gentleman who has championed this amendment does not claim that the Supreme Judicial Court has made any decision that the public cannot do what ought to be done at the present time, but simply advances it as his opinion. I think we are going to make this Convention ridiculous in the eyes of the public if we go ahead putting resolutions or amendments into our Constitution on the opinions of this or that delegate, and change the organic law to fit the tastes of groups of people in the Commonwealth. I hope that notwithstanding a favorable report you will kill this resolution.

Mr. Loring of Beverly: While I am opposed to the resolution, I am opposed especially to the amendment. There are too many charitable societies in this Commonwealth already. Countless applications

are received by everyone from one charitable society or another, to give them money. They are insistent. Sometimes they send several circulars in one day for the same purpose. It is like the daughters of the horse-leech, it is "Give, give." Many of the objects are very good and certainly appeal to our sympathies, but most of the matters that are brought to your attention and that ask for contributions are matters that ought to be attended to by the public. When we exempt those charitable organizations from taxation on their personal property I think we are doing a great deal for them, and I think that these charitable organizations are becoming almost a menace to this country.

Look at China. There in China two million people have to die of starvation every year simply on account of ancestor worship, because one-quarter of the arable land is taken up by the burial places of their ancestors. Are we going to reduce this country to that condition, where every old house that somebody thinks is interesting and will draw tourists to the town is to be preserved and kept standing, to the detriment of the health and the general welfare of the community?

To my mind, such power, if given, should be given only to the municipality, and I believe it should not be given at all. I do not believe that every historical society that is interested in a particular relic in its town should be allowed to take that property from the owner, who wishes to put it to a useful purpose, and put it in mortmain forever and make perhaps a large minority of the taxpayers pay for its upkeep by exempting it from taxation, and pay for the purchase price, simply because a majority of the people of the town think it is an interesting relic, which would draw people to the town.

I hope the amendment will not pass, and, if the amendment should fail, I hope the resolution will not pass.

Mr. PILLSBURY of Wellesley: I was greatly disturbed to hear my friend from Ware (Mr. Sawyer) suggest that there is even a possibility that this Convention should make itself ridiculous, but I rise to answer the inquiry, so far as I can, of my friend from Boston in this division (Mr. Creed), as to whether this power can be delegated to a private association. I think the law upon that question is somewhat in doubt, but I can refer the Convention to one or two historical instances. I think it will be found that in 1876 or 1877 the Legislature conferred upon the Old South Association power to take the old South Church, which then stood liable to be sold for commercial uses. I am not so clear in my recollection that I can assert it, but I think that is so.

On the other hand, to go back a little further, I have seen or heard it declared somewhere that the Bunker Hill Monument Association arose out of the doubts which were entertained at that time of the power of the State to take the battle-ground by eminent domain, and that the Association was organized for the purpose of acquiring it by purchase.

I should vote more willingly upon this resolution if I were surer of the state of the law, but it seems to me that if there is any substantial doubt of the constitutional power of the Legislature to take or authorize the taking of historical monuments, it ought to be removed.

Mr. SULLIVAN of Salem: I see that the president of the Bunker Hill Monument Association is here with us (Charles Francis Adams of Concord), sitting up there in the back row, and I should like to hear from

him. Perhaps he can explain the situation in regard to the constitutionality spoken of by the gentleman from Wellesley (Mr. Pillsbury). [Applause.]

Mr. ADAMS of Concord: I am, to be sure, president of the Bunker Hill Monument Association, but I regret to say that I have not been so long, and I am not well enough versed in the history of the association to answer the gentleman.

Mr. MAHONEY of Boston: I hope they will take this Bunker Hill Monument. I have the pleasure of living in Monument Square right opposite the monument, and it is a disgrace to the city or to this State. In fact, the monument ought to be closed up. The Government has closed the entrance to it; and as to the walks, — one can hardly walk on the walks. Some person here not long ago appropriated $10,000 to fix up the walks and they have not started to do anything. They had not cut the grass there for three months until, on the 17th of June, they went down to the Back Bay and hired a florist to come there and cut the grass.

That only shows what they are doing with Bunker Hill Monument. Now, if there is any place in this State that ought to be honored and respected it is Bunker Hill Monument. I hope and trust that this measure will pass. The gentleman from Salem (Mr. Sullivan) has said that the same thing applies in Salem. They have four or five little houses down there and they are going to decay, the owners charging ten and fifteen cents admission. The monument in 1843 was supposed to revert back to the State, and the only thing that kept it was that they were supposed to build a lodge. That lodge has been built, and the Bunker Hill Monument Association is comprised of five hundred honorable men of Boston, but they have let the place become a disgrace. The gentleman is right here himself and he will tell you the condition, if he wants to tell you the condition, of Bunker Hill Monument. If the members of this Convention will only go over to Charlestown while they are here in Boston and see it this afternoon, and if this matter came up to-morrow morning, there is not a member of this Convention who would not vote for this resolution.

I hope and trust for the sake of old Charlestown, where I have lived nearly all my life, and for the sake of Bunker Hill, for the sake of Bunker Hill Monument and its grounds, that this measure will pass.

Mr. BAUER of Lynn: Coming from the city of Lynn myself, a city that is not over-interested in what it has done in the past, but which is living largely for what it does at the present time and for what it will do in the future, and is of a state of mind to let the dead past bury its dead, and which also is a place where there are very few followers of Confucius within its confines, in order to expedite things along for our future welfare, I move the previous question on this matter.

Mr. BRYANT of Milton: I want to say only this: That it seems to me that Mr. Clapp's amendment goes a good deal further than is customary in this Commonwealth. I know the power of eminent domain has been delegated to public service corporations, like railroad companies or street railway companies, and possibly, though I do not know it, to other corporations that are financially clearly responsible, — that is, that have assets big enough to make it certain that if they

exercise the power of eminent domain the people whose property is taken will be compensated. But I think we all must be familiar with the way in which historical societies generally are organized and run.

I am familiar with the one that happens to be in my town, because I organized it and I am a member of it, and I know that its assets would not justify it in taking any property in the town of Milton.

The purpose of the amendment, as I understand it, is to enable a small proportion of the community to take the property of some other individual or individuals of the community, to come before the Legislature and after hearings in which the general public probably will not be interested, to go out and take somebody's property by force of eminent domain and irrespective of what the responsibility of the society taking it may be.

Now, the general object of this amendment I think is praiseworthy, but to extend the principle of eminent domain to allowing a part of the public to take property from the rest of the public I think is going too far. Hitherto it has been exercised either for the benefit of the entire public or for the benefit of a public service corporation, which to a certain extent represents the entire public or the wishes of the entire public. But this goes away beyond that, and the taking will now be practically by a few individuals, members of a hastily organized society, which very possibly does not admit to its membership anybody who wants to come in, but is confined to the few individuals who happened to have the particular object in mind.

I hope, as a matter of principle, that this amendment of the gentleman from Lexington (Mr. Clapp) will not be adopted, although I have sympathy with the main purpose of the general amendment.

Mr. Clapp of Lexington: Personally I do not care very much whether this amendment which I have moved is adopted or not, although I believe it to be an improvement, and that the objections which have been raised against historical societies being in a position where they may exercise the right are not well taken.

In the first place, historical societies, if I also may refer to my personal experience with them, are not burdened usually with an overplus of money, and I think they would find it very difficult indeed to raise the requisite funds to buy any local landmark which was of any substantial value. I wish to add that the idea of that amendment was suggested to me by the delegate from Fall River (Mr. Morton) in the third division. I conferred with him regarding the form of the resolution, and he suggested that that might be an improvement. It appealed to me to be such, and I have moved it here to-day.

Now, with regard to the objections which have been raised by the delegate from Ware (Mr. Sawyer), and the delegate from Beverly (Mr. Loring). You must remember, in the first place, that we are not conferring here and now the power upon the State, or any municipality or society, to do this; we simply are giving authority to the General Court. I think that if this had been the law of the Commonwealth in the days of Daniel Webster, the Legislature after his death would have been very slow, during the lifetime of any of his descendants, to have exercised this power of taking the property away from them. I do not fear that danger for a minute, and I do not believe the delegate from Ware (Mr. Sawyer) really can have any such apprehension. The occasion for the exercise of this power would arise, as

we all know, years, usually very many years, after the people immediately interested in the ownership of the property had passed away. As to the objection raised by the gentleman from Beverly (Mr. Loring), that this power would be abused, it seems to me there is not the slightest danger. For one, I am perfectly willing to entrust it wholly to the hands of the General Court, or, if you please, to the law-making power.

XLIV.

BUILDING ZONES.

The first paragraph in Part the Second, Chapter 1, Section 1, Article IV of the Constitution reads as follows:

ART. IV. And further, full power and authority are hereby given and granted to the said General Court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof [A]; and to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

Mr. Robert Walcott of Cambridge presented the following resolution (No. 182):

Resolved, That Part the Second, Chapter I, Section I, Article IV, be amended by inserting in the first sentence [at "A"] after the words "as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof", the words "and such good and welfare shall be deemed to include the regulation of smells, sights and sounds and the enactment of regulations limiting buildings according to their use and construction to certain zones or districts of cities and towns.

The committee on Social Welfare reported that the resolution ought NOT to be adopted.

It was taken up for consideration Wednesday, June 26, 1918.

Mr. Robert P. Clapp of Lexington moved that the resolution be amended by substituting the following new draft (No. 386):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to enact laws limiting buildings according to their use or construction to specified districts of cities and towns.

This amendment was adopted Wednesday, June 26, and, accordingly, the new draft was substituted and was ordered to a second reading, rejection, as recommended by the committee on Social Welfare, having been negatived.

The new draft (No. 386) was ordered to a third reading without debate Wednesday, July 31, and was passed to be engrossed Tuesday, August 13, in the following form (No. 415):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to limit buildings according to their use or construction to specified districts of cities and towns.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 161,214 to 83,095.

THE DEBATE.

Mr. Walcott of Cambridge: The report of the minority of the committee on this resolution was founded on a resolve introduced by me after consultation with the planning boards of Cambridge and of other cities. However, the amendment moved by Mr. Clapp of Lexington is entirely satisfactory to me; and, also, I have authority from the minority of the committee on Social Welfare to say that it is satisfactory to them, as a briefer and satisfactory phrasing.

The desire for some change in the Constitution on this point comes from the rather narrow construction of the police power that was referred to yesterday in the debate on the bill-board amendment. Since Judge Holmes left the Supreme Judicial Court it seems that the construction of the police power has been narrowed down considerably; and although the decision in Welch *v.* Swasey went to the effect that constitutionally districts might be made in Boston limiting the height of buildings, corresponding with the limits of the fire districts, yet the language in that case, — taken in connection with the Boston Advertising Company language, in the case cited yesterday, — gives a pretty narrow construction to the police power in Massachusetts; narrower than has been given to it in other States, notably in New York and in Illinois.

Now in New York in 1912 this condition arose: The district below Thomas Street of warehouses and commission houses began to invade the retail districts, up Fifth Avenue and Broadway. As a result the savings banks began to suffer because, first, the second mortgages began to be called, and then the first mortgages, and the property depreciated with tremendous rapidity. The merchants on lower Fifth Avenue banded together and tried to stop it by agreement not to trade with these wholesalers, just as Professor Hart referred yesterday to the consumers trying to stop obnoxious bill-board advertising by a restrictive agreement not to buy goods of those persons who used obnoxious bill-board advertising. This failed, however, and they had recourse to legislation.

The legislation that they sought was this: To divide the city into districts, one for manufacturing and wholesaling, another for retail stores, and another for residences. It took a very extensive agitation to get that through in New York. The first step was to get a commission appointed, — a "Commission on the Industrial Districting of New York," — which was authorized by the General Assembly of 1913, and reported at the end of that year, and their report was en-

acted into a statute. The report is a large book, which our State Library has, of 400 or 500 pages, with very elaborate illustrations. A campaign was started in New York, all through the city, to popularize this movement. The Real Estate Exchange, the Chamber of Commerce, took it up, and the result was that the legislation was supported unanimously in the General Assembly and the bill was enacted; and nobody in New York at the present time would wish to repeal that law.

Similar conditions have occurred in Chicago, and as a result, Professor Merriam obtained in 1917 from the aldermen, of whom he was one, their approval of a bill proposing that the State of Illinois should give similar authority to its cities and towns. He published a pamphlet, copies of which I endeavored to secure to distribute to the Convention here, — it is the best short statement on the subject in print, — but the issue was exhausted almost immediately after it was published, in February, 1917, and I regret to say that I was unable to secure the necessary number. In fifty or sixty pages he gives many instances of abuses which commonly result at present from the lack of intelligent zoning. A campaign of education in favor of such legislation is being made now in Illinois.

Now, it is suggested that in the city of Boston no such extreme conditions prevail as prevailed in New York and Chicago, but it is not to meet the extreme conditions only that this amendment is asked for. It is a general condition which exists in every town where residence property is depreciated greatly by the introduction of manufacturing or trade which is out of place in that locality. This intrusion of trade first of all raises the insurance rates, adding to the fire loss, and then the added rate makes the location much less desirable for residences. It also makes a fertile field for the hold-up real estate operator to get in his good work, in this way:

You buy a piece of land in the town, erect a handsome residence, lay out gardens, plant trees or shrubs, spend money to make the home attractive for your wife and children. Pretty soon some real estate speculator comes, and he says: "I thought you would be interested to know that somebody is about to erect a one-story store or a six-flat apartment-house next you; you probably will want to buy that land, won't you?" Very likely you are tempted to try to secure all your neighborhood by purchasing away for a couple of years what ought not to be permitted to go in that neighborhood and what would not be permitted to go in a residence district in France or Spain or Germany.

To a certain extent, of course, there is constitutional power at present to limit offensive trades to particular districts of the city, but the line is a pretty fine one as to what are offensive trades. Slaughter-houses, of course, ordinarily are a public nuisance and an offensive trade. Is the junk business an offensive trade? It may be a danger to property if it consists of inflammable junk. But how about the storage of old iron? Is that a nuisance? Probably not. Certainly you do not want it, however, next your house. It is noisy and it is not decorative. Mr. Simon, in this brief, for building districts and restrictions in Illinois, brings up several hundred actual cases, tabulated from the records of real estate agents in Chicago, and similar statistics were made in New York. You members of the Convention

probably can duplicate such instances from your own experience. You know how a good residence district decays. It does not go to pieces all at once, so that the Land Court can say that the use of the property has changed and all existing private restrictions are off. Not at all. The first thing that happens is that somebody who needs the money sells out a vacant piece of land. People very likely from outside the city come in and put up one-story "tax-carriers," as they are called, — a cheap drug store, a local grocery market. This is followed perhaps by a large apartment-house. That, again, is followed by some noisy trade; and after a while that residence district is decaying, but private restrictions on the property probably prevent many owners from selling it for the only purpose for which it is valuable now, and they have to hold their places to their great detriment.

This system of districting, as used in New York and about to be applied in Chicago, makes effective what private restrictions are unable to effect. It takes off the private restrictions, or what would be the equivalent of private restrictions at one time; or perhaps, to express it better, it puts on for a certain period of years restrictions for a whole district which, if left to private ownership to arrange, could not be distributed satisfactorily throughout such a large district. We all know how some one person is apt to block the imposition of a private restriction. That is, it supports the values of districts, when otherwise, if left to private initiative alone, there would be slow or unequal decay of one part of the district over the other.

A bill was introduced by Representative Blanchard of Cambridge in the last Legislature to accomplish this, with the same wording as the Illinois bill, but it was met with the objection in the committee on Mercantile Affairs, to which it was referred, that it might be unconstitutional, under the language of the decision in Welch *v.* Swasey and the case of the Boston Advertising Company, if not held to be necessary to public health or public safety. Whether or not that objection is well founded, obviously I am not as competent to say as the ex-Justice of the Supreme Judicial Court and the former Attorneys-General in this Convention; but, at any rate, it was a doubt which troubled the legislators and prevented useful legislation from being passed.

It is for that reason, as I understand it, that the minority of the committee on Social Welfare hope that this constitutional amendment, in the form advocated by Mr. Clapp, may be adopted.

Mr. KILBON of Springfield: As one of the minority members of the committee, I may be permitted perhaps to make a very brief statement as to the reasons in my mind for the stand that we took. I may say that the original minority was not merely the gentlemen whose names are printed upon the calendar, but it included also that of the chairman of our committee, the late former Governor Brackett.

The question as it came to us was a question simply of public policy, not a question of legal technicality; a question as to whether it was advisable and proper for the Commonwealth to establish regulations which should make it possible for a community to determine the direction and manner of its own growth. It is to be recognized of course that when a man owns a piece of property he is entitled to do with it what he wishes. He may wish to do something which is offensive, not to the extent of being a positive nuisance but offen-

sive to the extent of being a serious detriment to the attractiveness of the neighborhood, to those who dwell about him; so that the right which he has to do what he wants to with his own property becomes in that case a right to injure the property of other people.

The minority of the committee believe that if it is possible by any wording of the Constitution, by any form of interpretation of the Constitution, by any declaration of the public policy that shall be fair, that it ought to be possible for public policy to be so directed that a man may be restrained in using his property in such ways as would depreciate the value of his neighbor's property, and we have at the back of our thoughts, then, this idea.

We were met with the objection that you might do ever so many things. You might say that on this street people should live who would pay $20 a month rent, on the next street people should live who would pay $40 a month rent, and that the $50,000 houses should be put in another part of the town. They said: "That is class legislation, we don't want anything of that sort." We do not. I do not. I do not believe the members of the Convention do. But that objection illustrates a tendency of the human mind which over and over again has been manifested in this Convention, — the tendency to imagine that, if new powers are granted or old powers enlarged, the most absurd and unreasonable thing of all the things that can be done is likely to be done. We have had suggestions about that this morning in our debate upon antiquarian relics, when a man stands up and seriously supposes that anybody representing the public of Massachusetts would take away from the son of one of her most distinguished citizens his ancestral home. They would not do it, even if they could; and there is not any danger in practice of a very serious abuse, an absurd abuse, of this power. Whether there might be dangers of incidental abuse, of course I should not dare to be quite so sure.

But I do want to say that I am convinced, and the other members of the minority of the committee are convinced, that in the first place it is necessary to make a statement enlarging the powers of the Commonwealth in this regard if anything is to be done with it; that, in the second place, for the sake of the preservation of existing values in real estate in a great many of our cities and towns, some policy of this sort must be adopted and carried through wisely and sanely; and, in the third place, that objections that arise to it are objections that arise on the whole from the class of people who want to use their private rights to the detriment of the common private rights of their neighbors. I sincerely hope that the amendment, in the form suggested by the gentleman from Lexington, if you please, may be adopted. I believe the motion has not yet been made. I should be glad to have the gentleman make the motion, and will not do it myself.

Mr. Clapp of Lexington moved the amendment printed at the beginning of the chapter.

Mr. Aylward of Cambridge: I want to say just a word. I am afraid I can say nothing new, except that I am entirely in accord with the remarks of my colleague from Cambridge. I think this resolution is one that might well be adopted to prevent the abuses

that have been pointed out. I have in mind some concrete illustrations of those abuses. I think that if this measure is adopted the General Court will go slowly in any way of abusing it, but it does seem too bad that after a section or tract of land is developed into a reasonable residential district there is not some authority, or that there is not sufficient authority, to prevent some unscrupulous man or men from destroying that locality.

We know that we do admire the splendid residential sections in many towns that we have around Massachusetts. While some of us may not be able to live in those sections, still we would dislike very much to have anybody do anything which would injure them. In the city of Cambridge at present there is a very fair line of demarkation between the manufacturing and residential districts. You might say there are, as in New York at present, three very well-defined districts, — residential, business and manufacturing.

In the development of new land in Cambridge, the land that was developed on the Charles River Parkway, the city of Cambridge was careful, — so careful that it had to undo a little in order to permit the Institute of Technology to come over. Cambridge was careful when that land was filled on the river to restrict it to residential purposes, and contemplated the development which I have no doubt will continue to develop, of a beautiful residential section; but when the city of Cambridge, in common with other municipalities, invited the Institute of Technology to come to Cambridge, on the beautiful shore of the Charles, it was found that the restrictions that had been made, the contract that had been made between the city and the owners of the land, practically prevented the Institute from coming there unless something could be done, because the Institute wanted to close up streets that it was agreed should be developed; and the city, after some little discussion, very gladly waived it and made a new agreement, — that is, the city and the owners, who were anxious to sell the land, and who could not do so unless the restrictions were removed.

I simply refer to that so as to show that the city of Cambridge, as far as it could, has developed along those lines. As a representative here of the city of Cambridge, I believe I speak the sentiments of the city in giving my support to the measure. I believe it is an amendment which should be adopted, and I have the greatest confidence that, if adopted by the people, the General Court will act within the spirit of the amendment.

Mr. Avery of Holyoke: I want to say just a word in support of the resolution offered by the member from Lexington (Mr. Clapp). I happened to be mayor of our city for six years, and I had a good deal to do during that time with the laying out of the park and playground system of the city. I became greatly interested in the orderly development of the city. We found that after we had gone along in a certain way that some real estate promoter would come in, absolutely with mercenary purposes and motives, and would ruin and spoil a district that had been planned and developed; and the General Court has not been able to give us any legislation that adequately will curb that evil.

Some years ago I had the good fortune to go abroad, and I noticed the wonderful development of the cities of Great Britain and on the

Continent in many cases, and that was because they did not have what we call the private interests, the vested interests; they could develop the city as it ought to be developed, for the beauty of the city and the good and the welfare of the people; and we cannot do that in Massachusetts to-day.

At this very moment I am interested in a proceeding in court where the town of South Hadley is trying to preserve some of the beauty of that town adjacent to Mt. Holyoke College, trying to do it under boards of survey and that sort of business, and its rights are all too feeble and they are all too limited.

Massachusetts needs something of this kind if we are going to have a development of the cities and towns of Massachusetts in the future in consonance with the marvellous beauty which nature itself has given to us. I hope that this resolution, or something like it, will be adopted.

Mr. Pillsbury of Wellesley: I am sorry to break my record by addressing the Convention, even briefly, for a third time on the same day, but I see a feature of each of these proposals which undoubtedly escaped the notice of the minority of the committee and of the gentleman from Lexington (Mr. Clapp), to which attention ought to be called.

One of the burning issues throughout the south for many years past, as we all know, has been the segregation of the Negro in particular quarters of a city or town, and several southern cities have made the attempt, which has always, so far as I know, been held unconstitutional, even by the courts of the southern States. To my mind this resolution, while undoubtedly such a thing has never occurred to anybody who is interested in it, plainly would authorize the segregation of the Negro, for it authorizes the limitation of buildings according to their use to certain zones or districts.

I do not apprehend that the power, if conferred, is likely to be put to that use in Massachusetts, but I should dislike to see it go out to the world that Massachusetts has written into its Constitution a clause which would authorize the segregation of a race, the Negro race or any other. I will not undertake at this moment to suggest a proper amendment, but if either resolution should be substituted it clearly calls for correction in this particular.

Mr. Sawyer of Ware: I should like to ask the gentleman who has just taken his seat (Mr. Pillsbury) if it would not be possible also, under this amendment, if adopted, to carry out the policy which Tom Johnson inaugurated in Cleveland, and which some foreign cities have done, of segregating houses of prostitution and such places?

Mr. Pillsbury: I see at present no reason to doubt that it would.

Mr. Walcott of Cambridge: I should like to say that the point raised by the gentleman from Wellesley in the first division (Mr. Pillsbury) was taken up by the corporation counsel of New York, and he gave it as his opinion that what he fears could not be effected, — no segregation of people by race or color. Moreover, it would violate the Federal Amendment. See Buchanan *v.* Warley, decided November 5, 1917, by the United States Supreme Court. As to the second question, that also was put up to the corporation counsel of New York, and he said the use of buildings as whorehouses would be something that could be segregated; it could be covered by the word "use" in this language.

XLV.

POWER TO IMPOSE AND LEVY TAXES.

Messrs. Roland D. Sawyer of Ware, David I. Walsh of Fitchburg and Walter H. Creamer of Lynn presented resolutions numbered, respectively, 15, 43, 60 and 131. The committee on Taxation reported the following new draft July 18, 1917 (No. 332) (Messrs. Guy W. Cox of Boston and Charles Francis Adams of Concord, dissenting):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Full power and authority are hereby given and granted to the General Court to impose and levy all manner of reasonable taxes, assessments, rates, duties, imposts and excises within the jurisdiction of the Commonwealth: *provided, however*, that in the taxation of property, all property of the same class, subjected to taxation, shall be assessed at the same rate or rates throughout the Commonwealth or the division thereof by or for which the tax is imposed, and that all excises shall be uniform throughout the Commonwealth.

The resolution was read a second time Wednesday, June 26, 1918.

Mr. William S. Kinney of Boston moved that the resolution be amended by striking out lines 3 to 12, inclusive, and inserting in place thereof the following: —

Full power and authority are hereby given and granted to the General Court to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident and real estate lying within, the said Commonwealth; and to impose and levy reasonable taxes upon personal property or upon the income derived therefrom as well as upon incomes derived from professions, trades and employments, which shall be proportional upon property or incomes of the same class, provided that personal property the income from which is taxed may be exempt from other taxes, as well as from duties and excises other than those imposed on licenses, transfers, legacies and successions; and in taxing personal property or incomes the General Court may grant reasonable exemptions and abatements, may classify personal property and incomes in a reasonable manner, may classify machinery as personal property, and may tax the interest of both owner and mortgagee in mortgaged real estate as real estate either separately or to the owner.

This amendment was withdrawn.

The resolution was ordered to a third reading Thursday, June 27, 1918, by a call of the yeas and nays, by a vote of 129 to 87.

The resolution was read a third time Wednesday, July 31, in the following form, as changed by the committee on Form and Phraseology (No. 396):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to impose and levy all manner of reasonable taxes and excises, but all property of the same class subjected to taxation shall be

assessed at the same rate or rates throughout the Commonwealth or the division thereof by or for which the tax is imposed, and all excises shall be uniform throughout the Commonwealth.

Mr. Walter H. Creamer of Lynn moved that the resolution be amended by striking out the article of amendment (see No. 396) and inserting in place thereof the following:

The General Court shall have power to impose and levy all manner of reasonable taxes and excises, to define classes of property [C] for purposes of taxation, to prescribe by general laws the manner or degree of taxation of each class of property throughout the Commonwealth and to tax such classes of property at different rates; but no city or town [A] shall either exempt property from taxation in whole or in part or shall tax the several classes of property therein at differing rates, except in accordance with a general law requiring such action on the part of all cities and towns [B] within the Commonwealth.

This amendment, as subsequently amended, was rejected, by a call of the yeas and nays, by a vote of 107 to 121.

Mr. Edmund G. Sullivan of Salem moved that the amendment moved by Mr. Creamer be amended by inserting, at "A", the words "or other political subdivision or tax district of the Commonwealth"; and by inserting, at "B", the words "or other political subdivisions or tax districts".

These amendments were adopted, by a vote of 83 to 44.

Mr. Joseph Walker of Brookline moved that the amendment moved by Mr. Creamer be amended by inserting, at "C", the words "and income".

This amendment was rejected.

Mr. Robert Walcott of Cambridge moved that the resolution (No. 396) be amended by adding at the end thereof the words "but no exercise of this power shall be the subject of an initiative petition".

This amendment was rejected, by a vote of 83 to 94.

Mr. William S. Kinney of Boston moved that the resolution be amended by striking out the article of amendment (see No. 396) and inserting in place thereof the following:

Full power and authority are hereby given and granted to the General Court to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident and real estate lying within, the said Commonwealth; and to impose and levy reasonable taxes upon personal property or upon the income derived therefrom as well as upon incomes derived from professions, trades and employments, which shall be proportional upon property or incomes of the same class, provided that personal property the income from which is taxed may be exempt from other taxes, as well as from duties and excises other than those imposed on licenses, transfers, legacies and successions; and in taxing personal property or incomes the General Court may grant reasonable exemptions and abatements, may classify personal property and incomes in a reasonable manner, and may classify machinery as personal property.

This amendment was rejected, by a vote of 24 to 102.

Mr. Lincoln Bryant of Milton moved that the resolution (No. 396) be amended by the substitution of the following:

Article XLIV of the amendments of the Constitution is hereby amended by striking out the word "income", in the second sentence thereof, and inserting in place thereof the words "incomes of different amounts or".

This amendment was rejected, by a vote of 88 to 92.

The resolution (No. 396) was rejected Wednesday, July 31, 1918.

On the following day, Thursday, August 1, a motion was made that the Convention reconsider the vote by which it had rejected the resolution; and the motion to reconsider was negatived, by a vote of 62 to 98.

THE DEBATE.

Discussion of the resolution was begun Wednesday, June 26, 1918.

Mr. Cox of Boston: This resolution in effect strikes out of the present Constitution the word "proportional", which has been, of course, in the Constitution since it was adopted and was found in all of the earlier Province laws relating to the question of taxation. As that is the question which is raised, it would seem incumbent upon those who offer this resolution to present to this Convention convincing and overwhelming reasons why this change should be made, for under the present Constitution the Massachusetts tax laws have worked well, the community has prospered, and there has been no general dissatisfaction expressed with the system of taxation as a whole. Under those circumstances the burden of proof is not upon those who ask that this resolution be defeated to give good reasons why we should cling to the present system which we have, and not depart and take up matters which may cause us all sorts of trouble.

But I want to call to the attention of the Convention that generically, at least, there is no trouble or fault which can be found with the word "proportional". It is unthinkable in the last analysis that taxation should not be proportional. You take the most violent agitator who wants to separate the people into groups which might be called the sheep and the goats and have the goats pay all the taxes, nevertheless after he has made his separation he sees the taxes should be proportional. And so it is with the man who says we should divide the people in accordance with their religious belief and put the tax on all of one sect. After he has made his classification he says: "Why, of course the tax should be proportional." And so with the single-taxer, who wants to put all the tax upon land. After he has made the separation or classification which suits him, why, then he says: "Of course the tax should be proportional." So I think we can assume that all that is intended in the mind of any one in the last analysis of doing away with the word "proportional" and "proportional taxation" is to give certain classes the opportunity to create special legislation for their own benefit by the way of classifying either persons or property in various classes, and then securing a favorable rate, which usually means that they will escape taxation themselves if possible, and then allow the tax when it is finally fixed to be proportional.

It is well to consider, I think, the reasons which have been advanced for the striking out of the word "proportional". Various reasons are given, but in the main I think they all come down to the point that certain groups or interests in the community wish to derive certain advantage for themselves at the expense of other groups or interests in the community. Now, if we take a brief review of the general taxation situation throughout the United States we shall find that down to the year 1907, to take a concrete example, taxation throughout the whole country in any and every State was on the proportional basis. There had been no objection, substantial objection, raised anywhere to that method of taxation, except with regard to one class of property, known as intangible. Just about that year of 1907 a movement was organized to spread the propaganda of

getting rid of the tax on intangibles. That movement was widespread, well organized and well financed. I speak rather by the card for unwittingly I was a part of that movement at its inception, for I was chairman of the Massachusetts taxation delegation which went to Columbus, where this first movement was staged, with the well avowed intent, as stated by those on the inside, to proselyte Ohio into changing her taxation system to get rid of the tax on intangibles. And I may say in passing that the movement was not successful, and not then or now has Ohio been proselyted into changing her system of taxation, although the people have voted upon the question.

Now, in regard to intangibles two propositions appear. On the one side it was said that the intangibles should not be taxed at all, or that they were taxed at too great a rate, and so they said that was a fault with the system, because it imposed too high a rate upon intangibles. On the other side it was said: "The only trouble is that the laws of taxation are not properly enforced. If they were properly enforced, and intangibles were taxed as they were required to be by law, all the community would be relieved to a great extent from the general burden of taxation." But you will see that it was only on one side that any fault was found with the taxation system, the complaint from the other side simply being that the present system was not enforced properly.

That movement gained some headway, and naturally it would with such powerful backing and so many financial resources at its command, and one or two of the new States, or the new States that came in since that time, Oklahoma, New Mexico and Arizona, rather coincided with that view; but so far as that propaganda has tried to spread its way among the other States it has been on the whole unsuccessful, notwithstanding the statement which has been made in the bulletin, so called, which was presented to this Convention. This was in reality merely a brief in behalf of striking out the word "proportional", and singularly enough the proof-sheets which were rushed to our committee just at the psychological moment when this matter came up for the committee's discussion bore the name of a man who has been employed in spreading that propaganda probably more extensively than any other citizen that I know of in the United States. Whether or not he was paid to write that bulletin as a brief in behalf of his pet theories of course I do not know, but it was entirely unfair, and it is full of a great many misstatements of facts in regard to the actions which have been taken by the various States in the Union in considering such a change as is proposed here. As a matter of fact, including the three new States which have come into the Union without the proportional restriction in their Constitution, there have been only six States in the recent years which have gone as far or farther than Massachusetts in regard to its taxation system. On the other hand, there have been eleven States where the matter has come before the people and where further action to permit classification of property has been denied absolutely and defeated by the votes of the people. So that if any argument is to be suggested by the example of what other States have done, we have the example of eleven States to six in favor of keeping the Massachusetts conditions as they are.

As a part of that scheme to get rid of the tax upon intangibles they went ahead with their propaganda in this State immediately, and a

resolve was worked through one Legislature here to strike out the word "proportional", but the next year it was defeated. I think that the men who were interested in that movement early determined that it would be impossible to get rid of all the taxes on intangibles. There was considerable to be said in favor of taking off entirely the taxation on intangibles, and the very competent commission of 1897, including some well-known men, judges of our courts and Professor Taussig of Harvard, had recommended that the tax on intangibles be abolished, but I think it was seen early that it would be impossible to secure such an amendment, and so the drive was made to allow a classification of intangible property, with the hope that a lower rate would be put upon that than the rate put upon the other property which was to be taxed. And incidentally I want to call the attention of this Convention, and it was not called to the attention of the Convention in this bulletin, that a commission was appointed in 1909 to study the situation and report, not on general taxation matters but upon one single issue, and that was whether it was advisable to strike out of our Constitution the word "proportional". That commission had that sole thing to consider, and it gave its undivided attention to that point. It was an able commission. The chairman was the President of this Convention. The other members were the gentleman sitting in the second division, who is the Tax Commissioner of this Commonwealth (Mr. Trefry), and Mr. Arthur Chapin, who was at that time the Bank Commissioner of the Commonwealth, having previously served as the Treasurer and Receiver-General. Now, if any one will read the report of that 1909 commission he will get some real, true facts in regard to this question which he will not find in the bulletin which was prepared under the conditions which I have stated. This commission reported unanimously against striking out the word "proportional" in our Constitution, and the Legislature followed their report and did not submit such a resolve to the people.

Then you see those who were urging this propaganda for intangibles had to draw in other forces. They found they were not strong enough by themselves, and so they schemed upon the idea of throwing a sop to the farmers and getting the rural vote, and they worked out that scheme about wild and forest lands, which had concerned nobody up to that time, and they brought that forward as a part of their propaganda. Of course there was no general objection to that, and it went through, and that amendment was made to our Constitution.

They needed still further strength, so they canvassed the Commonwealth, and they set their drag-net for the manufacturers and they said: "Here, we want you in this movement. You are paying too great a tax on your machinery. Now, that is another thing that we want to come in. We want to have machinery classified and get a low rate of taxation to help out the industries of Massachusetts." Well, the intangible question, as we all know, was pressed to a successful conclusion, and after that was out of the way of course machinery fell by the wayside. It was only a make-weight to get votes, in my opinion, to get through their main project, and after that was accomplished, why, as I have said, machinery was dropped. I think it is necessary to speak of that, because this whole movement here today is simply the aftermath of that movement and propaganda to get rid of taxes on intangibles. It is well illustrated, because the only reason,

the only real reason, which was given to our committee, why the word "proportional" should be stricken out, was to relieve machinery from taxation.

At about the time of committee hearings this Convention was circularized with this poster, which says: "Amend the Constitution. Give industry a chance. Let us finish the job. Give the Legislature the power to reduce the tax on industry and make agriculture profitable." Now, that is a very good example of the logic which usually is urged in making such a change in the taxation laws. Imagine such a statement: "Reduce the tax on industry and agriculture will prosper". Reduce my taxes and you will prosper! Why, a moment's reflection will show you that there is no logic about it; it is simply a blatant assertion of a fact which not only is not necessarily true but which is almost incapable of being true. Where would the taxes come from if industry does not pay them? Will they come from the agricultural interest, or what other classes are there in the Commonwealth not interested in industry or in agriculture?

The case of machinery was admirably discussed by this 1909 commission, and they pointed out, what is apparent to anybody after a moment's reflection, that it is not necessary to change the general taxation laws regarding machinery if Massachusetts wishes to foster her manufacturing industries. The State has plenty of power in other directions to foster industry, if that is its purpose, and need not interfere with the taxes on machinery. In the first place, it can reduce the franchise tax. It can do away with the franchise tax entirely. There was no franchise tax that manufacturing corporations had to pay until the civil war brought taxation burdens upon the State. They were then put on; they can now be taken off. So far as any constitutional question is concerned, manufacturing corporations now have to pay no tax on their merchandise and stock in process, and by the same analogies the Commonwealth, if it saw fit, today could abolish the tax upon machinery and put it into a franchise tax, and reduce that as it saw fit. The case of machinery absolutely fails, as I say, and as was pointed out by your honorable commission in 1909; but I will say this: If any one is so simple-minded as to think that the people at this time in this Commonwealth are going to remove taxation from our manufacturing industries, which are paying dividends that they never paid before, and when the burden of taxation is falling all the harder upon all the rest of us, let them present their proposition in a concrete form and I will vote to submit it to the people. Then the people will know what they are voting upon, and I think there is no doubt as to what their answer would be.

The only other reason urged before our committee was that of the single-taxer. Now, there is a specific amendment offered in this Convention for the single tax. All I have to say is, if you believe in the single tax, vote for that amendment, and do not vote for this one to try to get it in an indirect way. Vote for the single tax proposition if you believe in it, but not for this. Then when that is submitted to the people they will understand what they are voting upon and can act upon it intelligently.

I said that those were the only reasons addressed to our committee. I believe there was one other, and this is it: It is said that because we made the exception to wild and forest lands, and because we made

the exception as to intangibles, our rule, which otherwise was just and good, has broken down. That is about on a par with their logic, it seems to me, as to removing my tax and you will prosper. I say that the fact that there have been only two exceptions to the rule in one hundred and twenty-five years speaks eloquently for the beneficence of the rule, and not for the necessity of its general repeal.

Now, if you will pardon me just a moment, I should like to state to you why we have proportional taxation. I am not going to give you my reasons for it, but I am going to our very highest tribunal, the Supreme Judicial Court of this Commonwealth, and take its statement of the reasons why we have proportional taxation. The Supreme Judicial Court said:

> This rule of proportion was based on the obvious and just principle that the benefit which each person derives from the government has direct relation to the amount of property which he possesses and enjoys under its sanction and protection. It was to prevent this essential principle from being violated or disregarded, and to render it certain that taxation for general purposes of government should be made equal, that it was expressly provided in the Constitution that a valuation of estates within the Commonwealth should be taken anew decennially at least, and oftener if the Legislature should order.

Again, the same tribunal has said:

> This provision is the protection of the taxpayer against any arbitrary, unjust or oppressive exercise of the taxing power.

And very lately it has said, within the last two years:

> The general purpose of the constitutional provision for proportional taxation is to put the burdens of government equally on all the people in proportion to their ability to bear them.

Now I fail to see anything wrong in protecting the taxpayers against arbitrary, unjust or oppressive laws.

Mr. O'Connell of Boston: Will the gentleman be good enough to give me the citations that he is reading from?

Mr. Cox: The first citation is from Oliver *v.* Washington Mills, 11 Allen, 268, and the next two citations were from recent opinions of the court on constitutional questions, and I have not here the citations of those volumes.

Now I want to call the attention of the Convention in this connection that it has been held over and over again that this obvious and just principle did not preclude the Legislature from making exceptions or granting benefits in the case of poor and needy persons, and so for charitable, educational and benevolent purposes. In other words, under our general police power as it is now or as it may be developed hereafter under the name of police power or social welfare power, the Legislature has full power now to make any necessary discriminating rules or laws about taxation, any just exemptions for the benefit of the poor and the needy or for religion and charity.

I should like to ask your attention to what we may expect and what we invite if we strike out the word "proportional." In the first place, our system of taxation, — not the amount of taxation, but our system of taxation, — will become merely a question of politics. Nobody can deny that it will mean that our system of taxation, as I have said, — not the amount of it, — will become the subject of all the political prejudices and passions which may exist in the Commonwealth from time to time and whichever may gain the mastery for

the time being. It will mean, — and observe, it must mean if this amendment is to be utilized, — it must mean that our taxation system laws will result in a multiplicity of classifications on property, with all kinds of different rates. As has been said elsewhere by eminent authority: "Our taxation laws would rival a tariff act with all its innumerable classifications and rates."

I do not believe that any such thing as that would be wise for our Commonwealth. I do not believe that it is any more wise to classify property in that way, — that is, property as property and not the use of it in some particular occupation, — any more wise to classify property in that way than it is to classify persons. And I should like to remind you of this fact: Persons can be classified as effectually and readily by the kind of property which they own and in which they deal as they can be by the land of their birth, their religious convictions or by their complexion. And I do not think we should open the door to all those changes or attempts to make the changes which will come in under such an amendment as this.

As I said at the outset, it is not up to me to show that all these things will occur. It is for the other side to prove that this is something that is necessary to the happiness of the people, so essential that we must change our Constitution in this respect. It is no answer to this proposition, it seems to me, to say that such things have not occurred elsewhere where the State has a right to legislate along the lines which are sought for under this amendment. It is significant that the States where they have now the power to make classifications as is asked for by this amendment have not done so. If they have not done so, and if we are not going to do so, there is no need of the amendment. And I think that the very fact that there would be attempts made by one set continually in the Legislature to make these changes and to secure class legislation along these lines, — that such attempts in and of themselves are a sufficient evil that they should be restrained. Of course, as I said a moment ago, it is no reason, it seems to me, to say that because these evils really may not become enacted into law we should remove the restraints which we now have in our Constitution. For example, I presume that the inspector of the Industrial Accident Board would tell you of many, many places in our factories in this Commonwealth which are unguarded but at which places the owner might say: "Well, we never have had an accident in those places." Now I do not think that the wise and the prudent manufacturer who has safeguarded properly such places in his factory would find that answer by the other manufacturer a sufficient reason for him to go to work and destroy the safeguards which he has put in the dangerous places in his own factory.

The taxation power, it seems to me, is the most vital one that the government possesses. The power to tax carries with it the power to destroy. That statement is accepted so universally that it appears trite. And I mention it only to remind you that if we are to have any written Constitution at all we should have in it some guarantees as to the exercise of that power. I may want to revert for a moment to call your attention to the fact that the only logical result which can come from legislation under this amendment if passed would be in the end to put all the taxes upon land or buildings or machinery; that is, it would put the tax on the property which could not hide or

easily run away. And it seems to me that that would be acting at cross-purposes to the intention which this Convention apparently has manifested in opening up the lands of this Commonwealth to a greater occupancy.

I was surprised to find that it is admitted by the single-taxer and the others who generally study taxation questions closely that the only result of actually working under such an amendment, aside from the way in which we now are carrying on our taxation system, would be to force the taxes upon the land and upon the buildings. Now I say that is going to make a hardship upon the extension of securing of homes for people of small means and I think it would work very disastrously in that way and against the manifest purposes of this Convention.

I will just call to your mind the importance of this taxation of property. Why, it has been more fundamental in the life of a people as a rule than the right to vote or the right to hold office. And I think that we should go slowly in this matter and cling to the good which we have till some overwhelming reason for change appears and some specific way is pointed out to us that insures improvement. I hold it to be true that no form of government, whether autocratic or democratic, can enjoy domestic peace and tranquility long if it exacts taxes from those who may happen to be selected to pay them without due regard to the proportional benefits received and the proportional ability to pay those taxes. Now the true proportion of property as such always has been and always will be the value of that property compared to the total value. And in my opinion, if Massachusetts shall adopt this amendment and tax my property at one rate, yours at a different rate and our neighbor's at still a different rate, she will not find "calm repose under liberty," though she "seek it with the sword." [Applause.]

Mr. O'Connell of Boston: Before the gentleman ceases on this matter may I ask him to exonerate the members of the committee on Taxation in reference to the preparation or the procuring of such data as that we received. I understood the gentleman to say the bulletin was written by somebody as propaganda. Now in personal explanation I want to say that before our committee met for final session I went before the commission appointed to collect data for the Convention and asked them to send us all the information they had, and it was at my request that the proof-sheets were shown to us at that meeting, and this is the first intimation I ever have had that the information that we received was prepared by anybody other than by the commission appointed to get us the information. I should like to know from the gentleman from Boston, the chairman of our committee on Taxation, who the gentleman is that he refers to and whether there was anything improper or false given to us in the information which has been given.

Mr. Cox: I hope I was not understood as casting any reflections upon the members of the Taxation Committee. So far as I know, they were just as innocent of any of the transactions as I was myself, and I do not for a moment, never have for a moment, thought that they were acting in collusion with anybody. I do not care to say that there was any collusion on the part of anybody. I simply made the statement that the proof-sheets, — and I have them here, — orig-

inally bore the initials of the gentleman I referred to and whom I think it would be of no particular use to name at this time. I would rather do that in the privacy of conversation with the member from Boston who has interrogated me.

As to the misstatements, if he asked me specifically for the misstatements of fact which appear in that work, I will point them out to him gladly. Of the nineteen States referred to as permitting classification by constitutional provisions, Georgia, Illinois, Maine, Michigan and Missouri are no more entitled to be so classified than is the Commonwealth of Massachusetts under its present Constitution. Of the States in which it is said the courts have interpreted the constitutional requirements to permit a classification of property, — mark you this, — in Kansas, North Carolina and Oregon in 1914, the people rejected the proposed amendment to the Constitution authorizing the classification of property for the purposes of taxation, and in South Dakota such an amendment was rejected by the people in 1916. The truth is that there are only eighteen States of which it may be said certainly that there is broader power of classification of property for purposes of taxation under their Constitutions than Massachusetts has under its present Constitution.

Mr. Creamer of Lynn: I should like to ask the gentleman from Boston who has just taken his seat if he does not know that it is an absolute fact that the State of Maine does classify property for taxation at varying rates?

Mr. Cox: Such is not the case. If you will turn to this Bulletin No. 20 which I have in some way maligned, you will find that there are stated the constitutional provisions which apply in Maine, and those provisions are:

> All taxes upon real and personal estate assessed by authority of this State shall be apportioned and assessed equally according to the just value thereof but the Legislature shall have power to levy a tax upon intangible personal property at such rates as it deems wise and equitable without regard to the rate applied to the other classes of property—

that last phrase being adopted in Maine in 1913. But as all of the gentlemen of the Convention will see, it is not so broad as the amendment that Massachusetts already has adopted to her Constitution.

Mr. Creamer: I should like to call the attention of the gentleman from Boston to the fact that the word "equally" does not mean "proportionally." I should like to call his attention also to the fact that the State of Maine within recent years has levied a different rate of taxes on poultry than it has on other classes of live stock, and if it had the word "proportional" in the Constitution as we have it could not have done so.

Mr. Trefry of Marblehead: I desire to say a few words very briefly in support of the resolution which has been reported by the committee to the Convention, and my remarks I shall confine chiefly to a very brief historical review of the development of the word "proportional." I shall read mostly from manuscript and from print.

The principle of the general property tax was established in Massachusetts by the well-known law of 1634, which provided that rates and public charges should "be levied upon everyone according to his estates and with reference to all other his taxable abilities whatsoever." Coupled with the general property tax laws, the taxing stat-

utes always provided that the taxes should be proportional, that is, should be levied with uniformity throughout the State. This combination of the general property tax with a provision for uniformity has pervaded our laws to the present time. In 1780 the principle of proportionality was embodied in the new Constitution of Massachusetts, giving authority "to impose and levy proportional and reasonable assessments, rates, and taxes". The application of proportionality did not take immediate effect. In the very next year, 1781, an act was passed providing that all property except unimproved land should be taxed at 6 per cent and that such land should be assessed at 2 per cent. This appears to be very much like a classification of property for taxation, and was not repealed until 1828. No question of constitutionality was raised, however, during this time.

Similarly, the new Constitution contained a provision for the levying of excises, and in the same year, 1781, another law levied a duty upon coaches, chariots and carriages, and required such property to be returned to the assessors. This probably was nothing more than a tax upon property and it is doubtful if it could have been upheld as an excise or duty except upon such a broad interpretation as to render the distinction between the tax on property and excise taxes unmeaning. This also passed without notice.

The meaning of the word "proportional" was considered by the Supreme Judicial Court for the first time in the case of Portland Bank *v.* Apthorp, 12 Mass. 252, which involved the constitutionality of the tax levied upon State banks in 1812. The court upheld this tax as an excise tax, but took occasion to say that it could not be sustained as a tax, because it was not proportional. Though this was a mere dictum, it inevitably carried great weight fifty years later, when the next case arose. And yet if the dictum of the court was correct it followed that the Province of Massachusetts Bay never had had anything remotely resembling a proportional system of taxation, and that the Legislature of the State only a year after the adoption of the Constitution had established an unconstitutional classification of real estate, which still was in force, and, under the guise of an excise, had levied an unconstitutional tax upon certain other classes of property.

When the savings bank tax came up for consideration the court followed the reasoning of Portland Bank *v.* Apthorp, and upheld it as an excise or duty on the franchise of banks, even though, unlike the bank tax of 1812, it was in lieu of local taxation of the deposits. The early decisions merely had upheld an excise that was in addition to the property tax. The latter, however, made it possible for the Legislature, wherever it could levy a valid excise, to exempt from local taxation the property which in effect had been excised. The door was opened, therefore, for a considerable extension of the excise power, and the Legislature took advantage of the opportunities.

Another important effect of the decision was to commit the courts to the general line of reasoning followed in the earlier case and make it probable that if the question ever arose the dictum laid down in Portland Bank *v.* Apthorp would become a decision to the effect that a tax, in order to be constitutional, must be proportional in the strictest sense of that word. And that is what happened.

Cases involving this question were not long in coming before the court, and it presently was held that the Constitution required taxes

on property to be laid so that, taking all the estates lying within the Commonwealth as one of the elements of the proportion, each taxpayer should be obliged to bear only such part of the whole general burden as the property owned by him bore to the whole sum to be raised. Thus the tax clause of the Constitution finally was interpreted in such a manner as to make it prescribe strict "uniformity in taxation." This interpretation of the word "proportional" has persisted until the present time and has been a stumbling block to progress in taxation ever since. At best it is only an approximate attempt at uniformity. It does not work out a mathematical proportion. This is shown by the rates of taxation in cities and towns, which sometimes differ as widely as from $26 a thousand to $3 a thousand, so that one citizen pays on the value of his property $26 a year and another with an equal amount in the same year $3.

The influence of this rule, coupled with the rapid increase of intangible personal property, brought about many evils which could not be controlled except by amendment to the Constitution. The experience of the Commonwealth under these conditions in trying to enforce the general property tax was somewhat disappointing. It was estimated that not more than one-tenth of the intangible personal property was reached for taxation, and when such property was reached it required a large proportion of the income from such property to pay the tax. It drove such property into concealment. It promoted colonization in the few favored towns. It caused capital to migrate from the State and placed an undue burden upon other property and produced general demoralization in the attitude of the citizen to the taxing power.

Mr. Cox: I should like to ask the gentleman if the language of the argument which he is using was not made and used and applied to the situation before we adopted the amendment as to intangibles to our Constitution?

Mr. Trefry: Yes, but it is equally true now. The proportionality which is prescribed, as I have read here, is not a proportional tax. It never in the world could hold if the whole Commonwealth of Massachusetts were one taxing district. It would be said at once that I, who pay a tax of $3 a thousand upon my property, $20,000, we will say, am not paying uniformly with a man who pays $26 upon the same amount of property. That same thing exists today as it did then. But the court considers that the city or the town is the taxing district, and therefore as long as you live in a city or town, if you pay the same rate as your neighbor does you are paying proportional taxes. I do not consider that uniformity of taxation.

Now in order, — and I shall be very brief, — in order to correct the situation it was proposed a great many times that the Constitution should be amended so as to provide for a classification of property which would make the rates of taxation uniform upon persons throughout the Commonwealth, — the tax upon the same kinds of property. The situation has been described very well by the member from Boston in this respect, and the classification which was offered was sent to the Supreme Judicial Court with a request for a decision as to whether a classification would be permitted under our Constitution, and the answer came back promptly that such a tax would not be proportionate. But the classifications which were suggested were quite as

sensible as the one which was made in 1781 and which persisted for so many years in the State. Then a commission was appointed in 1909, whose membership has been named to you. I was a member of that commission. The question which the order required us to consider was whether it was expedient to amend the Constitution so as to provide for a classification of property for taxation, and the commission said unanimously, No. But in one of the drafts, of which several were made, of that report, the commission says that the answer to the question which was asked is that you should have an income tax, but it would require a constitutional amendment even for that. Since that time the income tax has been agitated in this State. It has taken until 1916 to secure it, and even now it is a modified tax, simply to take care of intangible personal property.

There are some defects in that law. In my opinion, one of them is that it does not allow for such a classification of property as will allow progressive rates and it cannot be done under the form in which the Constitution has been amended. Now the form which has been presented to you here, in my opinion, will allow of such a classification. And although it does not say in express words that classifications may be made by amounts to be taxed, it does say that classes of property may be taxed at varying rates, which we were assured was constitutional.

It has taken a long time to make changes in the Constitution. There is no reason now why the Constitution should not be laid open so that taxation could follow immediately upon economic change. Economic changes are the cause of progression. Such changes oftentimes come quickly. But economic changes govern and control taxes and the Commonwealth always, in my opinion, ought to be in a position to do justice to its citizens and not injustice, as has been the case throughout long series of years, by allowing the word "proportional" to stay in the Constitution unrestricted.

I give my approval to the resolution which the committee has reported. [Applause.]

Mr. CREAMER of Lynn: This article of amendment has the endorsement of thirteen out of fifteen members of your committee on Taxation. In its final shape it has been examined carefully by the assistant Attorney-General, Mr. Hitchcock, and by the State Tax Commissioner, Mr. Trefry, who has just taken his seat, and it meets the approval of both, not only in form but in substance. It includes in one redraft all the taxing power petitioned for in documents numbered 15, 43, 60 and 131. Its powers are broad. It simplifies, enumerates and consolidates the entire taxing drafts of the Constitution. Its main purpose, however, is to broaden the taxing power of the General Court so that body can classify property for taxation at varying rates according to the nature of the property and the effect of the tax upon that property. For it is elementary in taxation that taxes on one class of property have a different effect than taxes on another class of property. This power to classify property for taxation exists in thirty-four out of the forty-eight States of the Union, in spite of what the gentleman from Boston (Mr. Cox) says. And personally I want to say that I have every confidence in the person who drew up this pamphlet to which he alludes and in the commission on compiling information for the Convention, under whose instructions it was drawn up.

Now what is the situation in regard to those forty-eight States? There are nineteen of them in which classification is provided for explicitly by constitutional provision, — the States of Arizona, Colorado, Delaware, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Pennsylvania and Virginia.

The following States are those in which the constitutional requirement of uniformity which we have has been interpreted by the courts of each of those States directly to the contrary of the way that our court has determined the meaning of the word "uniformity" and the meaning of the word "proportional." Those States are: Alabama, Florida, Indiana, Kansas, Mississippi, New Jersey, North Carolina, Oregon, South Dakota and Wyoming.

The following States have only vague restrictions on the taxing power in which the courts have held that classification is constitutional: Connecticut, Iowa, New York, Rhode Island and Vermont.

The States in which property cannot be classified for taxation are only fourteen, and here they are: Arkansas, California, Massachusetts, Nebraska, Nevada, New Hampshire, Ohio, South Carolina, Tennessee, Texas, Utah, Washington, Wisconsin and West Virginia. You will see by that list that there are only two States in this section of the Union in which the power to classify property for taxation at varying rates does not exist, and those two States are New Hampshire and Massachusetts. I have not heard that the taxing power in Maine or Vermont or Rhode Island or Connecticut or New York or New Jersey or Pennsylvania has been abused, but I have heard and do know that the taxing power in such a State as Pennsylvania has been used to build up that State at the expense in part of Massachusetts. I do know this, that Pennsylvania calls her method of classification of property for taxation at varying rates protection to Pennsylvania industries. Just what does Pennsylvania do? Pennsylvania permits the taxing of real estate improvements on a different basis from the land itself. Pennsylvania permits the taxation of machinery and merchandise on a different basis from what it does the land itself. And what is the theory and what is the practice? How has it worked out? The city of Pittsburgh taxes to-day her real estate improvements at one-half the rate it taxes the land value. It does not tax machinery or merchandise at all. How has it worked out? You naturally would think that the land owner would suffer by it, would you not? He does not; he is benefited by it. The gentleman from Boston (Mr. Cox) said it was impossible to so reduce the taxes on industry as to lessen the taxes paid by somebody else, but it is not impossible, because it has been done. That policy has had the effect of so attracting business to Pittsburgh that it has increased land values faster than it has untaxed other values. You have an illustration there of a creation of a new amount of property which did not exist before for taxation purposes, and everybody there has benefited and nobody has been injured.

I should like to give you some illustrations which have struck very closely home to us in Lynn on this matter. Melville Woodbury moved his shoe manufacturing enterprises from Lynn to Philadelphia a few years ago. He moved the A. R. King Company; he moved the Kozy Slipper Company. His enterprises are prosperous in Philadelphia.

According to a statement made by the last speaker, Mr. Woodbury's machinery used in the manufacture of shoes is exempted from taxation. His case is not a special one, by any means. All machinery in Philadelphia is exempted from taxation. The people there believe that machinery is a producer of wealth for the community, so they exempt it from taxation. Very likely exemption from taxation is not the chief cause of Mr. Woodbury's prosperity. He prospered here in Lynn where he paid a substantial tax; but it is a contributory cause. If he does not have to pay taxes he can put so much more into his shoes and do so much more for his help and distribute his savings over his business generally.

There is another circumstance about Philadelphia to which attention is called by gentlemen familiar with conditions there. Philadelphia boasts its many homes. It claims that there are more homes within its limits than in any other community in the world. Why? Because they tax a man who builds a home at only half the rate at which they tax the land values. At first glance exemption of machinery from taxation and the building of homes do not seem to go together. One would think that if machinery were exempt from taxation homes would have to bear the burden, but that does not hold good in the case of Philadelphia. Rather does it appear that machinery in Philadelphia, — mark the point, here it is, — produces so much wealth that Philadelphia people can build more homes than can people in other communities, and, there being many homes in Philadelphia, the taxation is distributed over a large area and falls lightly on each house.

The situation in Philadelphia is of great concern to the people here in Lynn, because the Lynn Chamber of Commerce proposes that machinery in Lynn be exempted from taxation. They did propose it. What happened when the Lynn Chamber of Commerce came up here before the legislative committee on Taxation and tried to get this word "proportional" stricken out of the Constitution? Here is what happened: In the first Legislature it went through the House of Representatives by a vote of 202 to 6 and through the Senate by a vote of 35 to 2. The second Legislature it went through the House by a vote of 179 to 49, and was beaten by a few votes in the Senate, — that graveyard of legislation.

Mr. BENNETT of Saugus: I do not get quite clearly the general statement. Do I understand that it is possible under the Constitution in Massachusetts at the present time to exempt machinery from taxation or to levy different rates of taxes upon machinery in the Commonwealth, and that what is difficult is to allow the city of Fall River, for instance, to exempt machinery while the city of New Bedford taxes machinery? Now is that statement correct?

Mr. CREAMER: It is.

Mr. BENNETT: Very well. Then I would like a little further information in regard to the gentleman's use of the illustration of Pennsylvania. Under the present Constitution, as I understand it from what he has just said, the Legislature of Massachusetts can exempt all machinery from taxation but what it cannot do is to allow the city of Haverhill to exempt certain machinery from taxation while the city of Lynn does not. Now is my understanding of it correct?

Mr. CREAMER: I will say for the benefit of the gentleman from Saugus that this proposed article of amendment would not permit the

Legislature to permit the town of Saugus to tax machinery on a different basis from what it would the town of Brookfield, but this amendment will permit the Legislature of Massachusetts to permit each town to do it itself, to tax machinery at a different rate from what it taxes land. That is exactly what happens in other States which do not have the word "proportional."

Mr. BENNETT: Is it not true that we can do that now under this Constitution; that we can make a classified rate if applied to the whole Commonwealth? Now under this amendment of yours would it permit the city of Haverhill to make certain exemptions which the city of Lynn need not make, for the purpose of bringing industries from Lynn into Haverhill? Would that be permitted if this amendment should go through?

Mr. CREAMER: It would not. It would not be permitted. The amendment distinctly says, if the gentleman will read it:

provided, that in the taxation of property all property of the same class shall be assessed at the same rate or rates throughout the Commonwealth or the divisions thereof by or for which the tax is imposed.

Mr. COX of Boston: Under that amendment I ask him if the tax on machinery would not be imposed by Haverhill in one instance as the political division imposing the tax, and in the other case be imposed by Lynn?

Mr. CREAMER: Yes, as a taxing power, in the same taxing district. The cities and towns are permitted to do that now. I will venture to say that the rate of taxation in Haverhill to-day is materially different from what it is in Boston or Lynn.

Mr. BENNETT: I do not know the answer, exactly, which I would like to make. [Laughter.] Of course the rate is different. That is not what I am after, — the rate. Of course the rate is made locally. But I have an idea that there are somewhere or other volumes of court decisions construing this word "proportional," and that one of its greatest effects, the effect which I know about myself, is to prevent a town or city from offering inducements in the way of reduced taxation, to induce industries to come from one city and locate in another city. I do not understand the value of the citation, because I understand you can do that now; you can exempt all cotton machinery in this State under the Constitution to-day, or you can exempt all woolen machinery; that has been done, — something like that has been done in the past. But under this amendment, if it goes through, would it be permitted for one city to bid against another city by exemption from taxation?

Mr. CREAMER: I think I already have answered the gentleman from Saugus by saying it would not be permitted. It would be permitted, though, for the Commonwealth of Massachusetts to attempt to draw industry to Massachusetts by placing a lower tax rate on the product of labor than it would on other values.

Mr. BENNETT: This is the last time I shall interrupt the gentleman; but I have a sort of recollection, away back in the distant past, that the State has provided, at a time when they hoped they could raise beet sugar here, before it went out west, before they monopolized it, — the Commonwealth of Massachusetts provided that all beet sugar factories should be freed from taxation for a certain term. Now, if that be the case, and that was constitutional, it seems to me that the

objection which the gentleman makes to the present law is not valid; and therefore I should like to ask him, as an expert on the subject of taxation, whether it is true that there have been exemptions like that in this State in the past?

Mr. CREAMER: I disclaim being an expert on taxation. In regard to the fact of whether or no the Commonwealth of Massachusetts at one time attempted to exempt beet sugar factories from taxation, I cannot say; but I can say this, and this is the meat and the root of all the evil: That the Commonwealth of Massachusetts cannot impose a different rate of taxation on one class of property in the same taxing district than it does in another. I do say also that it is absolutely necessary, if Massachusetts is to hold up her end in the industrial world of to-day, that she should be enabled to do what other States do and that is levy a tax in such a manner as to encourage the industrial and agricultural development of the State.

Mr. UNDERHILL of Somerville: If under your proposition a combination of the representatives of Lawrence, Lowell, Fall River, New Bedford, representing the cotton industry; representatives from Lynn, Brockton and vicinity, Boston, Salem, Framingham and Natick, representing the shoe industry; from Worcester, Springfield, Taunton, Pittsfield, and other cities, representing the machinery industry; then we will go into the farming districts and we will take all of the outlying back country districts; and if they could come to the Legislature and make a combination to exempt cotton machinery, shoe machinery, all machinery as manufactured, and all agricultural products, I should like to ask, in that instance, who is going to pay the taxes?

Mr. CREAMER: The gentleman from Somerville has had a long legislative experience. I should like to ask him a question in return, Yankee fashion. Has he ever seen the time in his legislative experience when a combination of that kind would work?

Mr. UNDERHILL: I have. In fact, the Legislature, under the leadership of Governor Draper, took the appropriation of money by special bills for the building of roads, and later for the improving of harbors, from the Legislature and appropriated a lump sum to be expended by the Highway Commission and by the Board of Harbor and Land Commissioners.

Now, sir, the gentleman may smile and tell the Convention that that is a reflection on the Legislature. It is not. It is a virtue; because every man, including the men from Lynn, was representing his district and trying to get all he could. And when he cast a reflection a little earlier in his remarks on the Legislature, particularly the Senate, he did not say to you that the year the bill passed, and during the interval when it was refused, a commission, consisting of honorable, upright gentlemen, advised the Legislature not to remove the word "proportional" from the Constitution.

I think I have answered the question. Will he answer me?

Mr. CREAMER: I should like to ask the gentleman from Somerville, before I answer him, of whom that commission was composed that advised not to strike out the word "proportional?"

Mr. UNDERHILL: If my recollection serves me right the proposition came up in 1908. The next year a commission, consisting of John L. Bates, Mr. Trefry and Mr. Chapin, who was Bank Commissioner at

that time and had been State Treasurer, reported against the proposition, and a change was made in the attitude of the Legislature.

Mr. CREAMER: I will say that the memory of the gentleman from Somerville and his knowledge of the facts are erroneous. The Legislatures in question were those of 1915 and 1916. I will say also that those are the two Legislatures to which I alluded, in giving the exact votes taken.

I will say, for the benefit of the gentleman, that I served on the State commission on taxation which brought in a unanimous report the first day of January, 1916, after the Legislature of 1915 had passed that amendment to the Constitution almost unanimously. Our commission, composed of eight members, also recommended unanimously that that word "proportional" be stricken from the Constitution, but it showed how little influence we had in the Legislature of 1916. While it went through the House four to one, it was beaten in the Senate by four or five votes.

Mr. UNDERHILL: I am willing to grant that the gentleman in his statement is right, for I know nothing of what occurred in 1915 and 1916. But, sir, the case that I cite was in 1908 and 1909, and my recollection I think is absolutely correct.

Mr. CREAMER: We have progressed since 1908 and 1909, I hope. Now, in regard to the other question of the gentleman from Somerville, in regard to the trustworthiness of the General Court to be entrusted with this power, I have been an advocate, and am yet, of the initiative and referendum; but I never had so unworthy an opinion of the Legislature of Massachusetts as to think they could not be entrusted with this power. If the Legislatures of 34 out of 48 States can be entrusted with this power, why cannot the Legislature of Massachusetts? But if the gentleman is so fearful that the General Court cannot be entrusted with this power, let him go to the polls for the initiative and referendum and appeal from a radical Legislature to a conservative people. [Applause.]

Mr. UNDERHILL: That is the ground of my opposition to the initiative and referendum, — that Lynn and congested localities in the eastern part of the State shall say absolutely what the rest of the State shall do, and that there is no safeguarding of the interests of those who live in the western part of the State. The farmers, being in a minority, have got to pay every cent of taxes rebated to the city of Lynn.

Mr. CREAMER: Let me say to the gentleman from Somerville, it is a fundamental principle of economics that you cannot build up the industrial centers of Massachusetts without benefiting the agricultural at the same time. [Applause.] If there is any value in what is known as a "home market," and I think there is, there cannot be a man within the sound of my voice who believes in protection to local industries, for the sake of creating a market for agricultural products, who will not be in favor of so levying taxes that we can encourage the industrial development of Massachusetts, and thereby benefit all, not some.

Mr. UNDERHILL: This is not a joint debate. Let me remind the gentleman that all the agricultural products raised in Massachusetts would not feed the people of Massachusetts for two weeks; and all the products of the farms and dairies of Massachusetts are only a drop

in the bucket to supply the present demand for agricultural products. If you are going to enlarge the industrial centers at the expense of the farmers, you are going to decrease still further the farms and farmers.

Mr. CREAMER: I cannot conceive how an increase of manufacturing development of Massachusetts can lessen the market for the agricultural producers of the State; but I can conceive that if the Commonwealth of Massachusetts permits its General Court to classify property at varying rates, as this amendment will permit, — I can conceive that industry will not leave Massachusetts, will not leave Lynn, as it has been doing, and go to other States, and therefore to a certain extent take away some of the market we already have. I can conceive, sir, also, that if we build up the industries of Massachusetts we may be able to increase the land values of Massachusetts faster than we tax those values. I can conceive that if you will make it easier for a man to improve his real estate, so that he can get some income out of it, you will have many opportunities open to labor, in the building of buildings, which now do not exist because of the onerous tax burden upon those buildings.

Mr. UNDERHILL: The gentleman has cited one case, of the removal of a manufacturer from Lynn to Pennsylvania. I should like to ask him if there have not been numerous instances of manufacturers leaving Lynn and going to Brockton, and other places in Massachusetts to establish and continue their business because of the peculiar labor situation that exists in Lynn?

Mr. CREAMER: I do not know of any such instance. Now, the gentleman from Boston who opened this debate —

Mr. UNDERHILL: Mr. President —

Mr. CREAMER: I thought the gentleman from Somerville said he did not want a joint debate.

The PRESIDENT: The gentleman declines to yield.

Mr. CREAMER: I will yield once more, and only once more.

Mr. UNDERHILL: I thank the gentleman for his courtesy and forbearance, but I would call his attention to the case of Tom Plant, who moved from Lynn because of labor troubles, and established factories elsewhere in Massachusetts.

Mr. CREAMER: The gentleman said that Tom Plant moved his business from Lynn to Brockton. I deny it. I still deny it.

The gentleman from Boston who opened this debate made the assertion that we ought not to change this because it had worked so well; and yet we have changed this constitutional requirement twice in the last ten years. We did away with the principle of proportionality when we enacted the forty-first amendment to the Constitution, permitting the classification of forest lands on a different basis from other real estate.

Mr. BENNETT of Saugus: I should like to ask the gentleman just two questions. In the first place, did you not just say that the forest lands were exempted from taxation, and did you not thereby confirm my contention that we have abundant constitutional provision at the present time for doing what they did in Pennsylvania? What we do is to set Haverhill or Lynn to bidding for bankrupt industries from other towns; that is what we do now, and that is my question. That is one question. The other question is this:

I thought the gentleman made the statement that unlimited ad-

vantage would be derived from removing the taxes from industries and putting them onto agriculture. Now, is there not a limit to that? Is there not an extent to which there would be no benefit to agriculture by taking off the taxes from industries, and creating new industries, to provide a market for agriculture, as is the frequent and usual statement? Is there not a limit that you could put upon that? I should like to have my two questions answered.

Mr. CREAMER: I will endeavor to answer the gentleman from Saugus; I do not know as I can answer him.

The gentleman suggests that the forty-first amendment, which permits a classification of forest lands for taxation, apparently, in his mind, would permit a classification of further kinds of property for taxation. But it will not. It permits only the classification of forest lands for taxation at a different rate from other real estate.

In regard to the fear on the part of the gentleman from Saugus that this constitutional amendment will put all the taxes upon agriculture at the same time it takes them all off of industry, why, I think he has created a bogy man. The amendment permits the Legislature to classify property. It does not say it must take it off of industry and put it onto agriculture, and neither could you elect a General Court that would. I mean, does anybody propose anything of the kind?

I simply want to carry out the rest of my argument in answer to Mr. Cox, the gentleman from Boston. He claimed this constitutional provision had worked well, that it was amended two years ago; it was amended a little later by the forty-fourth amendment, which permitted the classification of incomes for taxation at varying rates. So that now we have this situation: That we can tax incomes from real estate today on a different basis from incomes from other classes of property. But we all know that it is not feasible to tax income from real estate. The great benefit that is going to come from this amendment would be the permission to the Legislature to levy a lower tax rate on the doer than on the slacker, — that is all, — on the man who operates an industry and gives employment to labor, over the one who plays the part of a ground hog, if you please, and holds land out of use for speculative purposes, in order that he may benefit by the industry, the hard work and application of his neighbor. It is not a radical thing. Pennsylvania never had the name of being a radical State. Maryland does the same thing. That has not the name of being a radical State.

Some of my colleagues may say: "Oh, well, we cannot hope to equal Pennsylvania, no matter how we change our tax laws, because of Pennsylvania's natural resources." I grant you that we have few natural resources compared with Pennsylvania, aside from our water powers, perhaps. But is not all that added reason why we should not put a handicap on our manufacturers by an unscientific system of taxation?

These amendments have been drawn carefully. They permit no discrimination between persons, in spite of the argument of my colleague from Boston (Mr. Cox). There can be no discrimination between persons. Every bit of property of the same class has to be taxed at the same rate in the same taxing district, no matter to whom it belongs. Why, the people who would be afraid of that amendment would be afraid of shadows. I cannot see how any General Court ever

could enact tax laws under that that would discriminate against individuals. They cannot do it, and I have enough confidence in the General Court of Massachusetts to believe they would use that power wisely. I believe if the power is to be used, as it is used in other States, that it would have the effect of so increasing the taxable property of this State that it would make the tax burden easier for everybody, — even to the land speculator, if he attempted to use his land to the best advantage and for its development, by giving employment to labor upon it. [Applause.]

Mr. ADAMS of Concord: It is not easy to one unused to public speaking to address this body, but the issue is vital, and I think the gentleman from Marblehead (Mr. Trefry) really has stated it. Shall we remove the word "proportional" in order to introduce a progressive income tax? The gentleman in this division (Mr. Creamer) has another purpose in his mind, — that of encouraging industry. I merely shall point out that you cannot bring industries here by exempting a trifle, if the profit of that industry subsequently is taxed, as the owner of it may regard, unjustly.

Shall we then at this time notify the world, notify those who come to this part of the world, that we propose to change our system of taxation? Shall we do it at a time when of necessity the United States Government has adopted the principle of the income tax, and has introduced, or no doubt will introduce, the principle of the progressive income tax as far as it can? We must remember that a country can do things that a State cannot. You can adopt any laws of taxation you like in a country with very little danger that the citizens will renounce their allegiance. But Massachusetts is one of a number of competing States; each one of those States competing for industries, for men, for brains. The question is: What things can we do wisely in that competitive condition?

Danger arises in two ways from cutting out this word "proportional." One is a trifle, perhaps, actually driving taxable property out of the State, so that by the change you have killed the goose that lays your golden egg. That process, we all know, was going on, on a very considerable scale, before the latest change of our tax laws. To what extent it may go on no human mind can tell. It is hard to trace such things. But undoubtedly it is likely to be a grave danger to our real prosperity.

But that is not the real thing. We have got to have conditions here which will attract the young manhood of this country, conditions which will cause the young men coming back from this war to settle in Massachusetts, not elsewhere. We want to appeal to the best of them, to the men who have confidence in themselves and in their ability to make success for themselves. Such men are concerned with the problem of taxes. They will come back with that question in everyone's mind. Taxes will be enormous, they must be so, and those men, studying where they are to take up their lives, will look for the protection that the word "proportional" has given in Massachusetts.

It is true that that word does not exist in the Constitutions of many other States. But the great competing States without that word have behind them a record of careful thought and action on just this question. Men will go to those States with a feeling of safety which they will not have if the word "proportional" is stricken out here now, at

a time and under conditions which gives notice that we are to welcome every sort of change in our tax system known to the world. The question is simple and practical. I believe that we shall injure Massachusetts far more than we can help her, that we shall incur grave danger, if we strike those words out.

Mr. William S. Kinney of Boston moved that the resolution be amended by striking out lines 3 to 12, inclusive, and inserting in place thereof the following:

Full power and authority are hereby given and granted to the General Court to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident and real estate lying within the said Commonwealth; and to impose and levy reasonable taxes upon personal property or upon the income derived therefrom as well as upon incomes derived from professions, trades and employments, which shall be proportional upon property or incomes of the same class, provided that personal property the income from which is taxed may be exempt from other taxes, as well as from duties and excises other than those imposed on licenses, transfers, legacies and successions; and in taxing personal property or incomes the General Court may grant reasonable exemptions and abatements, may classify personal property and incomes in a reasonable manner, may classify machinery as personal property, and may tax the interest of both owner and mortgagee in mortgaged real estate as real estate either separately or to the owner.

Mr. KINNEY: The amendment which I have offered undoubtedly appears to the members to be rather long and complicated. I have no doubt that before we come to act on this matter the whole question will have gone over to another day and the amendment by that time will have been printed. However, at this time I desire to inform the members as to just what the situation in regard to taxation is in Massachusetts. It is a situation that I have been actively in touch with for the last ten years. I have served as a member of the committee on Taxation in the Legislature, as chairman of the committee in 1913, and the amendment which I have just offered represents the amendment reported by the committee on Taxation of the Legislature for the year 1913. That is the constitutional amendment which the legislative committee reported to the Legislature that year, and which passed the House but was killed in the Senate.

The situation in regard to taxation in Massachusetts at the present time is the result of the continued effort of those of us who have desired to broaden the constitutional authority of the Legislature, — a process which we have succeeded in gradually from that day to this. I might say in starting that I agree with almost everything which the committee on Taxation of this Constitutional Convention has embodied in their report, with a single exception, and the amendment which I have offered will go almost as far as the amendment offered and supported by the committee, as represented by its chairman, falling short merely of preserving the word "proportional" as it applies to real estate and property of the same class, but removing the force and effect of the word "proportional" with regard to personal property of all kinds, income of all kinds, and machinery. That, I think, would relieve the only necessity for further constitutional change in Massachusetts at the present time, which is the necessity for legislative ability to enact laws relieving the burden upon machinery.

Now, what was the situation when we started this fight? When we started this fight ten years ago Massachusetts was laboring under what was known as a general property tax. That was an old-fashioned system of taxation which our forefathers had brought from England. We

could make no change because of the decision of the Massachusetts Supreme Judicial Court, which the gentleman from Lynn (Mr. Creamer) has mentioned, defining the word "proportional." The Supreme Court of the United States has taken an entirely different view of that word. The Legislature of Massachusetts ten years ago was tied absolutely by the word "proportional." The first move we made was in 1912, when I had the privilege of bringing out of the committee on Taxation the amendment which released forest lands from the operation of the word "proportional." That amendment came out, went through the Legislature, and was adopted by the people and is now part of our Constitution; so that the Legislature could make such laws as it deemed necessary for the taxation of forest lands, which in effect means that during the first years of the life of trees the Legislature will exempt them, only to tax the full grown timber at the time when it is cut. The next step was to secure an amendment to the Constitution which would permit an income tax. Every year there was a fight, and it took a half dozen years to get an amendment by, which permitted the income tax in Massachusetts. I shall not go over all the stages of that fight, — it was very bitter, — but we finally secured the passage of the forty-fourth amendment to the Constitution, which permitted the present income tax of Massachusetts. Now, that cleared up most of the difficulties of Massachusetts in regard to taxation. It left, however, one or two things which are needed to put Massachusetts in the ranks of States progressive in the application of their taxation laws. If there is any one thing which Massachusetts needs more than anything else to compete with surrounding New England States in regard to the taxation situation, it is the ability either totally to exempt or to give a very low rate of taxation on machinery. Rhode Island, with a four-mill tax, New Hampshire, with a low tax on machinery, offer to the cotton industry and manufacturers competing with those in Massachusetts much more favorable terms than Massachusetts can offer to those same industries. The result is that when manufacturers in those industries desire to build a new mill they build it either in Rhode Island or in New Hampshire, or one of our surrounding States. So that there is an imperative need at the present time that Massachusetts be placed in a position where she can enact taxation laws in regard to machinery that will enable her to compete successfully with the surrounding States.

The amendment which I have offered will permit Massachusetts to tax machinery as personal property. In effect, the amendment which I have offered does this: It leaves real estate, — city property, all forms of real estate, — exactly as they are today, subject to proportional taxes; leaves the word "proportional" out of the Constitution so far as personal property is concerned. That allays any fear that any owner of a farm or of real estate may have as to radical legislation affecting real estate values throughout Massachusetts. That is where it leaves real estate. It takes all personal property outside the operation of the word "proportional", leaves the Legislature absolutely unhampered to pass such tax legislation as it deems best for the interest of the Commonwealth in regard to personal property; and it gives the Legislature power to classify machinery as personal property, thereby giving the Legislature full authority to pass such tax laws as it may deem expedient in regard to machinery.

Now that is a brief statement of the history of the effort to reform the tax laws in Massachusetts. That amendment which I have offered I believe will cover the whole situation, will go almost as far as the amendment proposed by the committee, with, as I have explained, the single exception of real estate. It will leave real estate still in the protection and safeguard of the word "proportional."

Mr. Lynch of Milford: I wish the gentleman would give us the citation of the case in the United States court, if he will, to-morrow.

Mr. Kinney: I shall be glad to bring to-morrow the citation of those cases.

Mr. Parkman of Boston: I should like to ask the gentleman this: He says it will class the taxation of machinery as personal property. Now, to-day intangible personal property is taxed under the income tax. Tangible personal property, like machinery, is taxed the same way that real estate is taxed. I want him to explain that a little bit more.

Mr. Kinney: I thought I had made that clear in the amendment which I have offered. It takes all personal property, tangible and intangible, out from under the protection of the word "proportional", — all classes of personal property; but leaves real estate, and tax laws relating to real estate, subject to the word "proportional."

Mr. Mancovitz of Boston: I should like to ask the gentleman if it is not the intent of the amendment, if carried to its logical conclusion, to relieve machinery and other personal property from proportional rates. Where does he expect to find increased revenue to meet the necessary revenues for the cities and towns and the Commonwealth to offset the revenue lost, if the rate is reduced on personal property?

Mr. Kinney: That is the old cry that everybody interested in tax reform in Massachusetts has had to face for ten years. When we came up here and wanted a constitutional amendment to permit the income tax law in 1916 that cry was raised, — that if you lower the rate of taxation on personal property, on intangibles, to a lower rate than other property, revenues would decrease.

The answer is now history. The law we enacted has produced, and did produce last year, thirteen and one-half million dollars as against about six million that the same class of property produced before we enacted the law of 1916. And the answer to the gentleman's inquiry in regard to machinery would be this: I do not know how much machinery we now have in Massachusetts, but say, for example, that we have $100,000,000, and we find our manufacturers not constructing new mills here, but find new mills in Rhode Island and in New Hampshire and in all our surrounding States. If we are able to reduce taxation on machinery to a point which will put Massachusetts on an economic equality with Rhode Island, New Hampshire, and surrounding States, by the construction of new mills here, by the employment of the labor that those new mills will make possible, by all of the economic conditions that grow out of retaining our industries when they are developed, keeping them from going to other States, the revenue incidental to that operation will more than double what we now get.

Mr. Mancovitz: I should like to inquire, if every individual who filed a return for 1916 or 1917 to this Commonwealth had told the truth, under the original Constitution, should we not to-day have a tax rate of a third of what we have now?

Mr. KINNEY: No one could tell the truth under the system we used to have, because if they had told the truth and had made an honest declaration of property, the rate that was prevailing would have made the application of the tax law practically confiscatory.

Mr. MANCOVITZ: Is the gentleman free to confess that the enactment of the income tax law was a concession to dishonesty?

Mr. KINNEY: No, I am not willing to admit any such thing. What I do claim is this: That the income tax law was the first time in the history of Massachusetts that the State enacted a law which any citizen could meet in fairness and honesty to the State, and honestly declare his property, and let it pay its just proportion of the taxes.

Mr. BENNETT of Saugus: I should like to ask one question, for the gentleman to take with him over night, — or two or three questions. He says something about their going to Rhode Island and leaving Massachusetts. Now, let him look up a sample over night. There is a very successful woolen manufacturing company, the American Woolen Company. They operate in different States. Have they got any mills in Philadelphia? No, so far as I know; if they have, it is unimportant. Did they go to Rhode Island? No. They have a mill in Rhode Island, but in their great increase in the production of textiles they have not increased in Rhode Island. They have built the biggest mills in the world in recent years in Lawrence, Massachusetts, and in Maynard, Massachusetts. They have come and they have increased here in Massachusetts.

Do not talk to me about intangible personal property that you are after. You are not after intangible personal property, — you are not after intangible personal property.

Mr. KINNEY: I think the gentleman must have misunderstood me. The situation in regard to intangibles has been all fixed up under the provisions of the forty-fourth amendment. We do not need to concern ourselves any further; we need no more constitutional amendments about intangibles; they are taken care of. I stated, I think, — or I intended to, — that the only situation now that really is pressing and that demands a constitutional amendment is to have the ability in the hands of the Legislature to deal with the question of machinery.

Mr. BENNETT: I want to leave that question of the American Woolen Company for my friend and other gentlemen to consider over night. Now, take the shoe manufacturing industry. When I first knew the city of Lynn it had 26,000 people, and they have been complaining ever since about one thing and another that restricted them. Now they have got 100,000 people and over. Do they move away for various reasons?

Let me tell you, I think this is true, or it is substantially true, — I might be picked up on some small detail, — that when Mr. Walter C. Fish came to Lynn he was sent there by the General Electric Company to wind up the business and to take it to Schenectady, New York, and they were employing 5,000, 6,000 or 7,000 hands. After he had been there a short time he reported that labor in Lynn was 25 per cent more effective than it was in Schenectady, and 50 per cent more effective than it was in any place in the west, for two reasons. One reason was the atmosphere, and the second reason was that the old shoemaker element, with its seasons of activity and its seasons of rest, had acquired a speed in industry and application that

did not extend to many other places. And instead of moving the General Electric Company from Lynn to Schenectady, he increased production, he built buildings, and employed 24,000 hands, and I do not know what more.

The gentleman in the first division (Mr. Mancovitz) has put his finger on one great objection to that, that is, where is the revenue coming from? Well, now, a good deal of it, some of it, is coming from agriculture. Now, another thing, you cannot apply this to machinery. You take personal property, you take cows and horses, they are taxed out of sight now.

There are several other points that I desire to bring out on this that I want the gentleman to take home. I should like to have the gentleman look up whether there have not been exemptions of some kinds of industry in this State in the past. I am very sure the law used to be construed, when I knew about it, as permitting the exemption of an entire industry through the State, but forbidding the local exemption of one town or one city as compared with another.

There is no need of it; there is absolutely no need of it. Where is there any part of Massachusetts that has not grown?

Mr. KINNEY: In regard to the illustrations which the gentleman gives as to exemptions in the past, as the hour for closing has arrived, I will state that the Legislature at different times in the history of Massachusetts has passed laws making exemptions. The Supreme Judicial Court, however, reviewed the question of the authority of the Legislature to make those exemptions, and if the gentleman to-night will read the opinion of the Justices in the 195th Massachusetts, he will find that they said that most of those exemptions by the Legislature were unconstitutional, and that there was no authority, with the word "proportional" in there, for making many of the exemptions which the Legislature has made, and defining strictly the authority of the Legislature on that subject. That whole question of exemptions is covered in that opinion of the 195th Massachusetts.

Mr. BENNETT: I shall not take up any more time now, but will the gentleman look into this matter of the efficiency and growth of industries in Massachusetts?

Mr. WHITE of North Brookfield: Being somewhat familiar with the cotton industry, I should like to make just one short statement. The reason that cotton industries are removed to New Hampshire is not the question of lower taxes on machinery, but more favorable hours of labor.

Debate was resumed Thursday, June 27.

Mr. BAUER of Lynn: For many years as a civilian I have made a study of those problems that seem to arise in this Commonwealth from our method of taxation, and I have arrived at the conclusion that the word "proportional" as placed in our Constitution was not intended by the forefathers who placed it there to have the accepted meaning that since then has been given to it. The men in this Convention who have had legal training, — and there are 157 such men, — will recognize the fact that at the time the Constitution was formed it was during an era when there was no equity jurisprudence, that the laws then existing were common laws or statute laws, and we had not arrived at that stage of progress wherein it was believed that equity

jurisprudence was necessary to supplement the already founded methods of legal determination. The lawyers of this Convention know that in many instances a court of equity has superior power to solve problems which courts at law have not at all, that the people who go before a court of equity go there in a different manner than they go before the courts of law; they must go there with absolutely clean hands to have their problems determined. Therefore I think that the forefathers, when they placed that word "proportional" in the Constitution, really meant "equitable," because they were men of large vision. Those who understand the early history of this Commonwealth know that for many years it was the custom of the rulers of the Commonwealth to grant bonuses and other forms of inducement to manufacturers of a product to further increase their manufacture, to further enlarge their investment in the plant, and everything was done in those days to induce an intensive increasing manufacturing condition that would give employment to labor in this Commonwealth. Even at that very early date our forefathers determined that the natural resources of Massachusetts were very limited, that probably there were no great mineral resources here, very restricted agricultural resources and no particularly important timber resources. Therefore they seemed at that early date to do everything they could to encourage commerce, merchandising and the production of manufactured products. Our early history is full of examples where those encouragements were given by the Commonwealth. Therefore I cannot bring myself to believe that the forefathers of those days meant that the word "proportional" should have the accepted meaning that the courts since then have given to it. I believe what they really meant was that the taxes should be levied in an equitable manner, and that is all the advocates desire who favor the removal of this word "proportional."

The word "proportional" is a misnomer. It never has meant very much in Massachusetts. It certainly did not mean very much when it came to the taxation of intangibles. It certainly does not mean what it should when it comes to the taxation of manufacturing properties to-day, because to-day, with the word in the Constitution, there is not a city in the entire Commonwealth whose tax assessors do not purposely, with the approval of the community, fail to tax large industrial plants to the one hundred per cent that their oaths and the law require them to tax them, and they do it because they believe if they tax them to the full extent as the law requires, the industrial plants would move from their respective cities. Indeed in the city of Haverhill it has been the custom for years among the tax assessors, with the approval of the people of the city, to tax only in a very nominal way the shoe manufacturing machinery used by manufacturers in that city, while in the city of Lynn the assessors have taxed it always to the maximum amount. Therefore you see that the word "proportional" as it now exists really does not mean what it should and really is a misnomer. And it is so because the people of the different industrial cities, at any rate, regard that a compliance in the strict legal sense of the word would be injurious to their prosperity.

I am going to make an effort in the very few minutes at my disposal to show that the removal of the word "proportional" is an incentive and an encouragement to the increase of manufacturing on

the one hand, giving a vast amount of added employment to labor and all the necessary benefits that come to the merchant and to the transportation companies and everyone in business from that added employment. I am going to show that it is going to be beneficial to the farmer. There are many here who seem to concern themselves about the farmer, but as a matter of fact, when it comes to doing anything for the farmer, they are found wanting and the farmer gets very little done for him except the promises around election time about how everyone regards his interests and how highly important they are. I am going to show further that the land owner, — the wealthy property owner, the owner of the improved properties, who pays his taxes on his improvement and on his land values, — is treated unfairly because of the presence of the word "proportional" in our Constitution.

We will take the States which have been the most liberal, since this word "proportional" was determined as it has been in this Commonwealth, to manufacturing interests; because they believed in being liberal to owners of producing machinery they gave added incentive to bring capital investment into their community and they furnished thousands of employees with employment that never before had existed, and as a result of that homes had to be built, stores prospered, everything in the communities prospered. Take the Commonwealth of Pennsylvania, for example, a State that has been most liberal toward its manufacturers, most liberal toward its land owners who have built improvements upon their property. According to the 8th census, in 1860, Massachusetts stood second at the head of all the States in this Union in the annual value of her manufactured product, being surpassed only by the State of New York by a little over $2,000,000. So you see about the time we were getting this word "proportional" really determined so as to be restrictive of our own prosperity, we were second among all the States in the Union in the annual value of our manufactured products, being led only by the State of New York. At that time Massachusetts led Pennsylvania by $2,699,084 in the annual value of her manufactured products. At that time Massachusetts led Illinois by $141,211,722 in the annual value of her manufactured products. Now to-day what has happened? These other States have more liberal and more progressive and more prosperity-inviting taxation arrangements than Massachusetts has, and what has been the actual result as one of the factors of their tremendous advance in the value of manufactured products and the tremendous lead they now have over the Commonwealth of Massachusetts? According to the 1910 census New York led Massachusetts by $1,878,961,000 in the annual value of her manufactured products. Pennsylvania, which used to be third, now leads Massachusetts by $1,136,213,000 in the value of her annual manufactured product. Illinois, that used to be fourth, now leads Massachusetts to the extent of $428,748,000 in the value of her annual manufactured product. And to-day Massachusetts, among all the States in the Union, in the value of her manufactured product is running a very bad fourth. New York has gained over Massachusetts in fifty years $2,078,961,000. Pennsylvania has gained over Massachusetts in fifty years $1,138,912,084. Illinois has gained over Massachusetts in fifty years $560,959,722 in the annual value of her manufactured product.

Now it must stand to reason, gentlemen, that the manufacturing interests of those States, aided as they are by the States themselves in the form of their taxation arrangements, have added very materially to the prosperity and the success of those States as manufacturing States. The sad part of it all is that each one of those States had mineral resources and timber resources and agricultural resources in addition to this tremendous advance in manufactured product, that Massachusetts has not at all.

Now we come to the problem of how removing "proportional" would affect the farmer. It would affect the farmer because it would be applied in an equitable way. Everyone knows that New England in times gone by used to be a great wool-producing country. The farmers, if they could have a law exempting from taxation their sheep, without any question in a few years would produce a great amount of wool in Massachusetts. The milk producers, whose products affect the infants of our entire State and the sick and those whose health is not perfect and need building up, have reached a critical stage in the Commonwealth at the present day. Farmers of my acquaintance are threatening today to beef the few milk cows they have left because of the unfair arrangements that discourage them in producing a product that if sold at a low price to us would mean so much to the people of the Commonwealth. And I believe that the farmers, in order to encourage the production of milk, should not be taxed on milk-producing cows. I believe, further, that the farmers, in order to encourage them in the production of all animal husbandry, should have their animals that produce foods for the Commonwealth untaxed. I believe it would be good business for the Commonwealth to so arrange its taxation that it could be applied equitably on those factors that would not be affected by it to the extent that the farming industry is. The day will come very shortly in Massachusetts when we shall have to do a great deal more than the State ever has done in order to preserve and encourage what little agricultural effort there is left in the farming industry.

Now as to the land owner who is building improvements, the big real estate man down town. He is confronted with the problem of an adjoining block of fourth-class buildings that probably are owned by trustees of large estates that have been handed down almost in perpetuity, and those buildings are allowed to remain there as "taxpayers" so that the owners of the trust or the beneficiaries of the trust can receive that tremendous unearned increment in values that the building improvements and other improvements of their more progressive neighbors have made for them without their doing a single thing or making a single effort to further improve their own property and keep it up to the same character that the neighborhood demands. There is not a man in this room who has not a personal knowledge of examples of that kind where the ground hog holds most valuable property, improved only with tax paying improvements or not improved at all, for the tremendous unearned increment that his more enterprising neighbors and land owners give back to his indifference and lack of patriotism and civic pride in developing his own property to keep it up to the standard of the rest of the neighborhood.

Look at our residence districts. The land speculators for years on Commonwealth Avenue, and those highly sought-for residence locations,

held that land for fabulous prices, would not let it go at a reasonable market price, believing that they would accomplish two things: That either they would get their price eventually, which was an unreasonably high price, or they would get the unearned increment that went with that land, because people all around built up nice homes and spent a large amount of capital in developing their property.

That has occurred under the word "proportional" being in our Constitution. I believe the day will come soon in Massachusetts when the land owners, large or small, rich or humble, will agree that a special excess surtax, if need be, be placed on the owners of that kind of property, in order that they may pay their equitable return back for the common good and the common conduct of the community.

And so we go down the line, first with the industry men, then with the farmers, then with the city property owners, and we see where the word "proportional" really has handicapped every one of them, where it has restricted them, and where it has been an unfair proposition in so far as the development of the Commonwealth is concerned.

Mr. WALCOTT of Cambridge: I should like to ask the gentleman in the third division if he kindly would give the names of some of the gentlemen who hold the land up there on Commonwealth Avenue, and the prices at which they hold it. I think he is dreaming day dreams. I should like to give him a chance to give the names.

Mr. BAUER: The gentleman very well knows that I cannot give the names. Being legally trained and having a legal mind, he has asked a question that cannot be answered on the spur of the moment, while a man is on his feet. But the evidence is there. Ask the people who live on it. I know a great many people who live on Commonwealth Avenue adjoining empty land, that has been held there for years, and the developments have been restricted, and they have gone forward in that way.

Mr. LOMASNEY of Boston: How many pieces of vacant land are there on Commonwealth Avenue between Arlington Street and Massachusetts Avenue?

Mr. BAUER: At present there are not a great many pieces.

Mr. LOMASNEY: How many are there?

Mr. BAUER: There are several pieces of land.

Mr. LOMASNEY: I do not like to contradict the gentleman, but I assert positively that there is but one piece of vacant land on Commonwealth Avenue between Arlington Street and Massachusetts Avenue, and that one piece is near the corner of Massachusetts Avenue.

Mr. BAUER: I did not understand the gentleman to restrict it to Massachusetts Avenue. I was going to the Fenway on the Avenue. There are several large pieces of land between Arlington Street and the Fenway that have not been developed. Within the past eight years there have been some developments of vacant pieces of land on that Avenue, but for the first twenty years that land was held by speculators, or people who wanted the unearned increment on land values, to the disaster of everyone who pays taxes in the city of Boston.

The whole sum and substance of this word "proportional" resolves itself, it seems to me, in this way: That if we wish to continue as we do now, and restrict our industries from further expansion and further

employment of labor as we have done, — and right here, on that point, I wish to state that the treasurer of the Waltham Watch Company, talking with me personally some seven years ago, told me that if the Waltham Watch Company were to build an addition to their plant they would not build in the Commonwealth of Massachusetts because of the word "proportional" being determined in the way it has been by the courts. That is only one instance of a great many.

Mr. E. U. CURTIS of Boston: I should like to ask the gentleman how much in the way of building the Waltham Watch Company has done within the last seven years, — in the way of increasing its plant.

Mr. BAUER: They have put on some additions to their plant for the purpose of taking care of additional automobile business that has crept in on them, and they have deemed it advisable to take advantage of it, but there have been no material additions to their plant. The treasurer of the company told me seven years ago, as I recall it, that if they were to make any material additions to the plant they would not be made in Massachusetts. I have a letter from him also, over his own signature, to that effect.

Mr. CURTIS: I should like to ask the gentleman if it is not a fact that the Waltham Watch Company has built a very large addition to its plant, facing on the Charles River, within the last seven years.

Mr. BAUER: They have built an addition, but not a very large addition and not a very important one. I am quoting the treasurer of the Company on a statement he actually made to me, and I believe that he probably understood the affairs of the Waltham Watch Company much better than any outsider could.

I further point to the fact that our boulevards that have been put along our ocean shores by the Commonwealth have been occupied for years by miserable shacks and the improvements of a tax paying kind, for the purpose of holding the land until such a time might come that the owners would receive about five times as much per square foot for that land as it was assessed for. I speak advisedly, because I had the honor of going along that boulevard from Swampscott to the most southerly part of the Revere shore at different times to obtain options from the owners of the land for the Metropolitan Park Commission on the one hand, and the Massachusetts Highway Commission on the other hand, and I have personal knowledge of that fact.

Mr. CURTIS: I should like to ask the gentleman if the land bordering on the Metropolitan Park Boulevard at Lynn, in the neighborhood of where the gentleman lives, has not been very largely taken up, and very largely sold at increased prices since the building of that boulevard.

Mr. BAUER: The feature as it affects the boulevard in Lynn is no example of the general boulevard system at all, because in Lynn we have a tremendous amount of civic pride. We fought for that ocean boulevard in Lynn, and Boston paid 55 per cent of it, and did not wake up until after the improvement there had been completed and paid for. We did everything we could to encourage the right kind of improvements on that boulevard in Lynn; we did everything we could to discourage the wrong kind of improvements on that boulevard in Lynn. It has not been done on the boulevard system anywhere else in the entire district.

Mr. CURTIS: I should like to ask the gentleman if there has not been a very large development, a very large sale of land, in the neigh-

borhood of the Point of Pines in the last few years and a very desirable lot of buildings erected thereon.

Mr. Bauer: There has been a development in the neighborhood of the Point of Pines, and a very commendable one, and it was commendable because the promoters in the development had the idea of civic pride, so that they would not permit anything objectionable to be located there, much to their credit.

Mr. Leonard of Boston: Did I understand the gentleman to cite, as an example of the civic pride of Lynn, the fact that they had secured there a public improvement for which the city of Boston had paid 55 per cent?

Mr. Bauer: Yes, and for the information of the gentleman who has just taken his seat (Mr. Leonard) the city of Boston pays about 55 per cent of every Metropolitan Park District improvement, and that is the reason; not that Lynn got anything that no other place received, but she got that 55 per cent when the improvement was finished and paid for.

Now, the word "proportional" in the Constitution in my mind has acted as a restriction on the prosperity, not only of the land owner, who wants to pay fairly his full share of the burden, and the man who develops his land in a proper manner and is glad to pay his share of the public burden on the development, but also the farmer who needs every advantage possible to encourage him to raise the food that we must have, that we must have at close range, that we cannot get from a distance, in order to have it properly helpful and at a low price. The industry man is interested in it because it allows him to add to his plant and cut down his overheads on his producing machinery. The laboring man is interested in it because it offers further employment for him in the added industrial expansion in which this would be one of the factors. The merchant and the real estate owner, and the rental property beneficiary, whoever it might be, trust or person, is benefited by it, because it offers him a more competitive market for what he has to sell. Therefore the word "proportional", as it is accepted now, and as it is not in force as it should be, is restrictive on the people of this Commonwealth all along the line, and it should be abolished, and some word should be substituted for it, or the resolution should go through as reported by the committee.

Mr. Curtis of Revere: I understood the gentleman (Mr. Bauer) in a previous statement, — or, at least, I got the impression, — that if he had been on the Supreme Judicial Court of Massachusetts at any time, he would not have defined the word "proportional" as the Supreme Judicial Court has. I would ask the gentleman to give the delegates his idea of the meaning of the word "proportional."

Mr. Bauer: I am afraid my personal belief of some of the Supreme Judicial Court decisions, expressed in this assembly, might jar some of the men who believe in the sanctity and the holiness of this court and the absolute desirability of not criticising those decisions, so that I shall not attempt to answer the question.

Mr. Bennett of Saugus: I think we know that labor in the Commonwealth of Massachusetts, and manufacturing, are more efficient than in almost any other State in the Union. This is due partly to climatic conditions, and partly to hereditary influences, to the long years of employment in various capacities. Now, I defy anybody to

name a single textile mill or shoe factory that has gone from Massachusetts into Rhode Island. There has been a lot said about our manufacturers going there. I defy anybody to name a single textile mill or shoe factory that has gone to Pennsylvania.

Mr. CREAMER of Lynn: I should like to answer the challenge by naming Melville Woodbury of Lynn.

Mr. BENNETT: I will give him a chance shortly to name where they went from and where they went to. Not now. I will defy anybody to name a textile mill or shoe factory that has gone to Pennsylvania. The iron industry has gone because they wanted to get near where the coal and iron are.

Now, as to the growth of Illinois, what is included in that great manufacturing business is the beef business, the meat business, the slaughtering, which naturally has drifted out there, as conditions are changed. But has manufacturing as a whole been going down in Massachusetts? No. When I first knew the city of Lynn it had about 26,000 people, and they were all the time complaining about how they were going to be put down and out. Now they have 100,000 people. Why? Has it been because of good government simply? No. They have had good government. They have had good mayors. They have got a mighty good mayor now (Mr. Creamer), as well as a very handsome one. [Laughter and applause.]

The speaker, my prosperous friend, who has just taken his seat, reminds me of that character of Shakespear's, I forget his name, I think it was Jack Cade, maybe. If they would elect him to office, anyone who bought one loaf of bread should get two and any man who bought a quart pot should get two quart pots, and the man who agreed to work for four shillings should get eight shillings.

Mr. BAUER: Will the gentleman from Saugus also include his own milk in that list?

Mr. BENNETT: I will come to that. I think I am the largest farmer in the county of Essex. [Laughter.] I do not mean physically, though that may be true also, but in the amount, in the value of product, I think I am the largest farmer in the county of Essex. Essex has a good deal of manufacturing, very prosperous manufacturing. It is also a large agricultural county, as counties go. I am pursuing the line of argument when I say that I also am the only man who takes into the city of Lynn milk which is not more than two to four hours old. I have some a little older, but I do not have any of this milk forty-eight hours old, or one hundred and forty-eight hours old. Mostly two to four hours old. I have built up that business in twenty-five years, from the ground up, and in order to save it from being a parasite on some other business I have had to sweat blood, as the saying is. Why, at the present time I have had ten acres of corn destroyed by worms, but the other farmers have had a similar experience. I have had three or four destroyed by frost. But all of those natural difficulties of the farmer are slight in comparison with the visits of the tax-gatherers, which are the worst of all.

It is impossible that we should make this panacea confer a benefit upon everybody. You have got to have revenue, and if you do not get it from some you have got to get more from others. What advantage does the farmer get in these matters?

Mr. CREAMER of Lynn: I should like to ask the member from

Saugus if it would not be possible to get more revenue for everybody by duplicating the production of wealth in this State, whether the production be agricultural wealth or industrial wealth, — if it would not be possible to get more revenue by increasing the material? That is what those of us who are in favor of striking out this word "proportional" are trying to attempt. It is to so increase the productive capacity of Massachusetts that there will be more value to tax.

Mr. BENNETT: I will answer that question "Yes" — but I do not know what it means. [Laughter.]

Years ago there was a very large capitalist in Boston, Mr. William F. Weld, who went to Pennsylvania because he was going to be more lightly taxed on his personalty. On account of certain advantages bank deposits in the past, before the Federal Reserve system was adopted, went to Philadelphia to a great extent at the expense of other cities.

Those two occurrences have been the basis of all the argument in favor of advantages in Pennsylvania. But the American Woolen Company, which is a very prosperous concern, and which has mills scattered in various places, has not seen fit to have one single mill in the city of Philadelphia; and while they have large mills in Massachusetts and in Rhode Island, their increase in capacity of production is made almost wholly in Massachusetts and not at all in Rhode Island, or not to speak of, — very little.

I do not suppose there is another city in the United States in which labor is more effective than in the city of Lynn. New Bedford runs along with it, — Lynn and New Bedford, one shoe manufacturing and electrics, and the other cotton manufacturing. Labor is the most effective. But close to it are Worcester and Lowell and Lawrence and Fitchburg, and the smaller industrial communities, like Maynard and Clinton. Labor is very effective.

When the gentleman says that Massachusetts is down to fourth place, — that is what I understood him to say, — to fourth place, in the value of its production, why, he destroys his whole case. The little Commonwealth of Massachusetts ranks fourth in the value of its manufactured products compared with other States!

I wish they would let us alone a little while in the matter of taxation. Every year we have something or other which rips up the whole system, and, as my friend from Lynn has shown very well, has a scope and a result which nobody ever dreamed of. I wish they would let us alone a little while and let us adjust ourselves to entirely new conditions that have been created in recent years, and let us go ahead and do business, and know where we are from day to day and from year to year.

I think the amendment proposed by the gentleman from Boston in the second division (Mr. William S. Kinney) is even worse than the original proposition. It may be a little more sinuous, but I am convinced that it is worse than the original proposition.

I hope we shall kill the whole proposition, concerning which nothing positively favorable has been presented here, but a lot of vague propositions, like those of Jack Cade. I hope we shall kill the whole proposition. We are going along very well. Why, here is the difficulty with the farmer in Essex County. The poor old Bay State Railway, which my friend from Lynn knows very well has been treated rather harshly

in recent years, has in its cars a sign, in effect: "Come and get a situation as motorman or conductor; you will receive pay while you are learning." Then there is the draft, which takes away men, — very properly, — we all accede to it. Then there is the competition of the General Electric Company. I wanted to get some logs sawed the other day by a sawmill in North Saugus, and the man replied that he had shut down because he was working in the General Electric; and there is no other sawmill within quite a number of miles. Everybody is busy. Everybody is prosperous, except the farmers, and especially the dairy farmers.

Only last week a man in Peabody, who has taken fourteen years to build up a dairy farming business, was compelled to give it up. He used to run six or eight routes into Salem. Now all his customers received within a day or two one of those messages, which are becoming too common, like "Sold out to Raymond," in the mercantile business, — "Sold out to Hood." Instead of sending out bills he sends out a notice, "Sold out to Hood," who gets his milk outside the State, for the most part, outside the Commonwealth. And when the effort was made in the Legislature here a few years ago, in a most righteous and efficient bill known as the Meany bill, to label milk, as to whether it was produced in Massachusetts or outside the State, as to whether it was produced under the high and excellent health conditions of the Commonwealth of Massachusetts or under the poor conditions of other States, — that bill came into the Legislature here and was incontinently killed. The dairy industry of Massachusetts is declining all the time, but the farmers as a whole are not unprosperous, I should say. But the great prosperity of this State is in its manufacturing industries. They are going along well enough, and let us be left alone for a little while in regard to taxation.

I do not believe a word of my friend's interpretation of what the fathers intended by the use of the word "proportional." I do not, — and for this reason. He has no authorities to cite, in the first place; and, in the second place, the philosophy of the fathers is well known. It was to tax everything according to its ability to pay. It was based upon the original proposition of the famous minister of Louis XIV: "Pluck the feathers in such a way as to make the goose squeal the least." "Impose your taxes upon each man's ability to pay." And is it likely that the fathers, who had that philosophy of taxation, did not know what they meant when they put in the word "proportional?" The word "proportional" is precisely in line with their philosophy of taxation.

Let us kill the whole matter. I do not know what it is here for. I do not know where it came from, excepting in the more or less praiseworthy desire or ambition of some men to do something; but I hope they will kill the whole matter and pass on to something more practical and beneficial.

Mr. WILLIAM S. KINNEY of Boston: At this time I desire to withdraw the amendment which is printed under my name in the calendar.

Mr. WASHBURN of Worcester: It is not my purpose to enter into a very broad discussion of this question, but there are certain aspects of it that I should like to bring to the attention of the Convention.

It seems to me that my friend in the fourth division, who has just taken his seat (Mr. Bennett), treats altogether too lightly the origin

of this suggestion. It has had a place in several reports of the Tax Commissioner, and it has been found worthy of notice by one or two commissions appointed to investigate the subject of taxation. Nor will this subject down in obedience to the mandate of my friend who demands that we be let alone, and that the perpetual agitation of the question of taxation be quieted.

This question always will be agitated and ought to be agitated continually, because it is one that lies nearest to the relations of every citizen with the government. I desire to confine my discussion more particularly to the effect of this amendment upon the taxation of business corporations. I do this, because in 1903 I had the honor to serve upon a commission which had that particular phase of the taxation matter under consideration, whose report subsequently was adopted by the Legislature in its entirety, with one change, and one only, which, from my standpoint, was utterly indefensible. Some of the facts which were ascertained at that time may be helpful to the members of the Convention in reaching a conclusion upon the matter now before it.

In considering the matter of taxation that commission of 1903 started out with the proposition that perhaps we might tax business corporations as individuals are taxed, — upon their real estate, their machinery and their merchandise. But upon investigation it appeared that, in the case of more than fifty per cent of our corporations, the value of whose corporate excess did not exceed the value of the merchandise item, had that plan been adopted, taxes would have been increased very greatly, and the commission did not think it wise to make the change, in view of the competition of other States to which our local industries are subject.

On the other hand, take that other class of corporations, which, because of the high market value of the capital stock, has a corporate excess of high value, exceeding the value of the merchandise item, and we found that those corporations, under their domestic charters, were paying a tax larger than they would pay if they had foreign charters.

Why were they content to pay this tax? Because of the fact that under the law as it then was their stockholders, if the corporation had a foreign charter, would have been liable to taxation on their entire holdings, while under a domestic charter the stock was not taxable. That condition has been changed by Article XLIV of the Amendments to the Constitution, with which you all are familiar.

In 1903 the Legislature, in accepting the report of the commission to which I have referred, made this change. They limited the value of the corporate franchise for purposes of taxation to a valuation twenty per cent in excess of the value, as found by the Tax Commissioner, of the real estate, machinery and merchandise and taxable securities. In other words, they permitted the law to operate in those cases where the tax fell somewhat lightly, and they limited the operation of the law where the tax fell somewhat heavily. But it utterly destroyed the logical operation of our law-taxing business corporations. It is for that reason among others that during all last summer a commission was in session, and I believe is in session now, to determine what changes should be made in our corporation laws, and particularly in the method of taxation. Among the methods considered is that of imposing an excise tax upon the franchises of domestic business cor-

porations which shall be levied upon the net income received by such corporations from business carried on within the Commonwealth, — a highly intricate, almost impossible measure, when you reflect that under our modern conditions the finished goods often are subject to several processes, not more than one of which may be conducted in any one State, and therefore it is extremely difficult to determine the amount of business carried on within the Commonwealth.

This question of taxation cannot and ought not to be smothered. We have made an amendment to the Constitution, to which I have referred, Amendment XLIV, and we are likely to make others in the progress of time to enable us to adjust this great burden of taxation most equitably upon the backs of the people who have to bear it. No one here is particularly interested in any theory of mine, but I may say, in passing, that I believe the time will come when every corporation engaged in interstate business, — and when I say that, I mean more than 90 per cent of them, — will operate under a National charter, and that each State will tax the tangible assets as they appear, scattered over the country in the different jurisdictions. That is the only fair way in which to tax corporations. Otherwise you rely simply upon the comity of the different States to prevent a degree of oppressive taxation that ultimately will be found to be a crushing burden.

Now, in order that the problem of taxing business corporations may be solved properly, as well as for many other reasons, I am in accord with the conclusion of the committee. I am in accord with the recommendation made over and over again by the Tax Commissioner. I am in accord with the recommendation made by the commissions that have sat upon this subject, have given it very careful consideration, and believe that this word "proportional" should be stricken out of the Constitution. What is the lion in the pathway? Why, some one says, if the Legislature has that power it will impose the support of the whole community upon certain classes of property. That proposition is unthinkable, — that 240 representatives of the people in the lower branch of the Legislature, and forty in the other, should unite in a conspiracy to work such hardship upon those whom they represent. We ultimately must trust some one in the administration of this government, and when our faith in our law-making bodies fails, then representative government is demonstrated to be a failure. [Applause.]

Mr. Lomasney of Boston: I did not intend to take part in these proceedings, but Boston, as usual, is being criticized severely. Anyone who lives here and pays taxes knows that real estate conditions in Boston to-day are bad. Eighty per cent of the property here would not bring its tax value. I stood at a sale the other day on Hollis Street, within forty feet of Washington Street, where a piece of property taxed for $9,000 did not have a bona fide offer of $5,500.

Go through Beacon Street, go through Commonwealth Avenue, see the "To Let" and "For Sale" signs. Go through the different sections of our city and see the real estate that has been injured, as I said the other day, by the Elevated Railway system, and see how much of it has been ruined, and then consider whence we are going to get this additional money for taxes.

The gentleman from Worcester (Mr. Washburn) says that this taxa-

tion question will not down. Of course it will not. What brought about the present situation? A few years ago, when Governor Walsh was in the executive chamber, after years of organization and of combination and coöperation by the intangible tax-dodgers of the city, they secured, I believe, from the Tax Commissioner's office, the knowledge acquired by a gentleman who was in the employ of the State then, but who to-day is in their employ elsewhere, and they developed this system of taxing incomes; and they went into the executive chamber at the other side of this building, and there they made a combination. The people who sought this intangible property, — income tax, — boldly said that they would not comply with the statute as it was and admitted that many frequently perjured themselves rather than comply with the law. They said: "It is unfair." They made the arrangement with the Governor by which an income tax was to be passed and the word "proportional" was to be stricken out. But when they put the proposition for the tax on incomes through the Legislature they defeated the other part of the agreement, and here we are to-day, fighting it all over again.

And the rich people with their intangible property, who took $10,000 or $100,000 of United States currency and invested in railroads or the mines of the West, won and succeeded in leaving the man with his $5,000 or $100,000 of real estate here to meet most of the burdens that come from local taxation, their claim being that they were not getting enough interest on their investment. Through the efforts which the State Street interests organized, and the men they employed, they put through the tax on income from intangibles and they fooled the Governor of the Commonwealth; and he stood for it, because he did not go out as he promised at the time and denounce the proposition before the people of the State voted on it. He remained silent although he had been fooled. He did not carry out his promise to denounce the amendment throughout the State. And it was approved, because every newspaper was controlled by these interests, and the people, in my opinion, were deceived, and the tax-dodgers who held the intangibles succeeded in unloading another burden upon the real estate holders of the State.

Why did they do it? They knew that the collection of income taxes by the United States Government was coming. They knew the day had passed when things could go along as they had been going. The decision of the Supreme Judicial Court years ago which said the income tax was unconstitutional could not stand forever. Consequently they said: "We must get in out of the wet," — and they did.

Now you want to put all this burden on real estate. How much more, sir, do you believe real estate can stand? Boston came before the Legislature this year to increase its tax rate. Boston, as the gentleman from Lynn (Mr. Bauer) well said, paid 55 per cent of building a road down in Lynn. For years in the Legislature we had to fight combination upon combination, trying to make Boston's real estate pay taxes for building roads almost everywhere in the State. Then they criticize Boston, and they tell you, in glowing phrases, about their progressive tax laws, and how much they will improve conditions for the manufacturers of the State.

Do they not realize that the conditions in this section of the country have changed? I can remember when we had rolling-mills in South

Boston, when we had glass-works in East Cambridge, when we had furniture factories in many sections. Where are they to-day? They are gone from the east and they have gone south and west; and, I regret to say it, because they work longer hours in that section paying lower wages, and have labor laws pressing down harder on labor, which give them a chance to compete unfairly with the manufacturers of the east.

The gentleman from Worcester (Mr. Washburn) recently stated that we should have certain United States regulations. We should have a National eight-hour law for the entire United States. Then we should not have these troubles. But we are here to meet a condition and not a theory. You cannot take any more taxes out of the real estate of Boston or the other sections of the State.

What about the poor man, who starts out in the battle of life, who is thrifty, who buys a little home after years of hard work and does not invest in these favored securities, who does not invest in these intangibles that these men have protected. Is he to have no consideration or protection?

Mr. CREAMER of Lynn: I should like to ask the gentleman from Boston in this division (Mr. Lomasney) what makes him think anybody wants to put a higher or more severe tax burden on the little homes or on the buildings in Boston. There is no such intention on the part of anybody. The whole purport of this amendment is to give the General Court power to lessen the tax burden on real estate.

Mr. LOMASNEY: Having had some experience as to how this matter works, I regard myself as being a practical individual. I never was accused of being a dreamer, and I do not fall for this talk that you can get blood out of a stone. Money must come from somewhere. Where can you get any great income out of real estate in Boston? Why, sir, take the Exchange Building.

Mr. CREAMER: I think the gentleman from Boston fails to differentiate between real estate improvements and land values.

Mr. LOMASNEY: I have been the owner of a few small pieces of real estate for 23 or 25 years. I know what it is to pay out what you receive; I know what it is to get rent, and how small the margin is after the bills are paid. I have no knowledge of this new high-toned theory, but I know the old-fashioned system: "Take in so much." "Pay out so much. The balance shows where you stand." [Applause.] I say no real estate owner in Boston will tell you that he is getting rich on his interest to-day, for very few of them are. They are getting $2\frac{1}{2}$, $3\frac{1}{2}$ and 4 per cent, and many buildings are in the market for sale at 30 per cent less than they were built for. You can go and buy them all over the city.

Mr. WEBSTER of Haverhill: I should like to ask the gentleman whether the outgo to which he has just alluded on the part of the real estate men of Boston consists principally in anything connected with the land, or whether it is repair on the buildings, etc., that the tenants demand.

Mr. LOMASNEY: I do not know how the men keep the books. I suppose these expert bookkeepers can do a great many things. But I know this: If a man is sane enough to own land he wants to get all the income he can out of it; and if you can show him where, by spending some more money, he can get some more income out of his

land, he will do it, or else he should be put in an asylum. There is no question about that. Do you suppose a man is going to pay out more money than he has taken in, and lose it, when he could put up a building and lease it, and make a profit? I am not saying there are not places where the property should not be improved, but there may be good reasons for it. You sometimes will find an estate where there is a fight among three or four parties who are interested in the property, and they will not join one with the other, one brother may be trying to drive the others out, or two or three sisters will not come in. These things occur, but we should not amend the Constitution to meet these conditions.

Real estate in Boston is overtaxed. The people who pay rent are paying more in many places than they should pay; and in speaking here it is my privilege to speak in part for a district that pays about 45 per cent of the taxes of this city.

Mr. BAUER of Lynn: I should like to ask the gentleman in the third division (Mr. Lomasney) if he believes the property around the corners of Summer and Washington Streets is overtaxed, or any of those properties around there on which the big department stores are located.

Mr. LOMASNEY: I know nothing about what the taxes are on it to-day, but I know this: That the assessors every year have had to meet increased expenditures, and they properly, in my opinion, have taxed that charmed circle from Boylston Street to Court Street, and in and around there, more and more every year. I know this: That the property in that section is not the same as it was forty years ago when I was a boy. It has been improved. The old theater that used to be in the rear of Jordan Marsh Company's store is gone. The small buildings have gone. The property has been improved. Look at Washington Street. See how much improvement there has been in that district; and, sir, that is about the only section in Boston where the real estate holds its own. I defy any man to deny it. Why, sir, in that part of Boston between Castle, Dover and West Newton Streets you could not get 40 per cent of what the property is taxed for. What is the poor man who owns it doing? He is saying to the assessors: "Don't reduce the taxes, for God's sake; if you do they will foreclose my mortgage and I will be wiped out."

Mr. BAUER: I should like to ask the gentleman in the third division the real reason why property on Castle Street has no more value than it has.

Mr. LOMASNEY: I have not the time now to go into all those questions, but every man knows that evolution settles the whole question. It is the same all over this country. You will find that the places where the homes of the rich are to-day in 25 years will be the homes of the poor. Is it not so here? The north end once was occupied by the rich. Then the poorer classes came in, gradually, — different races. That is the situation there. It is the same with the West End; the same with the property running in and out of Columbus Avenue. South Boston at one time was picked out to be the court end of the city. Look at the Back Bay to-day. The gentlemen say that the owners do not do anything. They have organized a syndicate in that section and they buy property in the Back Bay, on Beacon Hill,

through Chestnut and adjoining streets and do everything possible to secure property and improve it, so as to keep the values up.

Our taxes are increasing faster than our values are rising. Where are you going to get this additional money from? I am going to say only a few words against the Legislature, because the Legislature responds fairly well to the work that is put up to it. The man who works in a factory, who has got a house worth $4,000 or $5,000 and is busy working to clear off a mortgage, cannot come to the Legislature and leave his work to talk. The ordinary working-man is modest, he is retiring, he leaves it to his representatives; and they are out in the lobby, sitting down, laughing and talking, while the rights of the people are being voted away.

It is the rich men of the city who are responsible for our present condition; no question about that. I have no sympathy for those men who have intangible property, who want to get rid of paying their just taxes. I was one of six men who voted to keep this word "proportional" in. And why? Because in my early days, when a member of the board of aldermen, I talked, as so many used to at that time, with a man whom we thought was one of the greatest tax experts in the country, although he was not a college man, but a man of sound common sense. I refer to Thomas Hills, chairman of the board of assessors, who stayed there until he died. He always said: "It is a question whether you ever will get in enough additional revenue to warrant striking out the word 'proportional' from the Constitution." Now, I have not followed this income tax scheme out.

Mr. Creamer: I want to ask the gentleman from Boston (Mr. Lomasney) if he really desires to have this Convention understand that the passage of the so-called income tax on intangibles has resulted in an increased burden on real estate. Is not the gentleman aware that it has produced more revenue than when it was taxed proportionally with real estate?

Mr. Lomasney: I was about to say that the income tax of the United States government has had its effect, — you know these rich men are afraid of jail, — and I believe they make a pretty honest return. But let us see. There is a firm right here in Boston, I believe, that made $500,000 or $1,000,000, and they did not make a return of it to the United States government. They refused a clerk a raise of $30 a month, and he gave information to the government that these men were concealing $500,000 or $1,000,000 a year. The firm is now under investigation. But if the intangible property of this city paid its just taxes real estate taxes would go down 50 per cent, and that is why they have got their income tax at a different rate. That is why they pay $6 instead of $23 or $18. Do you not see that they get out of it for $6?

Mr. Creamer: The gentleman from Boston has not answered my question. Furthermore, does he not understand that the so-called securities, intangibles, are not wealth; that they are only the paper representatives of wealth already taxed somewhere else; and therefore, for that reason, that there is a warrant for their not being taxed twice at the same rate at which other tangible property is taxed? I have asked him and he has not answered me, whether or no the passing of the income tax law increased the burdens on real estate in Massachusetts.

Mr. LOMASNEY: The gentleman says intangibles are only certificates; that they are not wealth. Let me ask the Convention this question: Which would you sooner have, a certificate of the Standard Oil Company for 1,000 shares or a lot of land with buildings, — and I do not say it offensively, — in the West End or South Boston assessed for $100,000 by the assessors? Give him his choice, a certificate of $100,000 worth of securities of Standard Oil, and this old real estate stuff that we pay taxes on, and what will he take? The Standard Oil stock, of course, and you know it. [Applause and laughter.]

Mr. CREAMER: One hundred thousand dollars would look just as good to me in one form as it would in another. He has not answered my question.

Mr. EDWIN U. CURTIS of Boston: If the gentleman from Boston will allow me to answer the question I shall be very glad to answer it for him.

Mr. LOMASNEY: Yes, sir.

Mr. CURTIS: It is impossible to state what the saving of real estate tax has been by reason of the income tax, for the reason that there are no data upon which it could be reckoned. That is the answer. The Tax Commissioner (Mr. Trefry) is here, and if I have not answered it adequately you may ask him the question.

Mr. LOMASNEY: I am trying to give the Convention my thoughts in my own way. I am sorry I cannot argue it the way the gentleman from Lynn wants it argued. He is a traveling salesman. He knows the State, but when he tells you that he would not take $100,000 worth of Standard Oil certificates before he would take property in the north or the west end that is selling for about 60 per cent of its tax value, he knows that he would not be retained by his firm as a discreet individual if he could not make a better bargain than that. [Laughter.]

I spoke about the district which I have the honor in part to represent. In one part of it the Jewish people live. I have seen many of them coming into this country from Russia destitute, just as our ancestors came from Ireland years ago. I have seen many of these people struggling to support a little family of children and save enough to get an equity in a house. They get $500 and pay it down and give two, sometimes three mortgages. They work, I was going to say, from daylight until dark to pay off these mortgages. And the gentleman would have you believe that I would do something to injure that class of people whom I represent and who are partly responsible for any success that I may have attained. He does not know how these men worry day after day when the assessors are coming around for fear their equities will be wiped out by the lowering of their assessment. And, sir, that element in this community rebuilt many parts of Boston; they reconstructed the West End section when many of our people moved away. The Italian people did the same to the north end. The Jewish builders went out on Commonwealth Avenue beyond the Fenway which the gentleman from Lynn referred to and constructed nearly all of the apartment houses now there. And how did they do it? With their own money? Certainly not. They procured mortgages and they took their chance and they added materially to the tax value of the city.

Mr. CREAMER: I should like to ask the gentleman from Boston how

equities can be wiped out in real estate by reducing the rate of taxation on real estate improvements and increasing it on land values.

Mr. LOMASNEY: I know this, that if a man holds a mortgage for $15,000 on a piece of property which is assessed for $18,000 or $20,000, and the assessor comes around April first and says under his oath of office it is worth only $12,000, that when the mortgage comes due the mortgagee will say to the owner: "Come across, cut down your mortgage! Your property is going back;" and he puts up more money or it is foreclosed and sold. Now that is the practical result.

These men may have the best intentions in the world. I feel that I know something about how this intangible income tax was brought about. I could name the men who did it, and those who operated for them. As I said before, the United States income tax will show soon what we have here in incomes. That will result ultimately in increasing their tax. Instead of 6 per cent it will have to come up. As that tax comes up the real estate tax is bound to go down, and that is the way it should be. There is no question about that, no matter what anybody says. If we had not had the United States income tax in operation our own might have been a failure. But, sir, it was my privilege to know something about the original income tax, the one which was declared unconstitutional by the Supreme Court of the United States. The collector of this district at the time said to me: "It would surprise you to know the property there is in this city the owners of which are paying no taxes." No names were mentioned. But many of the same class of tax-dodgers are being uncovered now. I say it is wise to wait for a few years and see how the present income tax on intangibles works before we start to take any more safeguards out of the Constitution. That will be a question that can be determined very soon, because they are looking after the taxes pretty sharply these days and then with the State and the United States returns in we shall know how far to go. Are you aware, sir, that the assessors of the city of Boston are procuring now statements from the different Secretaries of State showing who in Massachusetts own stock in coal, copper and oil mines? Men are surprised to have the assessors say: "Well, we hear you have a hundred shares of Anaconda; we hear you have so many shares of Standard Oil." "Oh, no, I haven't." They say: "Well, put up your right hand." That is the way this law is working out, but with the increased taxes caused by the war coming along I urge this Convention to wait a few years and see how it works out. We know what revenue we formerly received. We shall know pretty soon how much the new law brings in. Then we shall be in a position to act intelligently. I trust, sir, upon all these considerations and especially in view of all the burdens now depreciating Boston's real estate, that you will not strike the word "proportional" out of the Constitution. [Applause.]

Mr. WATERMAN of Williamstown: I hope we shall consider well before we pass this resolution and amendment to the Constitution striking out the word "proportional." I do not rise in any degree as an expert in taxation, but I have been through some experiences in the past four years in regard to this matter in the change that was made in the taxation of intangible property. And I with others was in the majority that were persuaded finally that it was a right move to go into the change. We were influenced by different arguments.

We felt all the time that we must guard each and every interest in the consideration of the new proposition, and by the result of that study the Constitution is as it is to-day, with the forty-fourth amendment.

Perhaps some of us were influenced more easily than others. In fact it was almost unanimous. But there is this about it: I believe that that word "proportional" in the Constitution has been one of the safeguards of the peace and prosperity of this Commonwealth. And I will tell you why. There are different elements in any Commonwealth, and the power of the strong will be recognized before the power of the weak. That is an axiom. We know the history of the chartering of corporations some thirty years ago by the different States of the Union, how the States vied with one another to give inducements to organize these corporations under charters from their States. Massachusetts perhaps was the most conservative of all. But the corporations went to the States that were most consistent in their laws in that regard, and of course those that were the most liberal and the most consistent got the most business. And ever since that time we have been trying to straighten out and clean up and make good a great many of those mistakes that were made because of that feature that the people thought was so glorious and so bright.

Now they complain of the Legislature, of what it does and what it does not do. The taking out of the word "proportional" simply will make the Legislature a target again for all sorts of claims of exemptions or privileges that, with the limited time for study that they have, will be very hard to decide and decide aright. And I believe with the gentleman from Boston (Mr. Lomasney) that we ought to go very slowly in this matter. We have the law in regard to taxing intangibles, but after we collect the money, if we get it all, we do not know how to distribute it. Those intangibles upon which the first assessments were made have gone and there is a committee now sitting during this recess to decide where that money should go after it is collected. Of course the idea was, — and we expected that would be the case, — that every dollar that was taken out of the community under the administration of the State commission would go back to the community from which it came. But now there are other schemes to take care of that which belonged to the local communities. Only two years ago one of the highest officers in this State recommended to the Legislature that we take over the excess of the amount guaranteed to the cities and the towns and apply that to the State tax so that the State tax might be less to the people than it appeared, — it would be indirect. But that the Legislature frowned upon almost unanimously.

How is it that we can stand all these things, this flood coming in for all these special privileges, and yet maintain our integrity and our justice with one person and with another?

I believe this proportion is fair until it is proved otherwise. The public cannot learn and know the full results of any proposition until it has been tried fully. There never was a scheme yet nor proposition but what looked beautiful and attractive to many, and to those who were interested it looked the most attractive, and if they could put it over on a person they would put it over. That is human nature; you cannot help it; it always will be so. The safeguard of this old word is one that you ought to revere. You go west and you will find

scheme upon scheme in ways of doing business, and they say when you come to Massachusetts and the business men of Massachusetts you know what to depend upon. It is not something faked up or something intangible, but it is the real thing. And I hope and trust that this Commonwealth will not depart from that reputation.

There may be such a thing as too much inducement. I have touched upon it a little in the remarks that I already have made. A fair balance, I believe you all recognize, is a better condition than trying to force one idea here and another idea there. Now in the south, years ago, — and it is a good deal so now, — their interests were confined to two or three things, so that when either one of those failed they were in great distress. They have learned down there to diversify their interests so that if one failed the other would carry them through, — the same as the old story of trying to put all your eggs in one basket. If you make special inducements for one community or one region of the State you are creating a special interest in that thing.

Mr. Creamer: I am afraid the member from Williamstown has not read the amendment. The amendment particularly prevents discrimination between persons or as between communities. Under this amendment there can be no more discrimination than already exists in the varying tax rates on all classes of property in the different communities.

Mr. Waterman: I will say that I have read the amendment and I should be ashamed to stand on my feet if I had not. If I have said anything that led to the idea that this gentleman has introduced, I withdraw it. What I mean is to say, any interest, — take the machine interest or a manufacturer or a farmer or any of the different interests; they all would have certain lines to go by, if this was adopted, and it is a question whether that sort of thing is a good thing. I say it is not. I say this special inducement offered to manufacturers, which I dislike, would spread all over the State among all interests, and action fair and square would be impossible because of greater power of one interest over another; would be disastrous and become a burden.

Mr. Creamer: I should like to ask the delegate from Williamstown if he supposes it would be possible for any interest in this State, whether it was a manufacturing interest or an agricultural interest, to come here to the Legislature of this State and get any unfair advantage over any other interest.

Mr. Waterman: Why, ever since I have known anything about the Legislature they have been coming here to get advantages, and it depends on the power to get them that I am talking about, and the gentleman ought to understand it.

Mr. Creamer: I did not say that certain interests might not come here and ask for unfair ends. I simply said to the gentleman from Williamstown that I had enough confidence in the General Court of Massachusetts to believe that that General Court would not grant an unfair advantage.

Mr. Waterman: Answering the gentleman from Lynn, if these privileges are granted, if they are privileges, somebody else has got to pay the difference, and that is what I have been afraid of all the time, and it is true, — you cannot deny it, — if one person pays less than he ought the other person has got to pay more if you get the whole

sum, and you cannot deny that fact. Already there are exemptions in this State that have caused a great deal of trouble and they have been interpreted by the Supreme Judicial Court of the State, but the question will not down. And I say that if we open the door wide as this proposes to do you will have question upon question that will take almost eternity to answer. I trust that this will be given most serious consideration and that the amendment will be rejected.

Mr. WEBSTER of Haverhill: When the mists of the deep rose and enshrouded beleaguered Ilion with darkness, this prayer arose from the lips of the Grecian hero: "Oh, ye gods, grant me to see, and Ajax asks no more!" In a spirit, I trust, sir, of equal reverence I implore whatever celestial powers may be disposed to grant such dispensation for the clarity of vision that may enable us to view this strikingly important proposition aright.

It seems to me, sir, that from an apparently innocuous proposition upon our calendar has sprung a vital discussion, a discussion of essentials which are to tax the spirit and responsibility of this great deliberative body as perhaps no question which has been presented to us has tested and tried our responsibility to the spirit of the times.

In view of those somewhat inconsequential and trivial diversions of argument which have been adduced, perhaps I may be permitted to turn to a discussion of the principles underlying this proposition.

The question of taxation is of all questions a fundamental. The means by which the State shall insure the collection of its revenue is a first principle of its very existence. Any impropriety in the method of application of the power of taxation will arouse the lovers of liberty, the friends of civic virtue, as no other issue can. And for that reason I believe that we are face to face with a vital issue in our deliberation.

Now as to the question of taxation, — the taking by the State of that part of the production of wealth which is necessary for its revenue. It seems to me somewhat unfortunate that this particular measure is characterized as the "single tax." For a great many years, as measured in the ordinary political life of members, I have been a believer in what is commonly termed the single tax. But, sir, I recognize the fact that conditions are not such that we can go to the logical, the theoretical conclusion of that proposition. We have the income tax; we have other means of revenue which must be employed for a number of years to come, — for such a term of years, in fact, that in the lifetime of any one of us we need consider no abolition of those means and processes of revenue. We are concerned with the fundamentals of political economy, the production and distribution of wealth which results from the application of labor and capital to land. And let me say what perhaps may be unnecessary, that by land we must include, in the politico-economic sense, any part of the superficies of what learned counsel in the celebrated Tichborne-claimant case designated as "that vast rolling vehicle, the globe, the end of whose journey is everywhere and nowhere." And I quote those words not only with appreciation of their eloquence but also because they may appear applicable to some of the arguments which are adduced in any case or consideration of the subject of taxation.

I should like to see this discussion placed upon some basis a little broader than the corner of Summer Street. I believe that this theory, the principle now discussed here, is susceptible of a wider application

than any question of real estate values. Real estate, — why, even that is a moot term. Real estate? Why, that beclouds the issue at once. The land is the source of all values and the application of labor and capital to land constitutes the creation of all wealth.

Whoever acquires private property in land becomes seized of a certain privilege at the expense of the rest of the community. He should pay to the community a return for that; and therein, to my mind, rests the essential, rational essence of equitable taxation. I speak without any personal animus in my approach to this question. My honorable friend from Saugus (Mr. Bennett), whom I do not see in his seat, though he may be within hearing of my voice, — if he is in the building, — said yesterday in interrogation of the honorable delegate from Lynn (Mr. Creamer), that this in effect would transfer the burden of taxation from industry to agriculture. Without in the slightest degree attempting or intending to cast any suspicion upon the gentleman's sincerity, I do question the sound reasoning of that question. The average farmer, — I may say, unlike my honorable friend from Saugus, I am not the largest farmer, except it be longitudinally, in this assembly. [Laughter.] With that reservation I may class myself, perhaps, as an average small farmer possessed of a certain amount of land and certain buildings thereon, — buildings which have been in the possession of my immediate family for so long a period that I may claim some distinction upon that regard, even that I am a member of the ancient landed aristocracy of Massachusetts. [Laughter.] For over two hundred years my family has resided upon the same, — I was about to say paternal, but it is maternal, — acres and al o has lived in the same house. Now I have no particular objection to the house, it is a serviceable habitation, but perhaps it is not what many would consider desirable in modern appointments. I have got to pay a certain amount of tax upon property that I own. I am speaking from the class of the smaller farmer. Suppose that I represent the farmers who pay on an average, we will say, $100 tax a year. Now, that tax, that sum which, in the necessity of things I must contribute toward defraying the cost of government, and perhaps ought more especially because possibly I have added to the cost of government [laughter], — they are going to get that tax out of me some way. They will get it, whether they place it on my land or my house or my cow or my tomato plant. Is it not better for me to pay that tax upon my land as a farmer and not, if I want to build an addition to my barn or shingle my hen-house, to have the tax-gatherer descend upon me and assess me a certain sum because I have improved my personal holdings upon that land?

I should like to bring that point home to you. It seems to me that we might approach this subject with a little broader viewpoint. Is it not to the advantage of every one of us, — and I am glad to see discussion has brought my honorable friend from Saugus back to the chamber [laughter]; I appreciate the sacrifice of personal pleasure that he has made, — but is it not better? Why, I remember more than twenty years ago, while sojourning in a little country town in New Hampshire, I heard a discussion among the members of the board of selectmen of that town as to what they should do to brace up industrial conditions in their town; and they thought if they could only exempt improvements on land from taxation generally, — not simply

grant a special dispensation to some corporation, some fly-by-night concern which came in with loud promises of employment to be tendered to the native sons, but if they could adopt a permanent policy of exemption of improvements from taxation, — that that would be a splendid idea. I do not suppose a single one of those men ever had read Henry George or realized what the single tax was. Perhaps if they had heard of it they imagined it was something that suggested taxing the farmers for one thing.

I beseech from the members of this Convention, — and if I have in any way tended to generalize the discussion I shall take my seat with satisfaction, — I beseech from the members of the Convention a careful consideration of the tremendously important proposition implied in this amendment. Do not run away with the idea that the farmers of this State are going to be terrified by any discussion of the single tax upon land values, because, in the first place, they know we cannot get that for many years, and nobody expects to. It is simply freeing our hands; opening the way for a little differentiation in the application of the taxing power, which I submit to any reasonable man is a safe proposition. We have had much criticism of the Legislature, and having been a member of that body myself I well know how justified it has been. [Laughter.] I have abundant confidence in the Legislature of Massachusetts. I never have expressed anything to the contrary. In any suggestion for changes in the Constitution which I have advocated here I simply have asked that we free the hands of the Legislature. I defy any member of this Convention to say that I ever have championed upon this floor any proposition which did not contemplate enlarging the power of the Legislature. And I take this occasion to allude to the subject because it has been discussed now perhaps and also because it has been alluded to in the halls of the honorable legislative bodies themselves. There has been an assumption that we have criticized the Legislature. In the common acceptance of the term I maintain we did not criticize the Legislature. We simply pointed out some mistakes that its members as men, sharing the common attributes of us all, would fall into, being bound and hampered by the conditions to which they are subject. I believe in trusting the Legislature, and I assume that every one, if he is going to employ a man, will say to him: "I have confidence in you; go ahead and do this." Will you do that, or will you say: "I am going to keep a pretty close watch on you"? If you are going to assume that necessity, you surely will have need to meet it.

Now I say, trust the Legislature and give it power to deal with the intimate conditions which may arise under provisions which we may enact in this discussion. Let us give it the power to impose taxes unbound by that worn-out, deterrent word "proportional." Let us trust it to that extent and have confidence that it will not abuse that trust. [Applause.]

Mr. Benton of Belmont: I, like the delegate from Boston (Mr. Lomasney), desire to announce to you that property in the town of Belmont is over-taxed. I am a farmer from Belmont, and now we have heard both sides of this thing from the farmer, this subject has been discussed thoroughly and ably, and I am prepared to vote. I move the previous question. [Applause.]

Mr. Carr of Hopkinton: I have listened with some degree of at-

tention to the speakers on this question, and I also listened very attentively to my friend from Boston in this division (Mr. Lomasney) who now is absent from the chamber. I always looked upon that gentleman as being more or less on the side of labor. I have sat with him in the House of Representatives and I have heard his voice raised on behalf of labor. And for that reason, I intend to show you that he is not misrepresenting labor on this question. I take this opportunity of explaining to the Convention just what is labor's attitude on this question, because this is a labor question as well as a question between financiers. Because, as it has been stated so ably by the gentleman from Lynn in this division (Mr. Creamer), it means possibly increase of working people's homes, the giving to working people in this Commonwealth the opportunities that they enjoy in Pennsylvania of more of the working people owning their homes. So that there really is a labor side to this question, and this question has been considered by a labor convention. I have here the action taken at the proceedings of the thirtieth annual convention of the Massachusetts State Branch of the American Federation of Labor, held in New Bedford September 20 to 24, 1915. That action is as follows, — this is the preamble:

Whereas, the present tax laws work great injustice on the laboring man seeking to acquire a suitable home for his family, by compelling him to pay large sums in taxes upon money which he owes, while many other people escape taxation upon large amounts of property which they actually own; and

Whereas, this condition cannot be rectified while the word "proportional" governs the levying of taxes;

Resolved, that this convention approve the proposal to strike from the Massachusetts Constitution the word "proportional" wherever it relates to taxation, and the legislative committee is instructed to give its full support to that proposition.

Mr. Mancovitz of Boston: I hope that the main question will not be ordered at the present time. This question is a deep question; it is a serious question; I believe time ought to be given for discussion. The fundamentals of our government since its foundation have been for equal rights to all and special privileges to none. Where can you better exemplify that doctrine than in your taxation laws? Do you believe it would be fair, — would any one of us here for one moment consider a proposition to classify individuals in taxation? No, we would all rise in one body and say, No.

Mr. Bartlett of Newburyport: I hope the main question will not be ordered until the matter of which I am going to speak, and which I will put before this large assembly, has been considered. The committee's resolution provides that property shall be classified, — I presume by the Legislature. It provides that the rate shall be the same throughout the Commonwealth, or throughout the division thereof by which the tax is imposed. It seems to me that that opens the door, for instance, for Haverhill to impose a competitive rate with Lynn on property that relates to shoemaking, and for Lynn to compete with Haverhill, and the consequence might be very disastrous. I hope the committee will try to clear that up.

Mr. Bauer: I should like to ask the gentleman (Mr. Bartlett) if he is not conscious of the fact that that is being done with the present word "proportional" in the Constitution. Mr. Trefry will know all about it.

Mr. Cox: I will answer the gentleman in the second division (Mr.

Bauer) by saying that that is not being done the way it could be done under this resolution. At the present time Lynn must tax the industries at the same rate that they tax everybody else in that city, and so must Haverhill. Under this resolution they might put special rates on certain industries which would have nothing to do with their general rate of taxation.

Mr. CREAMER: I would say for the satisfaction of the gentleman from Newburyport that on the very point about which he inquires the committee took the opinion of the Attorney-General's office of the Commonwealth, and their opinion was that the evil he fears would not be possible under this amendment.

Mr. COX: I was chairman of the committee, and if the committee took any such opinion it was entirely without my knowledge.

Mr. CREAMER: Perhaps I should qualify my remarks by saying the majority of the committee got that opinion from the Attorney-General of the Commonwealth.

Mr. WALKER of Brookline: For some fifteen years I have been engaged with others in an attempt to remove the word "proportional" as a limitation upon the taxing power of the Commonwealth. I speak advisedly when I say that that word in our Constitution has worked more every-day-practical-injustice in the Commonwealth than any other single word in the Constitution. Whenever we discuss a tax reform in Massachusetts, no matter how reasonable, no matter how necessary, almost without exception we are told that we cannot discuss that question on its merits in the Legislature of Massachusetts because it runs up against this word "proportional" in the Constitution. The fact is that the incidence of taxation is not the same on different kinds of property. That is a fundamental economic fact. The tax on one kind of property and the tax on another kind of property may be proportional, but the incidence of that tax may be entirely different. An illustration of that, of course, is the tax on intangibles and the tax on real estate. It is wise to recognize that difference. We have tried to make a change; we tried to get a three-mill tax, and every time we discussed that matter what happened? We could not discuss it on its merits, because it ran up against the word "proportional," so we had to get a constitutional amendment. That took years, because certain vested interests, those that wanted to hold the tax just as it was, had an unfair advantage arising from the difficulty of amending the Constitution. We decided it was wise to tax forest lands, for obvious reasons, in the interest of the Commonwealth as a whole, at a different rate from the tax on real estate. No, we could not do it. Why? The word "proportional". It may be extremely desirable before this war is over to lay a graduated tax on incomes. Personally I believe it will be desirable and necessary to pass a graduated tax on incomes in this Commonwealth. Can you now tax a man with an income of $100,000 at a higher rate than a man with an income of $1,000? No. Why? Because the word "proportional" is in the Constitution.

Although I am a real estate owner, and my business is real estate, and all my income is from real estate, I am not so narrow as to think it is not worth while to discuss the question as to whether we should lay a tax at a different rate on land than on improvements on land. I am not a single-taxer, but my personal opinion is that it would be

greatly to the advantage of this Commonwealth, it would encourage improvement, it would encourage the building of working-men's houses if you please, if you allowed the rate upon land to be fixed at a different rate than the rate upon improvements on land. I am convinced that if this amendment went through, the burden on land would not be greater ultimately, but would be less. We say we have an income tax. An income tax! Yes, we have an income tax. We have an income tax to-day on stocks and bonds, and the widow who has a couple of shares of stock or a few bonds pays that tax all right, but the man with an income of $100,000 from land pays no income tax at all.

Mr. Edwin U. Curtis of Boston: I hesitate to speak on this subject after the distinguished gentleman from Brookline (Mr. Walker), who from the beginning of this Convention has told us what we should do, or what we ought to do, and as a rule has been obeyed. But I have interests in this matter as well as he. Unfortunately I own real estate in this city of Boston as well as he, and do not derive my living from it, and I never shall, in my opinion.

I want to call the attention of the gentleman from Lynn sitting in the third division (Mr. Creamer), to the fact that he asked the gentleman sitting here from Williamstown (Mr. Waterman) a question. The gentleman from Lynn asked him: "Do you not approve of the Legislature?" And by that he implied that he himself did. Gentlemen, I never thought this record was going to be of much use, but it has a pretty good use right here. This is what the gentleman from Lynn had said in a former debate:

> 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 benefit? I only wonder that there is so little.

The gentleman has changed his mind since that time. He has said to-day that he is willing to leave it to the Legislature.

I want to say, gentlemen, that the great standing that this resolution has before this Convention to-day is not because it is advocated by the gentleman from Lynn (Mr. Creamer), but because the gentleman sitting in front of me from Marblehead (Mr. Trefry) advocates it. He is a gentleman whom we all admire and in whom we all have trust, and nobody more than I. But he is human. He has been a long time in office. It is his duty to collect taxes, and he does it well, and I honor him for it. But he did not satisfactorily explain why he has changed his mind since 1909, when he was considering taking out this word "proportional" and reported against it. That is a fact. He has a right to change his mind; you do and I do, but he should be allowed the weight of his argument here, and not of his personality.

This is a serious question, and it is well sometimes to listen to the quiet men in this Convention, who have not burdened it with talk but who have great interests here. I refer to the gentleman in the last row who spoke yesterday (Mr. Adams). He probably is trustee for more real estate than any other gentleman in this Convention, if not in the city of Boston. You heard what he said yesterday. You bear

in mind these are bad times. We know not what will happen to-morrow. Since that report was made in 1909 and those gentlemen then considered putting a State income tax on us, a National income tax has been put on. I am reminded that at that time there was no National income tax. You know what it is to-day; you do not know what it is going to be when this Congress gets through, but I assure you it is going to be very, very much larger, and I doubt if the gentlemen sitting in this Convention will have anything left to pay the Commonwealth of Massachusetts after they have paid the next National income tax. Hesitate, think well, before you drive every real estate owner in this State to the wall.

They showed their hand. They came out flatly, these gentlemen, in argument and said they were for the single tax. That is what they are, and that is what they mean, part of them. The others came out and said: "We want our machinery exempt." Of course they do. I should like to have my real estate exempt. But I say let us all take our share in the burden of this taxation of the State, not try to put it off from one to the other. That is what we all are inclined to do.

I want to answer the other gentleman from Lynn (Mr. Bauer), if I have time, about this Waltham Watch Company. Of course at that time they said that they wanted their machinery to go clear. It did not go clear. They built the building, and now they are here, and we have seen their manager sitting in this Convention. The reason that they did erect that building was because the management changed. The new management is represented right here, and it would like to have its machinery exempted from taxation or reduced in rate. I do not blame him for wanting to have that done. But is that fair? Is that the object of this proposition?

Mr. WELLMAN of Topsfield: I think we all realize that this question is an extremely difficult one to settle. The tendency of us all is to take one side of it, and, arguing from that alone, and leaving out all other considerations, to come to a conclusion, and thus we see that member after member has presented his particular view of the question. I find it difficult myself to come to a conclusion. But there is one matter which seems to me to be worthy of serious consideration, which scarcely, if at all, has been mentioned. What would be the effect on the local government of striking out the word "proportional"? Reforms which we have passed in taxation have done much of late years to deprive the local people of their power and of their responsibility. If we strike out the word "proportional" and undertake to classify real estate, how can that be done unless we deprive local assessors and local authorities of pretty near all power whatsoever? Would not the result of that be that the people who spend the money would have nothing whatever to do with raising the same? Is that a wise policy for the Commonwealth to adopt, that the people who spend the money shall have nothing to do with deciding how it is to be assessed or how it is to be gathered or the rates? In other words, under such a plan the more extravagant a municipality becomes, the better for it in a certain sense. That tendency, in spite of the reforms which we have adopted, many of which I am far from condemning, is working already, and I should like to have it explained whether or not the striking out of this word "proportional" would be

likely to put our towns into that condition, and if so if that is a wise thing to do.

Mr. O'Connell of Boston: As a member of the committee on Taxation that has reported this resolve, I ask you gentlemen to support the report of the committee. We debated the question at length. Thirteen of the fifteen members of the committee support this resolution, and we are from all ranks in life and of both political parties. We believe that it is the best thing that can be done for the welfare of the Commonwealth. It is a step in the right direction. It permits the tax power of the Legislature to be directed into scientific channels, and for that reason particularly we urge you to support our report.

The chairman of the committee yesterday in his argument gave in a summary the reasons why he felt that the report should not be accepted. First, he said that the system will become subject to political prejudices. That is a good deal like saying that "I am against the proposition on general principles." It means nothing. Second, it may be faulty because of the possibility of multiplicity, and he said it might rival the tariff act, so numerous would be the classifications. And then in the next argument that he gave against it he answered his own objection by saying that the States where they have the right to make the classification, have not exercised that right, and he urged that as a strong reason why we should not adopt this resolution. The next he said was that the attempts to classify would be in themselves an evil. Can any man imagine it being an evil to attempt to straighten out the taxation system of this Commonwealth and to equalize it so that it may fall justly upon all of us? It does not seem so to me. Rather do I think that it would be a virtue that any man should attempt to straighten it out in order that equalization might be there. And fifth, he said that the effect would be to put the tax on property that cannot run away, such as land or buildings. The apparent answer to that is this: That when the income tax was put upon intangibles not only did the intangible property not run away but it remained, and we had double the amount in the returns that have come in to us. And so, gentlemen, I say that this argument, which means that we ought to stand where we are and do nothing, should not be accepted by this Convention as any reason why this report should not be accepted.

The gentleman from Topsfield (Mr. Wellman) comes on and says: "If you do this won't it take away from the local assessors the right to raise the taxation and remove it elsewhere?" Well, have we not done that in the income tax already? The local assessors have not anything to do with the intangibles, and has it worked any evil? Has it not worked for the benefit of the Commonwealth? Have we not raised six or seven more million dollars as a result of the change in the system? And if it will do the same thing in this change why not adopt it?

I yield the balance of my time to the chairman of the committee, who I think ought to be permitted to make a statement.

The President: The Chair will state that a member who has the floor has no right to yield the floor to another and thereby limit the chair in his recognition of members.

Mr. O'Connell: If you will pardon me for making that statement. I did it because I thought it was right.

Mr. Walcott of Cambridge: I agree heartily with the gentleman from Brookline in the third division (Mr. Walker) as to the advisability of adding to the legislative power of the State the power to pass an income tax that shall vary with the amount of the tax to be levied, — that is to say, a loaded or progressive income tax. I also agree entirely with him as to the propriety of giving to the law-making power of the State the right to tax improvements on real estate at a lower rate than the real estate itself. So far I go with him. But I shall vote against him, and I wish to rise and explain my vote for this reason: That I have received no assurance from him or from the other leaders of the initiative and referendum that when the order offered by Mr. Quincy of Boston, recorded on page 716 of the Journal, comes in, to apply automatically the initiative and referendum to every one of the amendments on which we already have given two readings, that those gentlemen supporting this very important constitutional change will vote against the amendment offered by the gentleman from Boston in the second division, or expressly except this particular amendment from the I. and R. There will result from this measure a lobby conceived by particular interests, who may not induce the Legislature to take care of them, — by labor organizations to exempt their property, by farmers to exempt their cows and stock, by manufacturers to exempt their machinery. Think what a pretty pickle we should be in if we had initiative and referendum petitions circulated all over the State, stirring up prejudice! At a time when the country is at war this does not appeal to me at all. Unless the leaders of the initiative and referendum before this Convention make some public declaration that they are not in favor of the resolution of Mr. Quincy, which was referred to the committee on Rules, and are in favor of this power now proposed to be granted being excluded from the I. and R., I shall vote, — very much against my inclination, — against the particular matter here involved, but vote against it because I think it is a subject totally unsuited to be passed upon by the initiative and referendum.

Mr. Cox of Boston: In the first place I want to make a correction in the statement which I made yesterday. I said that the proof-sheets of the bulletin which was forwarded to our committee were labeled with the initials of a gentleman whom I did not name, but to whom I referred. I want to say that I am satisfied, after conference with the gentleman in the second division, that I was mistaken, and that they were the private marks of the printer himself and that the gentleman whom I had in mind had nothing to do with the preparation of that document. But I do want to say that every word I said about the inaccuracies and the misstatements of fact contained in that pamphlet is entirely true and is substantiated after a further study of the matter and a looking up of the authorities.

I think that this debate has shown that what I said yesterday was true, — that there were only two matters of any substance which pressed upon our committee and this Convention to make this change. One was to get rid of the tax on machinery, and the other was to make an experiment in the line of the single tax. We have disposed of the single tax question here to-day. It has been rejected without a dissenting vote, so I assume that we shall not be asked to support this resolution to make further experiments along that line. If we had been

honest in that belief we would have put that question up to the people, so that they could vote understandingly upon the question.

Now as to the machinery. I said I would support a specific amendment to be submitted to the people in regard to machinery, because I knew perfectly well, and every man here knows perfectly well, how the people would vote upon that. In regard to that, 100 per cent of what little investments I have are made in the cotton industries of this State. My senior associate is president of five of the large cotton mills in this State. If any one is to benefit personally by getting rid of the tax on machinery I, in proportion to my property, will be benefited more than any man in this Convention. But I want you gentlemen to understand that that industry has no right to be exempted from the taxation of its machinery, its tangible personal property, which receives the protection of the government of the cities and towns where it is located.

Mr. CREAMER of Lynn: In the beginning I want to say that the purpose of this amendment is not in any way hostile to the real estate interests of this State. It is a friendly amendment. Its purpose is to enable the development of real estate in Massachusetts as well as the development of manufacturing. This amendment simply gives the General Court power to permit legally and equitably what is being done now in many communities in this State illegally and inequitably. Some communities grossly undervalue real estate. Other communities grossly undervalue manufacturing interests. If a classification of property for taxation at varying rates is to be an accomplished fact, is it not better to have that done by the General Court for the State as a whole than to have it done by individual communities?

The gentleman from Topsfield (Mr. Wellman) spoke as if the purpose of this amendment was to enable the State to assess valuations. The purpose of this amendment is to enable the State not to assess valuations but to fix rates. That is what other States do. Is not Massachusetts, through its lawmakers, to be given the same consideration and the same trust in picking out classes of property for taxation at varying rates that Pennsylvania has, or Maryland has, or Connecticut has? As the gentleman from Brookline in this division (Mr. Walker) said, it is a question of the incidence of taxation. We all know that taxes on some kinds of property have a different effect from taxes on other kinds of property. For that reason proportional taxation is not equitable taxation, it is not equal taxation, and yet I think that is what the fathers of this Commonwealth intended when they put that word "proportional" in. It was to have equitable taxation. We all know that a tax on houses, for instance, or on buildings tends to check the production of houses and buildings. We all know that a tax on land values tends to compel the use of those values and the production of buildings. Some of my critics have said: "Where are you going to get your taxes from if you put a lower rate of taxation on some classes of property than it now has to pay?" My answer is, — I have tried to make it clear once or twice, but I want to answer again and say, — the purpose of this amendment is to permit the Legislature to increase the productive capacity of the State by attracting industry to the State, by attracting home owners to the State, so that there will be a greater fund provided for taxation purposes. In that way nobody will suffer and everybody will benefit,

if there is an increased fund caused by a scientific system of taxation. Why, even a land speculator, if he will use his land instead of playing "dog in the manger" and holding it out of use, even he may benefit.

Mr. TREFRY of Marblehead: I do not think I need very much time to say anything further about this subject, except that it is a subject which has been before me and has come under my attention for a good many years. I attempted yesterday to show that historically the word "proportional", in my opinion, was a great stumbling block to any progress in this Commonwealth respecting improvement in taxation, and I think the same to-day. This debate has not taken any other course, or raised any other propositions, or brought in conflict any other interests, than the tests which we have had in former times. The word "proportional" was interpreted by the General Court immediately after the adoption of the Constitution in the year 1781 to admit of classification and to admit of taxation under the guise of a duty on property. When we come down fifty years later or so to the real interpretation of the proposition by the court, the judges who composed the court took an entirely different notion of it, and they put upon it, to my mind, a most unreasonably restricted meaning. Now, I say it has stood as a stumbling block ever since. We have tried to correct the taxation of personal property, as was explained yesterday, but I want to repeat again that as far as my attitude now is concerned it is exactly the same as it was then. The order of the Legislature under which the commission of 1909 acted was not an order to expunge the word "proportional" from the Constitution; it was upon the question as to whether it is expedient to amend the Constitution to provide for a classification of property. That we knew and everybody knows would have required an amendment of the Constitution restricting the meaning of the word "proportional". The committee did not believe at that time that a three-mill tax was expedient in the Commonwealth, and they so reported, but what they could not report was that an income tax was the solution of the whole difficulty, and an income tax would have required a modification of the Constitution, just as it did later. But we did not report it because it was not within the scope of our inquiry. I wish to say that if the Commonwealth is to make any progress in the amendment of its tax laws which is of any consequence or any importance to this Commonwealth, either to the manufacturing industries, as was explained this morning, or to the farmers, or to the further progress of the income tax, this word must be expunged from the Constitution, and I hope that you will pass this resolution. [Applause.]

The resolution (No. 332) was ordered to a third reading, by a call of the yeas and nays, by a vote of 129 to 87.

The resolution was read a third time Wednesday, July 31, in the following form, as changed by the committee on Form and Phraseology (No. 396):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to impose and levy all manner of reasonable taxes and excises, but all property of the same class subjected to taxation shall be assessed at the same rate or rates throughout the Commonwealth or the division thereof by or for which the tax is imposed, and all excises shall be uniform throughout the Commonwealth.

Mr. Walter H. Creamer of Lynn moved that the resolution be amended by striking out the article of amendment (see No. 396) and inserting in place thereof the following:

"The General Court shall have power to impose and levy all manner of reasonable taxes and excises, to define classes of property [C] for purposes of taxation, to prescribe by general laws the manner or degree of taxation of each class of property throughout the Commonwealth and to tax such classes of property at different rates; but no city or town [A] shall either exempt property from taxation in whole or in part or shall tax the several classes of property therein at differing rates, except in accordance with a general law requiring such action on the part of all cities and towns [B] within the Commonwealth."

Mr. Creamer of Lynn: I move this amendment for the following purpose: In the debate on the previous reading of this amendment, there seemed to be a feeling among some of the delegates that the amendment as worded, since it left the committee on Form and Phraseology, does not make it sure that the power granted is reserved to the General Court. There seemed to be a feeling among some delegates that the amendment, if passed in the present form, would permit cities and towns to bid against each other by levying varying rates of taxation on different classes of tangible property. Such was not the intent of the members of the committee that reported the original amendment.

So this amendment now has been drawn to read:

but no city or town shall either exempt property from taxation in whole or in part or shall tax the several classes of property therein at differing rates, except in accordance with a general law requiring such action on the part of all cities and towns within the Commonwealth.

Now, the whole purpose of this amendment has been to give the General Court of Massachusetts a power which is possessed by the legislative authorities of most of the States in the Union, and that is the power to classify property for taxation at varying rates, in order that a lower tax burden may be put on the producing interests of the State than on its privilege values. Such a system of taxation has worked well in such an extremely conservative State as Pennsylvania, where a lower tax rate is put upon real estate improvements than upon the land itself. A lower tax rate is put upon machinery; a lower tax rate is put upon merchandise. What has been the effect? The effect has been so to increase the amount of machinery, the amount of merchandise, and the amount of real estate improvements in that State, that there has been created a fund for taxing purposes which did not exist before, and, while the proportional burden, perhaps, on some forms of property was greater, the real burden was less.

We are in a condition now where the most important thing that can be done in this country is to increase production. It seems to me that taxes should be levied lightly on production, if we want to increase it. It seems to me that it is only by increasing production that States can be made prosperous and that wars can be won. It may be true that we also at this abnormal time should decrease consumption, — we are trying to do that, — but at all times legislation which will tend to increase production seems to me to be a very desirable condition.

To a certain extent, the very thing that I wish to provide for by legislation is being done improperly, illegally and wrongly in this

State now, because there is no legal way to do a needful thing. Is there a man here who does not know that, in certain cities and towns, assessors undervalue property for the sake of retaining business in those cities and towns? Is that a desirable thing? If we are going to grant lower rates of taxation to certain lines of industry, let it be done by general law instead of being done illegally, as it is now being done.

Mr. Cox of Boston: I understood the member in the third division (Mr. Creamer) to make the assertion that there are now going on in this State dishonest acts on the part of some assessors. Granting, for the purposes of argument, that his statement is true, although I deny it in behalf of the assessors, I ask him what virtue he thinks there is in an amendment to the Constitution which is going to make assessors honest if they now are dishonest?

Mr. Creamer: The delegate from Boston in the fourth division (Mr. Cox) well knows that the object of this amendment is not to make assessors honest. He knows that the object of this amendment is that we may increase the productive energies of this State, to enable this State to compete with other States. The mere fact that it might also work well by removing present illegal inequalities of assessment is a subsidiary reason, and he knows it.

What, let me ask the delegates to this Convention, would be the natural feeling of a great manufacturer to-day who has a large plant in this State and a large plant in the Commonwealth of Pennsylvania, and who wants to add to one of those plants perhaps an investment of several millions of dollars in order to produce more goods? If, in Pennsylvania, that several millions of dollars is taxed at only half the real value, and in Massachusetts it is taxed at its real value, to which State is he going? As a matter of self-protection, by general law, we should encourage manufacturers to add to their plants here and not elsewhere. Is there a man here who does not know that if some of our large manufacturing enterprises should leave this State and transfer their business elsewhere because these extra advantages are offered elsewhere, it would decrease the value of every bit of real estate in Massachusetts, especially in the town or city which lost the manufacturing establishment? It seems to me that is primary economics.

The possibility that the Legislature might be enabled to enact a general law of this nature would be of advantage not only to the manufacturer but to every producer of every description within the State, whether he is a farmer, whether he is a laborer, or whether he is a home builder who is building a little home for himself. The only disadvantage that I can see to anybody is to that man who wishes to hold out of use some of the opportunities for employment in this State, — the man who wishes to speculate in the opportunities for employment. Under present conditions many a man is owning a little bit of real estate who cannot afford to improve it, because if he does a heavy tax rate is put upon that improvement; and when he adds the interest on the investment to the amount of the tax rate and the great cost of building in these times, what does he gain? Nothing. Therefore he lets his old, worn-out property remain as it is and he does not improve it. Now, if it were possible to put a lower tax rate on that improvement than on the land under it or on franchise values,

or on privilege values generally, he would improve it. In so doing he would give employment to labor. Under present conditions, if he is so reckless as to improve it, he not only gets a small return on his property, but instead of adding value to his property he adds value to the property of his neighbors, — the men who desire to profit by somebody else's exertions and the men who desire not to see some such amendment as this adopted.

In my opinion, this is one of the most important amendments that has been presented in this Convention. On its adoption and on its use by the General Court, should it become a part of our Constitution, depends the future prosperity of Massachusetts, — whether Massachusetts will be able to hold its own with other Commonwealths which have adopted this system, or whether we gradually shall become industrially decadent.

I sincerely hope that this substitute that I have offered will be adopted in place of the original amendment as modified by the committee on Form and Phraseology.

Mr. Bartlett of Newburyport: The amendment offered by Mr. Creamer of Lynn on page 4 of the calendar seems to me to accomplish all the objects that I am trying to arrive at by my amendment. So, if I may have consent, I will withdraw my amendment.

Mr. Walcott of Cambridge: I wish to move the amendment under my name in the calendar. This amendment is to add at the end of the resolution (No. 396) the words "but no exercise of this power shall be the subject of an initiative petition."

The arguments in favor of this measure were stated fully at the last hearing of the committee. The principal argument, and one of the best ones, was that the Tax Commissioner of this Commonwealth desired it. I can think of no stronger argument than that the man who has spent his official career as Tax Commissioner of this State wishes this legislation.

On the other hand, it is open to very serious objections. It is open to the same sort of objection that this Convention ruled was important in refusing to allow cities and towns to lease buildings. It is open to the very great objection that favorites can be played under it. A lower rate can be given to one class of persons or interests than can be given to another class of persons or interests. That is going to throw a struggle into the Legislature as to who shall get the most pie in the shape of exemptions. That is involved in this, and, in my opinion, will be exaggerated a hundredfold if this struggle is carried through the Commonwealth by circulation of initiative petitions. Labor-unions perhaps will be bidding against employers. It may well be a proposal to exempt everybody whose property does not reach five thousand dollars. Then we shall have an exempted class careless of the weight of taxation. It may be this agitation shall be carried on in the same way as the initiative and referendum was handled, — by the unscrupulous use of the daily press.

Mr. Kelley of Rockland: May I ask the gentleman, — suppose the initiative and referendum be rejected by the people, — then what will be the standing and meaning of his amendment, if adopted by the people?

Mr. Walcott: I share the hope that I think the gentleman in this division (Mr. Kelley) also shares, — that the initiative will be de-

feated. But in case it be not defeated, the word "initiative" is a word of general standing politically, and I think there will be no difficulty in understanding what it means on the part of anybody who reads the Constitution.

My point is this: That I believe the merits of this amendment outweigh the defects, and I shall vote for it if the initiative does not apply; but if the amendment proposed by me is not carried, then I shall vote against the measure, as will others of a like opinion, believing that, on the whole, the scramble for exemption outweighs the possible benefits.

Mr. WALKER of Brookline: I am sorry that the gentleman from Cambridge (Mr. Walcott) has seen fit to drag in at this late stage in the proceedings of the Convention the initiative and referendum. I believe that it should be kept out.

The gentleman from Boston (Mr. Quincy), probably as the result of some remark made by me, — I am responsible for it, perhaps, — introduced a resolution relative to the initiative and referendum, which was referred to the committee on Rules and which is there now. I trust it will stay there.

Personally, I do not wish the question dragged in, and I do not know why it should be dragged in. As has been said, it would be absurd to find in a constitutional amendment adopted by the people a provision excluding the subject-matter from the initiative and referendum, and then have the initiative and referendum itself defeated. That shows how unwise it is to mix up these two entirely distinct and separate questions. If the people choose to act unwisely under the initiative and referendum, they can act unwisely in a great many different directions. This is only one of them. So, I appeal to the Convention at this time not to make this initiative and referendum fight all over again.

In regard to the main proposition, I understand that the Tax Commissioner of Massachusetts approves of the amendment that has been offered by Mr. Creamer of Lynn. I simply wish to say that I think it is an excellent amendment, and I hope that it will be adopted.

Mr. BRYANT of Milton: I hope that the amendment of the gentleman from Cambridge (Mr. Walcott) will be adopted. We have it on the very highest authority that the initiative and referendum is a cumbrous piece of machinery; that it is awkward; that the people, if they want to, may make many mistakes in using it, — all of which are the words of the gentleman from Brookline (Mr. Walker) who has last spoken.

This question of exempting various kinds of personal property, of making different rates for different kinds of personal property, is a very difficult matter to deal with. I think that now is the time to consider whether we want it dealt with by such a cumbrous piece of machinery, and whether, if we are going to pass this new tax amendment, we had better not have it dealt with here and now by a deliberative body which is trusted so highly by the gentleman from Brookline (Mr. Walker), as he has explained to you this morning. That is the kind of body that can deal with a provision of constitutional power of this kind better than different groups of citizens in the various parts of the Commonwealth, each of which is anxious chiefly for its own

special interest; and I hope the amendment of the gentleman from Cambridge (Mr. Walcott) will be adopted by the Convention.

Mr. Washburn of Worcester: Contrary to his usual habit, my distinguished friend from Cambridge in the third division (Mr. Walcott) has undertaken to throw a monkey-wrench into the complicated machinery of this Constitutional Convention. I do not need to argue very long to persuade the Convention that I am an opponent of the initiative and referendum, but I think it highly inexpedient at this time to provoke a discussion of that measure. If my friend in the third division (Mr. Walcott) is in favor of this amendment, he should have abstained from making any such suggestion as he has made. The suggestion of what may happen to our taxation system if the initiative and referendum is adopted is a figment of the gentleman's imagination. Suppose that the gentleman's amendment is adopted. Why, then, perforce, the advocates of the initiative and referendum will oppose the proposition now before us.

I see my friend from Boston (Mr. Edwin U. Curtis), at whom I am now looking, smiling in anticipation of the confusion into which this proposition will throw the Convention. I might go almost to the extent of suspecting that he himself made the innocent suggestion to my friend in the third division (Mr. Walcott). I observe that my friend in the first division (Mr. Edwin U. Curtis) and my friend in the third division (Mr. Lomasney), not my friend who made the amendment, but the one who is sitting next him, are now again in close communion (laughter), but I doubt if the sound sense of this Convention is to be diverted by this camouflage.

The proposition now before us is one of very far-reaching consequence. This change is one that is commended by all those versed in the intricacies of our taxation laws, it has been recommended over and over again by the accomplished Tax Commissioner who sits here as a delegate, it has been recommended by at least one commission that has had the matter in charge, and it will be an impeachment of the intelligence of the membership of this Constitutional Convention if we vote adversely upon it. I urge the members of this Convention to defeat the proposition of my friend in the third division (Mr. Walcott) and to sustain the recommendation advocated by the Tax Commissioner and by every great authority upon this question. [Applause.]

Mr. Cox of Boston: I am at a loss to understand how the member in this division can refer so confidently to all the great taxation authorities and say that they have recommended this proposition. I deny it. It is not true. Moreover, he has said that every commission that has considered taxation matters in this Commonwealth has recommended this proposition. I deny that. It is not true. One of the members of such a commission was this Tax Commissioner, who is sitting upon the floor of this Convention.

Mr. Creamer: I should like to ask the delegate from Boston (Mr. Cox) if he is not aware of the fact that since the Tax Commissioner took that attitude he has taken a contrary attitude because circumstances have changed.

Mr. Cox: I presume that he has seen the change in circumstances if he has changed his position. What they have been it is not for me to say. Consistency may be a jewel, or it may not be, or inconsist-

ency may be the jewel; but it is certainly a fair criticism that at one time when it was the sole proposition to be considered and when —

Mr. LOMASNEY of Boston: I should like to ask the gentleman, while he is talking about the Tax Commissioner, how many of these tax-dodgers the Commissioner has prosecuted after they broke the law by taking false oaths.

Mr. COX: I say that it is a fair proposition to say, in refutation of the statement which has been made that all commissions at all times have recommended this proposition, that it was not so. And I will say that this Commissioner when he recommended that this proposition should not be adopted was surrounded then by minds that were entirely clear and that had some knowledge of the subject. Among his colleagues at that time, and there were only two, as I stated before, were the President of this Convention, the former Governor, John L. Bates, and a former Treasurer of the Commonwealth, at that time the Bank Commissioner of this Commonwealth. Those gentlemen I think were as well versed and as well able to serve the Commonwealth as some members of certain recess commissions which more lately seem to have changed the opinion of the Tax Commissioner.

But are we going to decide this question upon the wishes of a member of this Convention or upon the reasons, the facts and conditions which appeal to us? I grant you if, as the gentleman in this division (Mr. Washburn) has said, this Convention must bow to the wish of an official of the Commonwealth, that there is no further use to argue this case; but I do not think that we are here simply to follow out the wish, even if it be a sincere one and not a whim of caprice, of any of our members, but we are to act upon the question as our sound sense and all our knowledge of conditions will dictate our action.

Now, however you camouflage, to use the word of the gentleman on my right (Mr. Washburn of Worcester), this proposition, by varying the language, by changing the form of phraseology and by the offering of amendments, you come back to the original proposition that you want to get rid of the word "proportional" in our Constitution, and that is all you want to do, and you want to get rid of it as applied to real estate and tangible property, because you already have passed an amendment getting rid of it as to intangibles, and now you want to strike it out as regards real property. As I stated before when the question came up, our Supreme Judicial Court has said time and again in well considered cases that this provision was inserted in the Constitution by our forefathers to protect individuals from the enactment of unjust and arbitrary laws.

Mr. CREAMER: I should like to ask the delegate from Boston (Mr. Cox) why, if it has been deemed wise in some cases to depart from what he terms the principles of our fathers on various lines, for instance, in intangibles, it may not be wise to do so now. I do not suppose all the wisdom of the ages was written one hundred and thirty years ago.

Mr. COX: Of course, as a matter of logic, it may be perfectly possible to depart from some of the customs or the rules and regulations laid down by our forefathers and make progress and make better conditions for ourselves, and if it can be shown that by doing so we shall progress I certainly am willing to follow.

Mr. WASHBURN of Worcester: Let me ask the gentleman this

specific question: Does he approve of Article XLI of the amendments to the Constitution, giving the General Court the right to prescribe for wild or forest lands such methods of taxation as will develop and conserve them?

Mr. Cox: If the member is through with his question I will answer.

Mr. Washburn of Worcester: I should like to ask one other question, because both can be answered together. I should like to couple with it this question: Does the gentleman approve of the adoption of amendment No. 44 to the Constitution, which gives the General Court the power to impose and levy taxes on income, such taxes to be at a different rate upon income derived from different classes of property?

Mr. Cox: Unfortunately for me, when I spoke before on this question the member who has just asked me the question did not favor me with his presence.

Mr. Washburn of Worcester again addressed the chair.

Mr. Cox: Well, I certainly cannot ever hope to answer anybody's questions unless I am allowed to proceed after they have been fairly asked. I was trying to answer the member on my left, and before I had even begun to answer him I was questioned in another direction. Now, if I may be allowed to answer the questions, then I willingly will yield when I have finished.

If the gentleman had favored me with his presence at that time he would have known that when I discussed this matter I made reference to both of these questions he now has asked me. I showed, I think, very clearly, how that question of wild and forest lands crept into our taxation system. It is a matter, so far as I view it, of absolutely no consequence one way or the other. We have so few wild and forest lands in Massachusetts that it is a negligible factor in the situation and, as I said then, was used simply to win the rural vote, in my view, to put through the amendment on intangibles. Now, I do not care anything about the wild and forest land amendment.

Now as to intangibles. That amendment was put through solely on this issue. They said intangibles could be differentiated from tangible property. Intangibles can hide or they can run away. As a result of that self-evident fact they said: "If the tax is too high on intangibles you cannot collect it, because they will hide or run away."

That was the sole issue which was put before the people on that question. They said: "If you give us a low rate on intangibles we will collect more money from the tax on intangibles, even though the rate be low, than we will if you have a high rate and try to collect that." Now, I was willing to try the experiment, and to that extent I am in favor of that forty-fourth amendment, and I say that amendment was passed only in 1916. We have not yet proceeded far enough in the two years' trial of it so that we can say confidently that the very basis and the only reasons that were given for passing that have been established and will be maintained over a reasonable number of years; but if experience shall show that over a reasonable number of years the Commonwealth actually will collect more taxes from intangibles on a low rate than they would at a high rate, I will give my assent to that proposition. But you observe that that cannot be applied to the taxation of tangible property. You have a certain amount of real estate. There it is, and it cannot hide and it cannot run away, and

it has a certain value which cannot be changed. Therefore if you tax that property at a lower rate inevitably you must get a smaller return from the amount of taxes, and that is why I differentiate the proposition as to intangibles from that as applied to real estate.

Mr. CREAMER: I should like to ask the delegate from Boston in the fourth division (Mr. Cox) if he is not aware that under the forty-fourth amendment it is possible also to tax incomes from tangibles as well as intangibles, and that the only reason we want an amendment of the kind that I have offered is because it is neither feasible nor practicable to tax incomes from some forms of tangibles, while it is from others. As far as the principle is concerned, the forty-fourth amendment now gives us the power to classify incomes from tangibles.

Mr. COX: I recognize the difference between taxes upon incomes and taxes upon property. That is the very point I want to emphasize. It is the point which I tried to emphasize when we argued this matter before. I do say that there is a greater difference between taxes upon intangibles and taxes upon income than there is in a tax on property itself. One of the main arguments I have for opposing this amendment at this time is that we have only begun an experiment with this new kind of taxes upon intangibles and upon income, and that before we proceed farther to involve the Commonwealth in a change of its taxation system, knowing the good which we now have in the old system of proportional taxation, we should stop and not go any farther. As a result of that experiment, when it is determined finally it probably will be possible to draw an amendment to the Constitution, if one is needed, that more than three or four men could agree upon. Now each group insists upon its own particular form. This is well illustrated by the various amendments offered here, and by the trouble that the committee had in offering an amendment. Each one now has a different solution of the difficulty, varying in various degrees, which all goes to show, as I say, that the public opinion is unsettled, men do not know exactly what they should do about the taxation system, they do not know how far to go. So long as they do not know how far to go I think that we should remain in the present condition and try out the experiment to which we are now committed.

Mr. BRYANT of Milton: I should like to ask the gentleman, as the chairman of this committee, regarding a point on which I am not at all clear. Is the amendment as recommended by the committee intended to permit a graduated tax on incomes or a graduated tax on property, such as is not possible in connection with inheritance taxes?

Mr. COX: It may be assumed from my dissent, I think, that I had nothing to do with the drafting of the amendment which was submitted by the committee on Taxation. Therefore I cannot give you, and will not attempt to give you, the views of a majority of that committee. But speaking for myself, I would say perfectly frankly that I think they intended to draw it to permit a graduated tax upon incomes, and I also confidently think that they failed to do so.

Mr. BODFISH of Barnstable: I should like to ask the delegate if he has considered the possible effect upon our already waning agricultural interests of the discrimination between taxing intangibles on income and taxing tangibles such as real property on actual valuation.

Mr. COX: I am very happy to inform the member that I have thought of that very seriously. I think that, as I say now, and my

own view of it is, we now are engaged in an experiment as to which I am not satisfied in my own mind just how it will ultimately turn out. I think it is possible that it may turn out very disastrously to the farmer; but I hope, taking the view from the Tax Commissioner among others, that it will turn out well. I can see that if it turns out that more money actually is collected from intangibles under this present experiment than could be collected under the old method, as the proponents of it always said was the corner-stone upon which they rested their case, agriculture will not suffer; but if they do not sustain the burden which they assumed under that proposition, then agriculture will suffer from the experiment which we now are undertaking.

I would say, only briefly, what everybody must admit, what has been brought out time and time again, that if we do try this new experiment we subject the whole field of taxation to constant change by legislation. It seems to me by the amendment which has just been offered by the gentleman from Lynn (Mr. Creamer) this morning, he evidently thinks that we are going to hand over the taxing powers to the cities and towns in certain instances, as he now sees fit to try to restrain them specifically by the provisions of his amendment; that if we do proceed with this new experiment taxation becomes a matter of annual law; and it has been well said that there will be a lobby around the State House every year which practically will equal in size the old tariff lobbies they used to have down in Washington. Now, I do not think it is wise to go that far, especially in view of the experiment which we now are trying. I should deplore any opening of the doors to any such thing.

I may say that it is the truth, and I do not care who makes any other statement, the records will show this to be so, that the majority of the States have not gone any farther in the matter of taxation than has Massachusetts. The Legislatures of a majority of States have not any broader powers with reference to taxation than has the Legislature of our own State, and I discussed that and named the States when I spoke before.

In view of all these circumstances, and in view of the fact that they have not shown us just how a law is going to work out which will benefit the Commonwealth, I think we ought to go slow and reject all the amendments and defeat this proposition.

I want to deny any inference from the argument which the gentleman in the third division (Mr. Creamer) has made, that this will help industry. It will not help industry. It will not help the producing classes. As an illustration, — and I would not like to have this take place, — suppose we own a cotton mill in Lawrence and we think we can get the tax reduced on our machinery there by the sum of $400,000, which would not be an unlikely possibility if we could manage the Legislature, and we come up to the Legislature and we get through our pet scheme, we get relieved of paying taxes in the city of Lawrence to the amount of $400,000 on our machinery. Well, how is that going to affect the general tax rate in the city of Lawrence? How is it going to affect the amount of money which Lawrence is going to have to spend upon its parks and upon its schools and for its welfare work, which indirectly benefits our mills? Lawrence is deprived of the $400,000 which we have been paying on our machinery, unless you raise the general rate on real estate, and that

rate is going to be raised on our own mill property, and it may be, if the rate is worked out, the addition will be as much as shown in the example submitted in the report of the Tax Commission of 1907, where I showed that the change in the distribution system made a difference in the general tax rate of more than $3 a thousand. That extra $3 a thousand which our mill would have to pay on its real estate might make up just the $400,000 that we took off from machinery, but it might not. However, it would not work well for the city of Lawrence; if we did save some money that way we would put it upon our operatives, — we must. Suppose we did not have to pay anything more on our real estate, but took this out of our operatives, from their rents on their tenements, would we not have to give it back to them later in wages and in increase of their wages? Of course we would.

Now, you cannot lift yourselves by your boot straps, and you cannot benefit Massachusetts industrially by trying to dodge taxes on your legitimate property and your legitimate interests. I hope, for the reasons which I have stated, and I do not care to prolong the debate further at this time, that this Convention in its sober senses will not permit further experiments in our taxation system till we see what we are going to do under the experiment we now are carrying on, and until we see what the conditions will require after the war.

Mr. SULLIVAN of Salem: I offer an amendment, in the hands of the Clerk, which I understand is satisfactory to the gentleman from Lynn (Mr. Creamer), — inserting after the word "town", in line 6, the words "or other political subdivision or tax district of the Commonwealth"; and inserting after the word "town", in line 10, the words "or other political subdivisions or tax districts".

Mr. William S. Kinney of Boston moved that the resolution be amended by striking out the article of amendment (see No. 396) and inserting in place thereof the following:

Full power and authority are hereby given and granted to the General Court to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident and real estate lying within, the said Commonwealth; and to impose and levy reasonable taxes upon personal property or upon the income derived therefrom as well as upon incomes derived from professions, trades and employments, which shall be proportional upon property or incomes of the same class, provided that personal property the income from which is taxed may be exempt from other taxes, as well as from duties and excises other than those imposed on licenses, transfers, legacies and successions; and in taxing personal property or incomes the General Court may grant reasonable exemptions and abatements, may classify personal property and incomes in a reasonable manner, and may classify machinery as personal property.

Mr. WILLIAM S. KINNEY: I differ very materially from my colleague from Boston as to the question before the Convention, and I venture to suggest that the facts upon which he predicated his argument are erroneous, and that his conclusions are not in keeping with the taxation developments of the past ten years in Massachusetts. Unlike him, sir, for the past ten years I have been in active touch with all of the movements to revise the Constitution, and with all of the legislation which has been passed in an effort to improve the taxation situation in Massachusetts, and I am prepared to defend the soundness of each of the constitutional amendments which have been

passed during that period and the success of the legislation which has followed those constitutional amendments.

Our Colonial ancestors brought with them from Great Britain a system of taxation known as the general property tax. That system was adopted at that period throughout practically all of the Colonies. That system, sir, which my colleague has attempted to defend to-day, has become antiquated and has been discarded not only in the mother country from which the colonists came but in practically every State in the entire Union, and any effort to extol it to-day is to extol a system which has been entirely discarded in the entire civilized world.

I am of the opinion that Massachusetts should keep pace with the trend of modern theories of taxation. The development of taxation throughout the United States during the last ten years has been in the direction of an income tax. It took us many years in our Legislature to secure the constitutional amendment which finally was adopted by the people in 1915, which made possible the income tax law of 1916. The success as a revenue producer, as an equalizer of the taxation burden upon the people of Massachusetts, of the income tax law of 1916 cannot now be questioned, because the facts are before the people of this Commonwealth, and the revenue which it has produced is a matter beyond dispute.

Mr. MANCOVITZ of Boston: I should like to inquire from the gentleman whether in any way the income tax as now in force has reduced the rate in any city or town in the Commonwealth.

Mr. KINNEY: The income tax law of 1916 produced something like $4,000,000 more than the tax upon the same class of property had produced prior to its enactment. That would have resulted in a reduction in the tax rate of the various cities and towns, or, rather, would have resulted in their receiving from the Commonwealth a sum of money as an excess over what they previously had received in taxing that class of property, were it not for the fact that the Commonwealth, owing to the outbreak of the war, has been obliged to use a portion of the receipt of the tax for extraordinary war expenses.

My attitude in the matter is this: I want to see Massachusetts keep pace with the most enlightened thought on taxation in the United States. We have succeeded in amending the Constitution to the extent embodied in the forty-fourth amendment, which permits an income tax upon individuals. It is desired now to place upon the statute-books a tax changing over the system of taxing corporations from the present franchise basis to an income basis, in line with the Federal corporation income tax, and in line with the New York corporation income tax, and in line with the Wisconsin corporation income tax, and in line with other States that have kept pace with the times. The present constitutional limitations will not permit an income tax upon corporations in all of the desired features. It will be impossible under present constitutional restraint to impose a uniform rate upon merchandise throughout the Commonwealth, and we could not adopt an income tax upon corporations which would deal unjustly with partnerships and individuals engaged in the same commercial line as the particular corporation. Furthermore, our manufacturers in this State are in active competition with plants in Rhode Island and New Hampshire, both of which States are in a position, because of the absence of constitutional restraints, to give manufacturers a low rate upon

machinery, and this preference is working to the detriment of Massachusetts in the manufacturing lines in which she is competing with Rhode Island and New Hampshire. Therefore, sir, at the present moment the only purpose for which the Constitution of Massachusetts need be amended is to remove the restrictions upon the taxation of personal property, which would permit the uniform taxation of merchandise throughout the Commonwealth and a classification of machinery as personal property.

Mr. CREAMER: As I understand the delegate from Boston in the other division (Mr. William S. Kinney) he is speaking now on his amendment to permit the classification of all forms of tangible property, except real estate improvements. I should like to ask him why he wants to discriminate against those poor fellows who own improved real estate. I should like to know why he wants to discriminate against a manufacturer's building, and give him a lower tax rate on his machinery.

Mr. KINNEY: To answer the gentleman I would say this: During the last ten years Massachusetts gradually has been improving the taxation system along certain definite lines. Those lines can be developed further under the amendment which I have offered. But if we should start out on the line which the gentleman suggests we practically would be starting on an entirely new and divergent line, a system of taxation of real estate which has many different manifestations, perhaps the most obnoxious of which is the single tax, and it is for that reason that I cannot concur in the amendment which is fathered by the committee on Taxation of this Convention. I do not believe that Massachusetts should so broaden the Constitution at this time that those systems of taxation, the single tax, the different rate of taxation on buildings to that prevailing upon land, and other features which have not proven a success in many instances wherever tried, — I do not believe that Massachusetts at this time should venture along that path.

Mr. CREAMER: I should like to ask the delegate if he knows of any instance where that policy has been abused, — in the Commonwealth of Pennsylvania, for instance. He speaks about the possibility of the Legislature enacting the single tax. Does not the gentleman know that that possibility has not been sufficient to cause any alarm in Pennsylvania? Why should it here? It is not a new thing to tax real estate improvements on a different basis from the land itself. It is a common custom in many States in this Union.

Mr. KINNEY: It is difficult to take up the finances of a great commonwealth, like that of Pennsylvania, and adequately determine whether or not in a particular locality the system which the gentleman suggests has been either a great success or a great failure, and in the limited time which I have before the recess this noon, — and I hope to conclude such remarks as I shall make upon the entire question before then, — I will not attempt to take up the entire financial situation of the Commonwealth of Pennsylvania. Suffice it to say that my attitude on the question is this: The system of taxation which the gentleman suggests, and which is the underlying purpose of the report submitted by the committee on Taxation, would be a divergent system from the policy which Massachusetts has been

pursuing for the last ten years, and therefore I do not see my way clear to support it at this time.

Mr. Flye of Holbrook: I should like to ask the gentleman if it would not be possible for the Legislature to follow his ideas as to what should be the taxation policy of this Commonwealth under the amendment as proposed by the gentleman from Lynn (Mr. Creamer) as well as under the amendment proposed by him.

Mr. Kinney: I thought I had made it quite clear that my amendment goes in the same direction as that of the committee and as that espoused by the gentleman from Lynn (Mr. Creamer) up to this point, that is, real estate. My amendment stops there. Up to that point anything that could be accomplished under my amendment could be accomplished under his. The difference is that under my amendment real estate will retain the benefit of the word "proportional" in the Constitution, while under his that benefit is removed.

I think I already have stated two things which are desired by those who have struggled to remove the constitutional restraints in Massachusetts in the last ten years. I think we have stated that the two purposes which we now still further desire are the ability to relieve our manufacturers in the taxation of machinery and the ability to impose a corporation income tax, and as an incident thereof to have the authority rest in the General Court to make a uniform rate upon merchandise throughout the Commonwealth. Those two purposes, sir, are the only purposes which I know that any large body of citizens of this Commonwealth desire to attain at this time, and therefore any further broadening of the Constitution at this time would not be in response to any public demand. Therefore, sir, I suggest to you that as a compromise between the older and ultra conservative policy suggested by my colleague from Boston (Mr. Cox) and the extremely radical policy suggested by the gentleman from Lynn (Mr. Creamer), and as embodied in the report of the committee on Taxation, my amendment suggested here will be a happy half-way ground for this Convention to take, an amendment which will permit every desirable change in our taxation system, and which will retain to real estate the benefits of the word "proportional". I trust that those of the Convention who have studied this matter will read my amendment and give it the consideration which I believe it deserves. It is not, sir, my individual effort. I perhaps would have been more modest in urging it as strongly as I have if it were my individual conception. It is the amendment which was drafted by the committee on Taxation of the General Court for the year 1913 after a very exhaustive study of the subject, an amendment drawn in conjunction with Professor Bullock of Harvard College, who is accredited with being the most learned gentleman in this section of the United States on the question of taxation; and I believe, sir, that it represents many hours of study and that it will meet all the requirements of the present situation in regard to taxation changes in Massachusetts.

Mr. Hart of Cambridge: Without desiring to interrupt this highly informing debate upon the general question of proportional taxation, I desire to spend three or four minutes in laying a protest against the proposition introduced by the gentleman from the third division (Mr. Walcott). That is the proposition that we shall bind ourselves

and our successors that no initiative shall touch this sacred subject of taxation. All I have to say is to be found in the text of the act or the form of act which we have submitted for the people's action upon the initiative and referendum. There is not a member of this Convention who does not remember how many different propositions were made for exclusion from the operation of the initiative and referendum, and there is not one of us who cannot recall, if he will think of it, that we finally came down to eight exclusions which appear in the text of the act: That is to say, that no petition and no act of the Legislature and no constitutional amendment can apply through the initiative to religion and religious practices, and so on, to the status of judges, to the reversal of judicial decisions, to the organization of the courts, to acts the operation of which is restricted to a particular region, to specific appropriations of money from the treasury of the Commonwealth, to certain rights of the individual embodied in the Bill of Rights and specifically mentioned here, and finally to an amendment which shall affect the initiative; that is, no part of the Constitution specifically excluding any matter shall be the subject of an initiative petition. There are eight subjects selected out of a possible eighty by this Convention, laboriously debated, inserted in the act, a part of the balance of give and take upon which that act is founded, — that proposition. And now comes in the gentleman from Cambridge (Mr. Walcott) and proposes that we shall upset that balance by making another exclusion a year after the first. That will mean, of course, that the same point can be raised against any other proposition pending before this Convention, and that any gentleman may introduce freely a proposition of that kind with the understanding that it is debatable. Of course it is debatable, but I submit to this Convention that we have other things to do with our time than to make up a new list of exclusions after having spent days and weeks in making up a list which fairly satisfies the majority of this Convention.

Mr. Coombs of Worcester: I think we all have listened with much pleasure to this discussion, and I think that our minds are made up. I therefore move the previous question.

Mr. Bryant of Milton: Every other member of this Convention may have made up his mind, but I am very far from making up my mind. This is a very difficult and technical question which we are dealing with. I hope to hear a good deal further discussion of the general principles of it. One point which is not at all clear to me yet is whether a graduated income tax is to be possible under this amendment as recommended.

Mr. Creamer: I simply rise to tell the delegate from Milton (Mr. Bryant) that I have the opinion of the Attorney-General's office that a graduated tax is possible under this amendment, that the word "property" includes incomes; in other words, that incomes are property.

Mr. Bryant: I respect very highly the opinion cited. From reading the amendment myself I was a good deal of the impression of the gentleman from Boston who sits in front of me (Mr. Cox) that, although an attempt had been made to include a graduated income tax, it had not been successful. I think that this subject will bear a good deal more discussion, and possibly the amendment will bear

remodeling, and I hope that the previous question will not be voted, after the hour and a half debate on this which we already have had.

Mr. Lomasney of Boston: I regret to have this Convention stifled. The gentleman from Lynn (Mr. Creamer) suggested to the gentleman from Worcester (Mr. Coombs) that the previous question be moved. That is not a fair way to do, after he has talked all the time to shut other people off. I do not believe in that. The voters of Boston are entitled to be heard here. I object to that kind of method, and I hope the previous question will not be moved in that way.

Mr. Coombs: I am the last one to wish to stifle debate on this or any other question. In conference with several members of the Convention in this vicinity I made that motion. But, as I say, being the last one to wish to stifle discussion, I am more than pleased to withdraw that motion if it seems advisable. May I ask, therefore, unanimous consent to withdraw the motion for the previous question?

Mr. Walker of Brookline: I should like to move an amendment to the amendment offered by Mr. Creamer of Lynn, in the hands of the Clerk, — inserting after the word "property", in line 3, the words "and income".

Mr. Richardson of Newton: Before the recess I should like to ask a question, which I think may be directed fairly to the gentleman from Lynn (Mr. Creamer), who is now sitting near me, and to the committee on Form and Phraseology. I suppose that it is true that one of the purposes of this amendment as a practical matter is to take the word "proportional" out of chapter 1, article 1, section 4, of the Constitution, or at any rate to take out the effect of it. At some time this body is going to be confronted with the job of rearranging the entire Constitution. I should like to ask whether it would not be proper to include somewhere in this amendment the actual taking out of that word from the place where it now occurs in the existing Constitution.

Mr. Creamer: It is my purpose, and the purpose of those who agree with me in this matter, to offer this amendment in place of the present taxing power granted by the Constitution.

Mr. Richardson: I should like to ask the gentleman at what stage he proposes to do that. The amendment as at present presented, so far as I can discover, appears as a tail-piece to the Constitution, and it is not drawn in the form of striking out and inserting anything. This is the third reading of the amendment, and, as I understand it, the last chance for changing the form.

Mr. Creamer: I simply would say that the committee have been following only the common custom. Every other amendment that has been passed upon by this Convention has gone along in just this same way.

Mr. Richardson: That does not answer my objection. Other amendments have not been of such nature that they could be put in the form of striking out and inserting anything. Now, here is a case where in the form of the amendment, it seems to me, — and I may be mistaken in this, — the word could be stricken out.

The debate was continued after the recess.

Mr. Hobbs of Worcester: After having seen this Convention over a series of debates considering carefully the question of extending the

power of the State to take property by eminent domain, and having seen the care which the Convention has exercised lest perchance that power should be exercised intemperately by the General Court and in the direction of socialism, it comes with somewhat of a shock to me to see how few of the members apparently appreciate the importance of the present proposition. The power of taxation is by no means less important than the power of eminent domain. Eminent domain in theory is the ultimate power of the State, but it can be exercised in the ordinary course of events only occasionally and it is very seldom that takings by eminent domain affect more than a small proportion of the citizens of the Commonwealth. The power of taxation, on the other hand, which of necessity must be exercised continuously for the carrying out of the State's business, affects practically every person in the Commonwealth. We all of us at one time or another have our relations with the tax collector, and it is a matter of no small importance to every one of us, whether we own property or whether we merely are taxed for a poll, to know exactly how far the General Court can go in the power of dipping into our pockets.

I would call to your attention that on the one question of socialism it has been claimed that as a matter of theory, at least, private property can be taxed out of existence, and that this has been advocated as one means by which the socialistic idea finally might be realized. Practically the power of taxation, if granted to an unlimited extent, can be used in a number of very interesting ways. It can be used to lift up and to depress. It can be used to facilitate the operations of one part of the community and to discourage the business of another part. The State which is armed with that unlimited power has indeed an ample power to direct its own affairs. It can say to this class "You may," and to that class "You may not," to an even greater extent than the police power would justify. And unless the exercise of the power were clearly confiscatory and oppressive, under the limitation of the amendment before us it would be very difficult for a court to say that a given taxation measure was unreasonable. Therefore I think it must be conceded that the amendment before us opens up a very interesting vista of possibilities.

I am not an expert on taxation. However, I have seen tax matters going through the General Court year after year and have spent some time and some thought upon them. I have noticed this: That the number of men who really understood the subject was very small, that the number of those who really could claim to be experts on taxation was very limited, and that even some of the so-called experts frequently were quoted on both sides of a proposition. I think that our honored Tax Commissioner (Mr. Trefry of Marblehead) in the course of this debate has been quoted on both sides of the present proposition. Now, if there be so much doubt and uncertainty upon the subject, I think it fairly may be said that if we really feel disposed to intrust the General Court with a power whose limits are very uncertain, even under the amendment before us, we are reposing indeed a marked degree of confidence in that body which, inasmuch as I am a member of that body, ought to make my heart grow warm.

The power of taxation at present, as you understand, is limited in the Constitution by the presence of the word "proportional". I am not so familiar with the history of the subject that I can claim to

speak with absolute authority, but it is my strong impression that the word "proportional" was inserted there for the purpose of insuring a certain measure of equity in the operations of the General Court under the taxing power. It was intended to stand as a bar against class legislation. It was intended to prevent the General Court in some measure from playing favorites.

Now the object of this amendment apparently is to do just the opposite. I will call to your attention the arguments that have been used in its favor. They have been the necessity of the General Court's playing favorites, the necessity of the General Court's making special rates for this or that class of property, — machinery, for instance. That mode of argument is extremely attractive to those who feel that their property in some way might receive a favorable rate. Perhaps the time has come to change our policy. Perhaps we must go into class legislation and make varying rates on different classes of property, favoring different parts of our community. But we must understand when we do it that if we favor one we do it at the expense of somebody else. The money that is saved to the manufacturer whose machinery gets a special rate must come from somewhere, and unless the result of the operation is to bring in new revenue for the State from some unknown source, it must come out of the parts of the community that do not get an exemption.

Now it is claimed that new revenue will be brought in. It is claimed in the case of Pennsylvania that the exemption of machinery has resulted in bringing in more revenue, so that while the proportional burden was greater the actual burden was less. But I will point out to you that we are not pioneers in this movement now; that if we go into it now it will not avail to go as far as other States have gone, but we must go still further in order to bring the property back, if any there be, which has gone out under the laws of the other States; that we will have a greater deficit to make up and that once all of the States start in this matter of competition in granting favorable rates, there will come a time when we no longer can compete and therefore there will be no new advantage to gain and no new revenue; there will be merely the distribution of the burden, bearing more favorably on one part of the community and less favorably on the other.

It has been my experience in the General Court, — and I think the condition in the General Court is no different from that in other walks of life, — that the one who gets favored in these matters is the one who makes the most active and aggressive campaign. The class which is best organized, which presents its case most persistently and plausibly to the General Court, is the class which will get its claims to an exemption or to a favorable rate recognized; whereas the unorganized class, the small property owner who cannot afford to maintain a lobby at the State House to protect his interest,— the small business man, — is the one who is apt to find burdens thrust more and more heavily upon his shoulders as more and more favoring rates are granted. That is the most likely result to be looked for from a policy such as has been mapped out for us as a reason why the State should act favorably upon this proposition.

I have no doubt that the General Court will do all that is in its power to prevent the small fellows from being hurt, that it will do

all that is in its power to introduce a measure of equity in such exemptions as it allows. But the General Court is by no means superhuman, nor is its knowledge and experience at all unlimited. It is at best an imperfect match for the man who comes up there with a well prepared case, well advertised, plausibly presented, and backed up by a considerable influence throughout the community.

I merely instance that as showing what the danger is of going into this proposition. There is danger, of course, for other parts of the community, for other interests of the community, which have so large an actual value that they cannot well receive a favoring rate without having a disastrous effect upon the finances of the State. The exemptions probably would be on limited classes, but the proposition that you can make exemptions and not find the burdens falling somewhere is of course an impossible position to take.

We have several alternatives before us to-day. We have the proposition of the gentleman from Lynn (Mr. Creamer), which I think is a wide open proposition. We have the proposition of the gentleman from Boston in the second division (Mr. William S. Kinney), which goes to meet him about half way. We of course have the alternative always of rejecting the proposition and doing as we have done in the past, — instead of throwing the gates wide open, confine ourselves to specific propositions; that is to say, instead of spreading the gates wide open or throwing down all practical restraint in the matter, of considering the propositions that are presented to us on their merits, deciding whether we want to adopt them, and then opening the gates sufficiently to admit the specific proposition and no more. It is a case between a specific power and one that is more or less general, and the policy that we should follow in this case is one which the Convention must decide for itself.

I must admit that for my part I look upon this proposition with a little more apprehension than some of the gentlemen who so hopefully look upon it as a relief from all the troubles that we are suffering from now, and I am not able to bring myself to give the General Court the full proposed measure of power. I think that we might well do as we have done in the past: If we find that we ought to exempt one class of property, — as we already have done in the case of wild or forest land, — we should do that; if we want to make a special rate, as we have done in the case of incomes, if we want to grant power to make classified rates on incomes, as we have done in the case of intangible property, we should do that; and that on the whole I consider a wiser way to approach this subject than to throw the whole matter into the General Court and see the General Court crowded year after year with a multitude of meretricious schemes for taxation, either the product of enthusiasts or backed by strong selfish interests.

The trouble with the whole subject of taxation, so far as the General Court is concerned, is that in any proposition of great magnitude there are a multitude of divergent interests concerned, so that the matter is pulled and hauled from this side and from that until the General Court is in considerable doubt which way to turn and until the proposition is developed in a way which frequently is not consistent with sound theory. That, we must admit, is the constant likelihood if this amendment is adopted; only the throwing down of the bars intensifies the trouble that we now have, because a great many schemes

will be possible under this amendment which under our present Constitution are not possible. Therefore, it seems to me that the policy that we have adopted in the past is on the whole the wise policy; that the theory that the State should not play favorites, that the State should not indulge in class legislation and in class favoritism, is on the whole worthy of recognition in our Constitution; and that if it becomes necessary to make exceptions to that rule those should be made by special provisions rather than by tearing down the whole bulwark and throwing the gates wide open to all sorts of special tax legislation.

Mr. LOMASNEY of Boston: The Supreme Judicial Court once said a few words on this question. Let me read them. At the top of page 10 of bulletin No. 20 are these words:

> This rule of proportion was based on the obvious and just principle that the benefit which each person derives from government has direct relation to the amount of property which he possesses and enjoys under its sanction and protection.

That was the view of the fathers and that is the way that we went along until some people got so much money that they did not know what to do with it, and, like the misers of old, they started in to get rid of paying their just taxes.

Now you would think that every fair-minded man would be willing to pay his just taxes. But the richer people became after the civil war, the meaner they became along certain lines. There were two things that people with great wealth determined to do. And what were they? They were:

First, To smuggle in everything they could from Europe without paying a duty on them; and second, to pay as little taxes as possible on their intangible property.

These people were honest enough on everything else, but they had no compunction about violating the law in these particulars and telling about it, — the women in the sewing circles and the men in their clubs and places of business. And what was the story? Did the assessors and the tax collectors do their duty in accordance with their oath of office? Did they make these men and women come up to the ringbolt and pay what they should? Of course not. They compromised with these men who were breaking the law, because they were rich criminals. I am talking frankly. You do not repeal the law against larceny because men steal without getting caught. But these rich men organized. They blocked all the avenues of enforcement. Yet you ask: "Why is the law not enforced in this matter?" And the reply is: "It is impossible to enforce it against such rich culprits in this Commonwealth."

How can the law be enforced when the captains of industry and the leaders in the highest society conspire together to make not alone the statutory law but the Constitution of the Commonwealth itself a dead letter? For years these men concealed their intangible property and finally secured the passage of the forty-fourth amendment to the Constitution. This is the ingenious scheme which they laid to Professor Bullock's door. I have seen Professor Bullock around the State House, around the Governor's office, and around these corridors. I am not suggesting that he might be interested, like Bruce Wyman was, as he, too, is a Harvard professor; but for a man who was a Harvard professor without large means, he certainly took a

tremendous interest in this question, having been used extensively to bolster it up.

What did the amendment that was passed do? Let us be frank about it; let us drop all discussion as to matters which throw no light on this subject and which no one understands, and let us discuss the facts of this case. Here is what your law about intangibles amounts to: It allows the rich, as I understand the matter, although I have no intangible property myself, to pay a 6 per cent tax only on the income of intangibles. Let us see, as business men, what this proportion amounts to. For instance, if a man has $25,000 invested in real estate and it is valued at $25,000, if the rate of taxation is $20 a thousand, he pays a tax of $500 in that case. He pays that tax whether he has only an equity of $5,000 in it or more; the mortgagee may have all the rest, but he pays the $500 in taxes, nevertheless.

Now let us see what this great law which the privileged class put through does for the rich man who has the intangibles. If that $25,000 is invested in intangibles and it pays 4 per cent, that would be $1,000. Under the law the rich do not pay taxes on that $1,000 even, unless there is earned an income on it; but if there is, then the tax on that $25,000 is only $60. But the man with the real estate, the farmer, the mechanic, must pay on his $25,000 at the rate of taxation which I have stated, $500. That is the ingenious scheme which they got through. And how did they get it through?

Mr. William S. Kinney of Boston addressed the chair.

Mr. LOMASNEY: The gentleman may be seated. I am not going to answer any more questions at this time.

Now, sir, I ask, how did the privileged class secure the enactment of so unfair a law? The word "proportional" has been before the Legislature year after year. I have talked with several Speakers of the House with regard to this matter. Some of these men said: "We will never pay taxes on our intangible property; it is outrageous." And they even threw the force of their great office in favor of the tax-dodger. The tax-dodgers have had lobbies of all kinds in the past, but they never succeeded in erasing the word "proportional" from the Constitution. A few years ago, however, the tax-dodgers made a combination, a combination between milk and water, and members of the Legislature came into the House of Representatives under the orders of men holding high official positions.

What did these members do? They said: "Let the Legislature pass a law favoring the rich dodgers, the men who never are prosecuted. Let them be allowed to pay their intangible property tax on a 6 per cent income basis." And these same members said that "then the Legislature will put through the proposition to strike out the word 'proportional' from the Constitution." But the tax-dodgers had mesmerized certain men in this building, and in turn they mesmerized members of the Legislature, and succeeded in putting through the 6 per cent income tax on intangibles, thereby relieving themselves of their just taxes; and then they turned around and defeated the proposition to strike out the word "proportional". There can be no question about that. The Governor who was fooled on that occasion said that he would denounce the intangible tax proposition before

the people, but he never did, and the people adopted it. That is the situation to-day.

Now, what is the argument that the tax-dodgers advance? They say that the tax on intangibles works well out in Philadelphia. But who is going to Philadelphia for good law? Would you think that they could not mention some better place for Massachusetts to follow in this matter than Philadelphia? I am not surprised that Philadelphia, in the Commonwealth of Pennsylvania, should be their standard, — a city that is so ill governed and mismanaged that the United States Government had to go in there and police it. And that is the city that they ask us to follow in regard to our tax laws!

Who do you suppose controls the Pennsylvania Legislature? Who do you suppose controls the tax laws of that State? Is it the poor people of Philadelphia and of Pennsylvania? Of course not. The interests that control that State are composed of the richest people in the world, with their oil, coal, steel and iron mines, — and in that State they spell "steel" both ways.

The gentleman from Lynn asks: "How can you expect Massachusetts to compete with Pennsylvania?" Why, sir, that day passed more than half a century ago for us to do that. We had our rolling-mills here in those days, but the opening up of the great west, together with the natural resources of the States to the south and west, and, added, the unfair discrimination against New England by the railroads, made it impossible for us to compete industrially with that section of the country. Therefore, business and the manufacturing interests gradually located there.

There must be so much money to run a city or State government, and the cost of running the government is going up instead of down. I ask: "Where is the money coming from?" It is very easy for one to say relieve this, relieve that, or relieve the other class from taxation. But where are you going to get the money to pay what the budget authorizes may be spent? You must get it somewhere. Why start to bring annually into the Legislature different classes, each struggling for supremacy, one against the other? You will have different classes seeking different rates, and it will be just like the intangible law amendment which was presented by the financial interests, and put through here under the cloak of tax experts and professors. You know from experience that persons with the largest purse are able to put through a law in favor of themselves. They have pages of newspaper advertisements, they do a thousand and one things, all strictly within the law, but every one of them affecting the mind of the legislator, who, if left alone, would do what is right.

I submit, you must get somewhere the money to maintain the government. Some of you gentlemen remember when we had no inheritance tax here. The State had to meet the question of increased expenditures and therefore the inheritance tax law was enacted. The returns from that source uncovered rich men who had not paid into the treasury of the State what they should have. The officials then started to go back, and to sue them for what they had concealed. Then came the scheme of the assessors to get information from the different States as to who owned stocks, bonds and other securities. Then came the feeling that the United States was going to pass an income tax; and these rich men felt that they could not conceal their

intangible property any longer, so they worked to avoid their just burden of government by getting the State income tax amendment passed. To-day they are almost free from taxation, not because they are entitled to it, but because our fathers never believed in the rich man's way of doing business. They only understood that the American way was for one to pay his just debts and give equal and proportional rights to all. Those were the things that were fundamental in the early days of the fathers. But the rich men were evading our taxation laws. They did it because they were not prosecuted by those who had the right to enforce the law and have them make return of all their property. Then when conditions arose which were going to compel them to pay something near what was right, they came forward and found a Legislature willing to give them a 6 per cent income tax law.

Suppose you proceed and give real estate owners the benefit of the same rate. Suppose you tax real estate owners at that same rate, 6 per cent on income when earned, where would you be? There are many men in this body who know of hundreds of pieces of real estate which do not earn to-day any income. Where would the Commonwealth be if it gave the 6 per cent income rate on all its real estate? Would it not be a great relief to the man with a small equity in his house, who is paying the whole of the taxes and paying his interest besides, while the mortgagee is free from taxation except as to the tax on his income which he pays to the United States Government? Would it not be fairer, I say, sir, to give such a man a 6 per cent income rate than it would to give it to these rich, intangible tax-dodgers? The tax-dodgers' money is invisible here. Their intangible property is in mines, and in other forms of investment in the west, building up that section of the country. But did you ever hear of the Tax Commissioners and assessors coming forward to urge that the poor man, who puts his all into his home, maybe a thousand or two, buying it for $7,000 while he has a mortgage of $6,000 thereon, — did you ever hear these gentlemen say: "Give him a 6 per cent income rate"? Of course you did not, and you never will, because he does not meet these professors and these experts who have the audacity to stand up here and tell you what a great thing the tax on intangibles is for the Commonwealth. I say, sir, that tax law never should have been passed, and it never would have been necessary, if the men charged with the enforcement of the law had carried out their oath of office.

You may say: "But we must do something." I say, sir, these are dangerous times to change the Constitution, particularly in this regard. No city of this Commonwealth to-day can tell you what its tax rate is going to be in the future. Boston, I believe, has jumped to $20 or $21. Some towns and cities may have $25 or higher. You do not know what is going to happen at this time. Why start speculating in this matter now? Why not pause and see how this great intangible tax question is going to work out? The United States Government is taking a large amount of the earnings of the people now. When I was on my feet the other day I suggested to you how many of the tax-dodgers act. These men have got so much money that they cannot find time to count it. In fact, the more they have the meaner they get; and as I stated recently in this connection, there was in this city

a firm that was so mean that it would not give its bookkeeper $5 or $10 a month advance in wages, who subsequently gave information to the government upon which, as you read in the papers, its members were indicted because they were concealing their taxable assets from the government. The firm, I believe, earned $500,000 a year; and they would not pay their just tax to the United States Government in time of war. These are samples of the men whom you are asked to protect now.

I submit that the real estate of this city to-day is in a deplorable condition. There is not a man here who does not know it. Of course, a man who has no money might say: "Well, I would like to take that real estate off the owner's hands." But, nevertheless, there are plenty of people who would be glad to pass their property over to-day, if one would assume the mortgage and give them a bond providing that they would be relieved by a surety company from paying the mortgage. That is the situation that many owners of property are in to-day.

Now why, upon the demands of dreamers and theorists, should we put through this additional legislation and remove the last safeguard? I hope that the word "proportional" will stay where it is, and I believe that the time will come soon when this $6 intangible tax rate will be increased and put where it should be, in which event real estate will be paying the same rate as every other class of property. Then you will have no trouble about your real estate taxes. That is the reason why the gentleman from Cambridge (Mr. Walcott) does not want to put this amendment before the people under the initiative and referendum. If you are going to change it at all, I believe in putting it before the people under the initiative and referendum. However, I do not believe in this amendment at all. Yet, if adopted by the people under the initiative and referendum, we all will know then what each person receives, and what each person pays, and it will tend to bring every element in the community back to the fundamental principle of equal rights and proportional taxes for all.

If the owners of intangible property in Boston and Massachusetts would pay their just taxes, the men who own real estate and the men who run factories and who operate farms would have their taxes cut in two. Just think of what the returns show in Boston! Just think of the amount that has been concealed in this State! The intangible property owners have no idea of their duty to their government in this one particular regard. I admit that the very people who would evade their taxes and who do it with impunity will give a thousand dollars to the Red Cross and a thousand dollars to any other charitable movement in the world. Yes, they even will help build churches and monuments, but they will steal from the tax-gatherer and with hardly a thought, avoid paying a just duty on their luxuries which they bring with them from Europe. If they did not steal in this manner, the State would have no need of these laws.

Now what is going to happen? If you strike the word "proportional" from the Constitution and let the Legislature consider the question of taxation annually, it will be just like the tariff act. Some of you men have heard Congressmen, coming here from the west in the last two years and addressing this part of the country, boldly say to us: "Well, we from the west and south have paid tribute to Massachusetts for years. We have admired the skilful way you have ex-

tracted our all from us, but I guess we have learned from you how you do it, and we are now securing some of your surplus cash." That statement was passed out freely to those of us here who were in the Legislature, and there is no getting away from it.

Let us not strike the word "proportional" from the Constitution. That simply will be allowing more injustice to be done. It does not cure the evil. Keep that word in. Get the returns on incomes for two or three years. These are the times to get the returns. Then appoint a commission to go over the matter, when you have had returns not for one year, not for two years, but say for three years. Get all the facts about these intangibles and other classes of property, and then strike a fair, equal, and proportional tax for the different communities of the Commonwealth, and such a tax will stand for a long time. If you strike the word "proportional" from the Constitution, you will put a great deal of injustice upon the poor man who owns his little home, and he is the one in whom I am interested, because the district I represent is taxed for about 45 per cent of the value of Boston, — the richest property and some of the poorest property in the city is located there. I have seen these poor people work to get the equity in a house, buying a house with only $1,000 or $2,000, and paying the tax, which is high, and then having piled upon them additional burdens which the intangible property owners should pay. We know how poor people have to work to pay their interest charges and expenses. I do not know whether you gentlemen saw the point I wanted to make about the mortgagee and the holder of the equity. The holder of the equity was not the man from whom the load was lifted by an obliging Legislature. Of course he was not the man whom the gentleman in the second division (Mr. William S. Kinney) referred to, as those of us here well knew who were interested in this tax question. He was not interested in him. He was interested in giving relief to those rich intangible property owners, those men who have so much money that they cannot count it, and who were not honest enough to walk up and pay their just share of the taxes of the government.

The owners of intangible property may talk as they please; they may talk of conditions here; they may talk of conditions there; and they may point to Europe, Asia and Africa. But we in this Convention are legislating for Massachusetts, and what I have stated is the true situation in this Commonwealth. The poor man is working here with his equity in his little home. The load has been put on him more and more. And the assessors and the Tax Commissioners never have suggested in any report that they have made that the tax be taken from his back and put on other shoulders where it justly belongs; but these gentlemen always are ready to change their minds, if necessary, to yield to the conditions as presented by Professor Bullock, who has haunted these State House corridors doing the work of those who, in my opinion, have paid him for it, properly, of course, because he was acting as their expert agent in these matters. How long are you gentlemen going to be deceived by men of that class? Who would have believed that Bruce Wyman, the other Harvard man, was operating as he was until he was uncovered?

Consider your own towns, consider your own districts, pick out the communities that suffer in the way that I have indicated, and then

ask yourselves if justice does not demand that we leave the word "proportional" in the Constitution. [Applause.]

Mr. Bryant of Milton moved that the resolution be amended by the substitution of the following:

Article XLIV of the amendments of the Constitution is hereby amended by striking out the word "income", in the second sentence thereof, and inserting in place thereof the words "incomes of different amounts or", so as to read:

Such tax may be at different rates upon incomes of different amounts or derived from different classes of property, but shall be levied at a uniform rate throughout the Commonwealth upon incomes derived from the same class of property.

Mr. BRYANT: The purpose of my amendment is to allow the taxation of incomes under the forty-fourth article of amendment to the Constitution at graduated rates; that is, to permit the Legislature, in its discretion, to tax incomes under the system now in force with respect to United States income taxes.

I think that enough has been said in argument on the pending amendment to show that taking the word "proportional" out of the Constitution would involve the Legislature in innumerable discussions and attempts by various interests to get something for their own particular division of the Commonwealth or for their own particular businesses.

The question of levying different rates upon different kinds of businesses is a very different question from whether the income of a man is justly taxable at a higher rate if he gets a very large income than if he gets a small or a moderate income. I think it is recognized generally in States and communities which levy an income tax that it is fairer to assess large incomes at a greater rate than small incomes. We all know that it is done in the United States. It cannot be done at present in Massachusetts.

I think from what has been said that, as far as taxing different kinds of property at different rates is concerned, the word "proportional" in our Constitution is probably a very useful and valuable word. I am not enough of a tax expert to say what the effect of exempting machinery, for instance, from the operation of the tax, or lessening the tax on machinery, — I am not enough of an expert to say what effect that would have on manufacture.

Possibly it would encourage it. In the long run, I am inclined to think the whole thing would even itself up and that competition would reduce the whole process of manufacture to where it is now; but assuming it will encourage manufacture, that, people will say, is a good thing. But can it not be argued that to encourage farming is a good thing, and therefore we should reduce the tax on milk, or the tax on cattle, or the tax on all sorts of farming produce? Can it not be argued with equal force about almost every useful occupation in the Commonwealth that it ought to be encouraged, and that, therefore, the tax on that particular occupation and the products of it ought to be lessened? It seems to me it involves a controversy upon which there are no certain data by which anybody can judge. I think that is one of the reasons why "proportional" always has been left in the Constitution.

But when you come to the question of taxing large incomes at a greater rate than small incomes, you come to a very different question, a very clear question, upon which people can have their own theories

and upon which they have something to proceed. My amendment is simply not to change the word "proportional" but leave it in the Constitution; simply to amend the forty-fourth amendment, so that if the Legislature thinks it advisable, it can tax large incomes at varying rates.

Mr. LUCE of Waltham: The gentleman from Boston in the third division (Mr. Lomasney) has so usefully illuminated the subject of exemptions, that I desire to profit by his reflections in order that I may learn something about his views as to the opposite side of the shield.

A great part of the expense of the present war, in the matter of taxation, is being met by the classification of property. This morning's paper announces that the committee now considering the matter in Washington contemplates a heavy tax on automobiles. I would be glad to learn from the gentleman in the third division (Mr. Lomasney) whether he regrets that the word "proportional" is not in the Constitution of the United States, and whether he is sorry that the owner of the automobile can be taxed more heavily than the owner of the kitchen range; whether he grieves because the system of taxation under which we now are fighting the greatest war in history permits the burden to be put largely on the shoulders of the rich. He has talked to us about exemption. Surely, we all sympathize with what he says about exemption. But does he think it wise so to shackle the Legislature as to prevent it from putting the burden on the strongest shoulders? It is inevitable, under the present system, that the weak shoulders shall carry the greater burden; that taxes shall be paid in proportion to consumption, to rent, to what a man spends; and this forces the poor of the State to carry the load. Does he, representing his constituency, desire us to understand that it would be unfortunate if we were as free as the Nation is to compel the rich to pay their share?

Mr. LOMASNEY of Boston: I ask the Convention's pardon. I have no right to take so much of the time of this Convention.

I believe the automobile is a luxury, and, owing to the war, many working-men now have one. Of course it uses up our roads, but they pay a tax for their automobiles. I submit, you do not need to strike the word "proportional" from the Constitution for that reason.

Mr. Luce addressed the chair.

Mr. LOMASNEY: Now, pardon me, sir, until I get through. You do not need to remove the word "proportional" from our Constitution to make the automobile pay what it justly should pay. Our Constitution, in its general provisions, covers a matter such as this, sir; and I am surprised that a tax expert like the gentleman in the first division (Mr. Luce) does not realize that fact. The Highway Commissioners, under their powers, make the owner of an automobile pay a license fee, and they are the ones to say how much that fee shall be. That general provision of law is due to the wisdom of our forefathers, who put the word "proportional" in the Constitution to meet the fundamental principle in this matter.

Mr. LUCE: I do not think I have had quite a straightforward answer from the gentleman in the third division.

Mr. LOMASNEY: I gave him my answer. I know it requires a good

deal more intelligence for him to propound a question than it does for an individual like me to answer it; but if I have not answered it correctly, let him put it again and I will try to meet it.

Mr. Luce: I desire to learn from the gentleman whether he thinks the power of Congress to classify property for purposes of taxation, which now is being used to finance this war, is an unfortunate power.

Mr. Lomasney: I believe our Congress should use every power, within and without, to win the war. When there is a man at your throat, or at your country's throat, you must use your guns to kill him if he is trying to kill you or to attack your country. I did not talk about such a question and that is not the question here.

Mr. Creamer of Lynn: I should like to ask the delegate from Boston in this division at my right (Mr. Lomasney) if he would deny the same power to the State that he is willing to concede to the Nation.

Mr. Lomasney: This State of ours was established years and years before the country out in the western part of the Nation, and a great deal more latitude is necessary for Congress to meet the situation in the wilds of the west and up in the Alaska region and in many other parts of the country than we need here. Why, sir, I am surprised that the mayor of Lynn cannot see the difference between this good old State, he, a mayor of that city, and the Arctic regions and those who occupy them. [Applause and laughter.]

Mr. Creamer: I object to having my question lost in the wilds of the west.

Mr. Lomasney: The gentleman should recognize the fact that we are dealing here, as was said earlier in this debate, with the Constitution of Massachusetts, which is maintained and cherished forever by the citizens of this Commonwealth. Their comfort, their convenience, and their rights are being affected by this question. We should have our minds settled on what is proper for Massachusetts. I think, gentlemen, that this country's history has shown how different parts of the country have had different viewpoints on many important matters and how it divided on these different questions, and how we paid with the blood of our people for our different opinions. But we are talking here for the welfare of Massachusetts. I ask, sir, and I ask him, and I ask the gentleman from Waltham (Mr. Luce): When did you see these great minds of the tax experts before the Legislature working to take the load from the man who owned the equity in the property, — the man who really was carrying the burden? Never! He is the one from whom the load first should be lifted. But, sir, do not lift any more burdens off those men who have good land and who have leased it, as many of them have, at a very high rental, and then say to those few favored individuals: "You are all right. Let the great mass of people pay your share and their own too." That is what this amendment will do, and I hope we will not strike the word "proportional" out of the Constitution.

Mr. O'Connell of Boston: As a member of the committee on Taxation, I hardly like to follow our chairman in his argument this morning in trying to show that everybody now advocating this change recommended by the committee on Taxation is inconsistent, because an inspection of the past record of my friend places him in the same class. He was chairman of the Commission on Taxation in 1908. He asks us not to give the Legislature any right to overcome the dif-

ficulties that confront it. In his report, which he was good enough to recommend to me, he says, on page 72, as follows:

> If the court should decide that the proposed law is unconstitutional, the commission recommends that the Constitution of the Commonwealth be amended in such a way as to secure to the Legislature the right to classify property in a reasonable manner for the purposes of taxation.

Now, his complaint this morning was that the Legislature, if it was empowered with that right to classify property, might be confronted with a lobby.

Mr. Cox of Boston: I should like to ask the member in the second division (Mr. O'Connell) if the general argument used in that report was not based upon an assumption obtained from facts which the commission tried to obtain from Pennsylvania or Maryland that more taxes could be raised by taxing intangibles at a low rate than at a high rate, and whether or not the whole report did not deal with the matter of intangibles and suggest merely to the Legislature an experiment, and whether or not we are not now trying that experiment.

Mr. O'Connell: Possibly that may have been the reason for impelling the gentleman to argue and to write as he did; but the fact remains that the commission, — and it was composed of eminent gentlemen, of whom there were none more eminent than my friend, the chairman of this commission (Mr. Cox), — the commission unanimously used these words: "secure to the Legislature the right to classify property in a reasonable manner for the purposes of taxation." Then the commission goes on to say:

> This is a course which not a few States have already taken, in order to free themselves from antiquated systems of taxation.

Mr. William S. Kinney of Boston: The arguments that have been advanced show that many of the speakers are very far apart. We have the extreme conservative view represented by the chairman of the committee (Mr. Cox) and by the gentleman from Boston in the third division (Mr. Lomasney). The argument which the gentleman of Boston in the third division made to-day is not a new argument. It is an argument which he has made here every year for ten years. It is the argument that stood in the way for years of the adoption of the forty-fourth amendment to the Constitution which permitted the passage of the legislation known as the income tax of 1916. The figures and facts which have resulted from the passage of that legislation entirely refute that argument. Where intangibles previously yielded six and a half to seven millions, they now yield twelve to thirteen millions. All that the gentleman does is to wave the flag, — that this is an attempt by the rich men to place an additional burden on the backs of the poor men. The facts do not support that theory. The facts show that, under this legislation, the rich man who receives a large income has been obliged to contribute annually into the coffers of the Commonwealth for the expenses involved from twelve to thirteen million dollars.

But I feel that the Convention would miss an opportunity to do something really constructive in the history of taxation in Massachusetts if it failed, at this juncture, to pass some sort of a constitutional amendment; and I hope that the conservatives will not go to the full extent of rejecting the whole proposition, but that they will unite in

adopting my amendment, which is a half-way position between these two extremes.

Mr. Mancovitz of Boston: I shall vote against every amendment and against the resolution itself. I was a member of the committee on Taxation in 1908 when the question was first approached to strike the word "proportional" from the Constitution. It was contended then that in order to get an honest and fair return from intangibles, it was necessary to tax intangibles at a lower rate. That argument was used by reason of the fact that people did not tell the truth, that people of means did not make honest returns. They finally induced the General Court and the people of the Commonwealth to adopt the income tax amendment. The adoption of a lower rate on intangibles did not produce a larger income to the Commonwealth, as is claimed by the gentleman in the second division (Mr. William S. Kinney). The increase in revenue is due to the tax upon income from tangibles, excepting real estate. By reducing the rate on machinery, you will get no more machinery; by reducing the rate on merchandise, you will find no more merchandise; because the assessors to-day find all the machinery and merchandise there is in the Commonwealth. If you reduce the rate on that class of property, you of necessity must increase the rates on other classes not favored.

All of the evils of the manufacturers and business men of Massachusetts will not be cured by changing the taxation law. Massachusetts is hampered by transportation. Massachusetts is affected by labor legislation. We in Massachusetts have given more liberal legislation to labor in the form of hours and with regard to minors and women than the States of the south have or of the middle west. You cannot overcome that condition by tax laws. You cannot produce in Massachusetts a crop of cotton, the same as it is produced in the south, by making more elastic tax laws. You cannot do that, sir. It is a humbug to say you can.

I hope, sir, that we will allow the Constitution to remain as it is and give every man protection under it. If you strike the word "proportional" from the Constitution, what do you do? You take away the keystone of the arch supporting your government, because every man who lives under our Constitution, at least in theory knows that he is not to be taxed at a greater rate than his next-door neighbor, regardless of whether he owns real estate or whether he is in business or whether he is a manufacturer or whether he has a store. I hope the amendment will be defeated.

Mr. Harriman of New Bedford: Reference has been made again in this Convention to the attitude of the working-men. I want to say that those who are interested in the labor movement in this Commonwealth have gone on record in favor of taking the word "proportional" out. But if that is a reason, there is another reason that appeals to me.

I came to this Convention and I did not know a great deal about taxation, and have no means of knowing; but I believe that if there ever was a time when a man should take advantage of expert advice, it is now; that where a man can look for unbiased opinions, particularly we in this Convention, is to a man who has the respect of every man in the Commonwealth, who has come here without any axe to grind or any ulterior motive, — I refer to the gentleman from Marble-

head (Mr. Trefry), the Tax Commissioner of this Commonwealth. And, for my part, I am willing to follow him in this matter, believing that his judgment is better than mine and far better than that of most of the men in this Convention.

Mr. GEORGE of Haverhill: I feel somewhat like apologizing for taking up the time of this Convention. I am not a tax expert, but I feel qualified to act as one, because I think the less a man knows the better informed he appears to be on the subject of taxation.

I had the opportunity some years ago to serve on the board of assessors in a city that has about forty million dollars' worth of taxable property, and I had an opportunity then to learn something of the laws with respect to assessing property. I also served in the Legislature for six years, and I have heard this matter discussed the same as every other member. I have come to the conclusion, in studying the tax laws and following these tax reforms, that the tax reformer usually is a man who wants to remove the tax burden from himself to somebody else, and I think that statement applies to ninety per cent of the tax reformers of this Commonwealth.

During the last five or six years there has been expended more than $100,000 to change our Constitution so that we could tax the incomes on intangibles rather than the property itself. Now, who spent that $100,000? Would those men have expended that $100,000 to get the opportunity to pay more taxes? They had the opportunity; they all held intangibles; and they could have paid more taxes if they had returned all their intangible property for taxation. But, no. They spent their $100,000 to change the Constitution in order that they could place the larger part of the burden of their taxes somewhere else so as to relieve themselves.

Men of course take different views in regard to taxation. If a man owns $100,000 of real estate and holds no intangibles, he holds one view. If another man holds $100,000 of intangible property, like stocks and bonds, and owns no real estate, he has an entirely different view. If a man has $50,000 in real estate and $50,000 in intangibles, he does not know exactly where he stands. I think the word "proportional" ought to remain just where it is. I do not think it is going to benefit anybody. I think it is a gamble. I think it is one of those schemes whereby somebody gets a little relief to-day and somebody else to-morrow. We all have observed, — I have, in fact, — that the people who advocate this reform have different views. The mayor of Lynn (Mr. Creamer) is an expert. He says that they are going to reduce the rate on working-men's houses. He agrees with the gentleman from New Bedford (Mr. Harriman) that the workingman who owns a little house is going to have a rate specially fixed for him. Now, let me remind the gentleman from Lynn and the gentleman from New Bedford that there is not one working-man out of twenty-five who owns his home. This special tax would benefit only one man out of twenty-five who labors. What are you going to do with the other twenty-four who rent property? Are you going to say that all the money invested in rentable property in Boston and other cities and towns is going to carry a low rate so that the man who rents a house may get a low rental? Oh, no. They are going to soak the man who owns the property, and the man who occupies the property is to be the real taxpayer.

Mind you, whatever scheme of taxation you have here, primarily the burden of taxation comes back upon the property that can be reached, and that means your business blocks and the homes, and it does not make any difference whether you own your house or whether you live in somebody else's house and pay rent, — you are paying taxes on the property. This argument that the laborer is to be benefited by lower taxes because he owns a little house is fallacious. Lower taxes would benefit only a few people because there are very few laboring men owning houses compared to the great number of men who work.

We have had all sorts of arguments presented in regard to this question. No two agree upon what this proposal means. Nobody knows what can be accomplished if this proposal is adopted. But there is this dangerous situation. The mayor from Lynn (Mr. Creamer) says that we can exempt property. That is the greatest menace that you can introduce into the Constitution of Massachusetts. I lived in New Hampshire, where property owners skated all around the State to escape taxation. One town gives a ten years' exemption if they would move from Lynn into some particular town, and it has been worked against Lynn for the last twenty-five years. Concerns from Lynn have gone to New Hampshire when the one great inducement was to be exempted from taxation. This feature is sufficient to defeat the proposition.

Mr. Flye of Holbrook: I may be pardoned, I hope, for taking a few moments of the Convention's time, because I am one of the majority of the thirteen of the members of the committee who are supporting the amendment under the name of the gentleman from Lynn (Mr. Creamer).

I believe very strongly that this amendment should be adopted by the Convention, because it seems clear to me that it accomplishes three very important things. In the first place, it will strike from the Constitution the word "proportional." I believe that the word "proportional" has served the purposes of euphony, — has been a good sounding expression, rather than an instrument for justice in the interpretation of taxation laws. I believe that the taxation experts want the word "proportional" stricken from the Constitution, not because they are in favor of exempting the rich, but because taxation experience in the State and Nation has demonstrated beyond question that you cannot put an increasing burden of taxation upon the rich, where it belongs, unless you take the word "proportional" from the Constitution. Therefore, I am in favor of this amendment because it will eliminate the word from the Constitution.

Then, I am in favor of this amendment because it permits the classification of property for taxation. Who is it who has taken part in the interesting work of taxation during the past five or ten years in State and National affairs who has not recognized the positive necessity of classifying property for taxation? My friends, it is well known that we could not have got anywhere in the present Federal scheme of taxation had it not been for the fact that congressional authority is broad enough and large enough to permit of the classification of property for taxation; and it goes without saying that, with a constantly widening field of operations in industry and in efforts for

the general welfare, the State must have the same broad authority for the classification of property, for taxation, as the Nation has.

I am in favor of this amendment.

Mr. Cox of Boston: I should like to ask the member in this division (Mr. Flye) if he does not realize that the United States government has no general authority to levy a real estate tax, and never has resorted to such a scheme of taxation. Therefore it must seek other fields of taxation than the State, and it cannot put additional burdens upon real estate by taking them off from special articles, nor can it disturb the situation whatsoever in that regard.

Mr. Flye: I realize that the Nation has no power to tax directly real estate; but I realize that it has a power of classification of property, and I want the Commonwealth of Massachusetts to have that power in order that it may not put increasing burdens on real estate, but may lift the burdens from real estate by the classification of property for taxation.

And finally, I am in favor of this amendment because it will give the Legislature broad and comprehensive authority to meet taxation problems as they occur. I believe it goes without saying that taxation is the most important governmental problem and the most important business problem that is to be before the State and Nation during the next two or three years; and therefore, without indorsing any particular scheme of taxation, let us give the Legislature the power to meet the situation as it arises and not let the Legislature remain impotent to provide necessary taxation remedies.

Mr. Hart of Cambridge: Without entering into this debate, I cannot allow it to conclude without saying a word in answer to some things that have been let drop by the gentleman in the third division (Mr. Lomasney), whom, unfortunately, I do not see in his seat, a gentleman whose reputation for general fair-mindedness is such that I am sure he would not wish to leave this Convention under the impression that professors in universities have no part or place in it, least of all a university which has furnished at least one member to this Convention and many of its experts in taxation and in kindred subjects to public service.

I should like to put on record for the benefit of that gentleman, with whom I have the honor to be on terms of personal friendship, — I should like to refresh the memory of that gentleman and every one here as to the fact that of the experts in taxation and finance in Harvard University, one of them, Professor Taussig, was a member of the Tax Commission years ago and sacrificed his health in that pursuit, so that it was years before he returned to normal activity. He is now the chairman of the Tariff Commission in Washington, and evidently his services as a financier have been appreciated.

Another of the professors of Harvard University, Professor Sprague, probably has had more influence than any other one man in persuading Congress to adopt a measure of large, full taxation for the support of the war, and now is designated as chairman of a new committee upon economic reconstruction. A further economic expert, Professor Gay, is at present the chairman of one of the most important of the executive activities of the government in shipping. A fourth, Professor Holcomb, often quoted here, is engaged now in an

investigation into the duplication of executive service, which is likely to have a large effect upon the action of the executive. And to this last I should like to add the name of Professor Bullock, a gentleman whom I have known for many years, and who was honored with the confidence of the Commonwealth in membership in the Tax Commission which has been referred to here several times. I pay no attention to the means of my colleagues. I am unaware whether Professor Bullock is a man of property or otherwise, except that I know he lives modestly; but I do know that he is a man of absolute integrity, and I am perfectly certain that the gentleman in the third division (Mr. Lomasney) will be relieved to have me correct the misapprehension which he unintentionally left in the minds of some people here, that Professor Bullock's presence in this State House had something occult about it. He was here many times, first, as a member of a Tax Commission, second, as an expert in taxation, appealed to not simply by authorities in Massachusetts but in other States, a man whose reputation as a man of character is unblemished, and no member of this Convention, I am sure, would wish to leave a stigma upon him.

And now one word more upon the main question. Proportional taxation was inserted in the original Constitution because at that time there was no taxable property in Massachusetts except land, buildings and vessels, — hardly anything more. There was only one bank. There were hardly any corporations. The result has been this: That in the course of time "proportional" has come to have the meaning of disproportionate. What was proportional in 1780 must be disproportionate now. The Constitution did not foresee the immense growth of business, the development of taxable property of all sorts. The Constitution simply did not provide for the exigency in which we find ourselves, and it is the duty of this Convention so to provide.

Mr. Balch of Boston: To me this is a red letter day, because for once I have found myself in accord with my friend the gentleman from ward 5 in the third division (Mr. Lomasney), and instead of having to fight against his eloquence and energy, I hope I have profited by them. His astute mind has penetrated to the fact that in this whole complicated debate there is only one main question, and that is the question that rages about the word "proportional". Shall we take it out or leave it in? Furthermore, he has penetrated to the point that that word, while it has worked at times in a different way from what it was expected to work, on the whole has been a buckler of protection for the poor. For years I was in favor of striking out the word "proportional". For what reason? Because it stood between us and the modern system of the income tax. It obliged us to retain the iniquitous general property tax which stamped Massachusetts as a backward State in matters of taxation. But we now have the income tax, and if I may be pardoned for saying so, the remarks of many of the men who have spoken on this subject apply not to the present state of affairs but to the state of affairs that existed when we still had the general property tax, which now has passed to oblivion. What, then, further could we have if we now struck out the word "proportional"? Is there anything more that we really want that we could get? Yes, there is. There is one thing that almost every one excepting a few very extreme conservatives wants, and that is to make our income tax a graduated income tax. Very well, let

us do that. The amendment offered by the gentleman from Milton (Mr. Bryant) opens the way to do that. We have nothing to do but to adopt that amendment, as I heartily hope we shall, and we shall have opened the way at once for a fully graduated income tax of the most modern kind. What else could we get that we do want by striking out from the Constitution this safeguard? Could we get what the gentleman in the first division from Waltham (Mr. Luce) suggested? We have it already. I was astonished at the gentleman's question. The word "proportional" in our Constitution does not apply to excise taxes. It applies exclusively to capitation and property taxes. That fact I think must have escaped the mind of the member from Waltham (Mr. Luce). It is entirely open to this Commonwealth at any time to concentrate its taxation on the consumption of luxuries, without striking the word "proportional" from the Constitution. In fact, we do that to a considerable extent now. We have a graduated inheritance tax. We have it because the inheritance tax is an excise. The gentleman from Boston, from ward 5, in the third division (Mr. Lomasney) laid his finger precisely on the best illustration there is of the dangers we should run into if we struck out "proportional" when he referred to the tariff situation. If you strike out the word "proportional" you practically are forcing every corporation in this Commonwealth to maintain a professional lobby in defence of its industrial life. If you decree that the day shall come when the Legislature may tax businesses which it dislikes and let off businesses which it likes, you will force every business to see to it that it is one of the businesses that the Legislature likes.

Mr. SHAW of Revere: I have been somewhat amused at the statement of the last gentleman. He gives utterance that at one time he was in favor of taking the word "proportional" out of the Constitution. Why? He immediately answered that. Because the word "proportional" at that time included proportionality of all taxation. He was interested in one specific item of taxation, namely, incomes; and when the Supreme Judicial Court of Massachusetts deliberately misconstrued the word "proportional" and permitted a special tax upon incomes and intangibles, he was satisfied and willing to have "proportional" applied to all other taxable property.

Mr. CREAMER of Lynn: In the first place, I want to say why I regard the amendment offered by the delegate from Boston in the second division (Mr. William S. Kinney) as distinctly unfriendly. That amendment would deny all the advantages of the classification of property for taxation at varying rates to the real estate owner, and would confine the advantages to the owners of tangible personal property. If there can be any more inequitable proposition than that put before a body of reasonable men I know not what that proposition can be. I would call the attention of the delegates to this Convention also to the fact that his amendment says nothing whatever about excises, and under his amendment it would be impossible to levy an excise tax of any description in this State. Now, the delegate from Milton (Mr. Bryant) and some other delegate whose name I have forgotten intimate that under this amendment it would be possible for particular divisions of the Commonwealth to be favored. No such thing is possible under this amendment as proposed by the Taxation Committee, and under the substitute offered by me no such thing is

possible as to enable one division of the State to get any special favors. One delegate said the city of Lawrence might get special favors that way. He could not have read the amendment. I want the delegates to this Convention to realize that one word alone in this amendment protects property owners of this State from lobbying and log-rolling, and any unfair taxation under it, and that is the word "reasonable". All taxation must be reasonable. And all property that is classified must be classified at a uniform rate all over the State. I also want to call the attention of the delegate to the fact that the Attorney-General's office advises me that the word "property" includes incomes, so that under this amendment it would be possible to classify incomes for taxation at various rates. The delegate from Boston in this division (Mr. Lomasney) took particular pains to impeach the government of Pennsylvania, and yet, gentlemen, Pennsylvania has more homes owned by its own residents than any other State in the country, largely because of its system of taxation. It may not be possible to draw industries from Pennsylvania to Massachusetts if we adopt this amendment and the Legislature passes some law under it, but it certainly will be possible to prevent our losing any more. It certainly will be possible for some of our largest industries in this State to increase their plants here, where now they are increasing them elsewhere, because they like the tax laws elsewhere better than they do here. Massachusetts is an industrial community, and we have got to depend for our real estate values upon the prosperity of our industry, and upon nothing else. The delegate from Boston in this division (Mr. Lomasney) has not yet answered my question, because he could not answer it. Why should we grant powers to the Nation that we refuse to grant to the State? I am aware that he lost that question in the wilds of the west, but it is to my mind a very pertinent question.

Mr. Trefry of Marblehead: When in the early part of this debate it was intimated to this Convention, and the Convention was warned, that it should not take any action upon this resolution because any public official wanted it, I made up my mind that I would not inject myself into the debate. It is the farthest from my disposition to undertake to influence anybody against his will; and if there was a possibility that I, by my desires, would influence anybody here simply upon that ground, I thought it was the part of dignity to keep out of the debate; and I have done so.

Not as a public official, but as an individual and a member of the Convention, because I have been asked so many times to which one of these resolutions I give my support, I think I have a right and I think it is proper for me to say that I think the resolution offered by Mr. Creamer of Lynn is the one which covers the circumstances and which the conditions of this Commonwealth require at the present time. I am not hostile to the amendment suggested by the member from Milton (Mr. Bryant), but I think that that is included in the one offered by Mr. Creamer of Lynn. I cannot see any reason why the amendment offered by the gentleman from Cambridge (Mr. Walcott) should be injected into this measure, and for my own part I wish to disclaim any sympathy with it.

With this simple statement I am going to leave the matter to the Convention itself to settle.

Mr. Walker of Brookline: I should like to ask the gentleman whether he thinks it wise to insert the words "and income" after the word "property" in the third line of the Creamer amendment.

Mr. Trefry: My opinion is that it is not necessary. As a matter of wisdom, if it makes the resolution any clearer and any more certain it ought to go in. But having had a talk during the noon hour with Mr. Hitchcock of the Attorney-General's office, he assured me that it was not necessary, — that the word "property" covered the situation.

The amendment moved by Mr. Walcott of Cambridge was rejected, by a vote of 83 to 94.

The amendment moved by Mr. Walker of Brookline to the amendment moved by Mr. Creamer was rejected.

The amendment moved by Mr. Sullivan of Salem to the amendment moved by Mr. Creamer was adopted, by a vote of 83 to 44.

The amendment moved by Mr. Creamer of Lynn, as thus amended, was rejected, by a call of the yeas and nays, by a vote of 107 to 121.

The amendment moved by Mr. William S. Kinney of Boston was rejected, by a vote of 24 to 102.

The amendment moved by Mr. Bryant of Milton was rejected, by a vote of 88 to 92.

The resolution (No. 396) was rejected Wednesday, July 31, 1918.

At the next session of the Convention, Thursday, August 1, Mr. Creamer moved a reconsideration of the vote by which the resolution had been rejected.

Mr. Creamer of Lynn: I do not want to make any extended argument on this question, but before a vote is taken on reconsideration I should like to call the attention of the Convention to this fact that was disputed yesterday; and that is that the National government does have a right to levy a special tax on luxuries, for I hold in my hand a special tax of that kind on a pleasure motor-boat. That tax cannot now be levied in this State. We cannot levy any taxes on tangible or real property except they be proportional taxes. Therefore I ask the Convention to reconsider this amendment which we rejected yesterday for engrossment.

Mr. Cox of Boston: I sincerely hope that reconsideration will not prevail. I want to call to the attention of the Convention that I did not hear the statement which has just been made as being made by any one yesterday. I did not hear it, and I do not understand that any such statement was made. We all know that the United States government has the right to tax luxuries, and it has the right to impose all kinds of excise taxes; and that is what they are compelled to do in order to raise their revenue. The only statement that was made was that they have not the general authority, and never have tried to use it, to impose taxes generally upon property, upon land and buildings, that subject of taxation being left to the several States, as it should be.

If reconsideration prevails we should be obliged to accept the draft of the resolution which was prepared by the committee on Form and Phraseology, and apparently that form satisfies nobody but the gentleman who drew it, or the committee that drew it. The amendments which were proposed, and which were carefully drawn, cannot again be

offered if reconsideration prevails. Therefore we should be obliged to vote upon a proposition that nobody wants and that is not satisfactory to anybody. There were several amendments suggested yesterday which might attract considerable support, but they cannot be considered again, and would have to be ruled out on a point of order. We had a full and fair discussion, and we want to get through some time. I trust reconsideration will not prevail.

Mr. LOMASNEY of Boston: We all had our day in court yesterday. The gentleman from Lynn was anxious at noontime to close debate, yet we went on with the debate until half-past four o'clock in the afternoon, and a good many members missed their trains in order to vote on this question. Where are you going to be if you start giving reconsideration to the different matters that arise here? It seems to me we have not done so very often, and that is the reason that we have got so far along as we have. The gentleman had a chance to bring into the Convention everything in his favor in the matter. Well, the motor-boat has blown up.

It seems to me we should keep our heads, start off and go through as we have begun, and let every day settle that day's work, particularly when we have had a good square debate and a good square vote. I hope the motion to reconsider will not prevail.

Mr. CREAMER: I will call the attention of my revered friend at my right (Mr. Lomasney) to the fact that there are more motor-boats that do not blow up than those that do. I would further state that under the Constitution of Massachusetts what I say is true: That a motor-boat cannot be taxed at any special rate. It has got to be taxed proportionally. The gentleman from Boston himself was the man who brought that question up yesterday and denied that it was impossible for us to do what I say now. The gentleman from Boston said that motor-boats could be taxed on a different basis from other forms of property. I do not allude to the gentleman from Boston in the fourth division (Mr. Cox), but to the gentleman from Boston in the third division (Mr. Lomasney).

Now, if by any inadvertence this Convention voted to reject this amendment yesterday, after having voted for it two or three weeks ago, it seems to me that thinking it over during the night might very well have caused some men to change their minds. A good many men voted against this amendment, in my opinion, because they had some other amendments they wanted to offer. It would be perfectly possible for the committee on Form and Phraseology to straighten out anything in this amendment which is not to their liking. Therefore I hope that the Convention will give that committee the opportunity to do so.

Mr. EDWIN U. CURTIS of Boston: As the subject of motor-boats seems to be now before the Convention, I want to say that when you allege the motor-boat is used by the rich only as a luxury you want to stop and consider. Who uses the motor-boats the most? The poor Italian fishermen, going out from the north end; the fishermen all the way down our coast.

Mr. CREAMER: I should like to call the attention of the gentleman in the first division (Mr. Edwin U. Curtis) to the fact that a special tax is levied on motor-boats by the Federal government only when used for pleasure purposes.

Mr. Edwin U. Curtis: I am ready to discuss later what the government does, but he is asking to have a tax put on motor-boats as a luxury in Massachusetts. Later we will talk about what the government is doing. I say the motor-boat is used for industrial purposes hundreds of times more than it is used as a pleasure boat, as a luxury.

Now, what does the United States government do? The United States government can tax it as a luxury. The Commonwealth of Massachusetts taxes that motor-boat as tangible personal property at the rate of taxation of the city or town where it is owned. In Boston that is $23 on a thousand. That is what it does. If you are not satisfied with that, the Commonwealth of Massachusetts or the United States government can tax the boat again in the shape of a license. That is what is done. You have got to license your boat. That is indirect taxation.

Mr. Cox: I should like to ask the gentleman from Boston in the first division (Mr. Edwin U. Curtis) if he does not agree with me that it is perfectly possible for the Commonwealth, if it wishes to, to require all users of motor-boats to be licensed, as they require automobiles to be licensed, and to impose any such license tax upon that motor-boat as a registration fee as distinguished from the tax upon the value of the boat itself, and impose any such license fee in that way that it sees fit to do.

Mr. Edwin U. Curtis: I answer that question "Yes." That is just exactly what they do. They could tax, and they could tax it indirectly; but before they do that they tax it as tangible personal property, with the rate of taxation in the city or town where the man lives who owns it.

Now, people who talk about the Commonwealth of Massachusetts having a graduated income tax want to remember this: The United States government has a graduated income tax, under which they are levying on every person in this State a very heavy tax. On top of that we have a personal property tax, a tax on intangibles in Massachusetts, and after we have got through with that we have a tax on tangible property in the cities and towns where we live. Having been in the war only one year, I venture to say that in the Commonwealth of Massachusetts to-day every one of us is paying in the total more taxes to-day than a person in England is paying after all the years England has been in the war. Why? Because in England there is one rate for everybody. In the United States of America you have to pay your United States tax, and then a tax in each Commonwealth where you reside. I do not think we want to drive everybody into a hole, as this gentleman seems to want to do, — the gentleman from Lynn.

Let us look at another thing. Suppose I own a mill down in Webster, where the great Slater Mills are, where they manufacture cotton and wool; suppose I own a factory in Waltham, where they make watches; in Plymouth, where they make cordage; in Athol, where they make tools. I might want my machinery exempt from taxation. Probably I would. I do not blame those gentlemen sitting here who do want it done. But if you exempt machinery in those towns mentioned you help the mill, but who is going to pay it? The town has got to make up its taxes, and they have got to be made up by the man who owns the farm or the little house or anything of that sort. Now, they have gone around here and said to the farmers: "It is

going to help you, going to make a different rate on your horse, your cow or machinery." Supposing it does, that town is going to get so much less taxes. Where is it going to be made up? The farmer will pay it on his real estate. That is the way they camouflage it to fool the farmer. Do not be fooled. Let us not reconsider it. They have had a fair debate. They came here with all their great guns and they have been defeated. Let them stand up like men and take it.

Mr. UNDERHILL of Somerville: The debate on this question has been very thorough indeed. The only question before the Convention is that of reconsideration. I want to reiterate what the gentleman in this division (Mr. Cox) has said regarding the status of this measure. The principal amendments offered, those of Mr. Creamer of Lynn and the gentleman in this division from Milton (Mr. Bryant), have been rejected by the Convention; reconsideration has been asked for and refused. They cannot be offered again unless they be subject to a point of order which the President must rule well taken, and be thrown out of the discussion. All that remains is the mere skeleton, as the gentleman in this division says, unsatisfactory to everybody interested in this measure.

The gentleman from Lynn (Mr. Creamer) has had his day. It really is amusing to go back a few months and remember how incensed the gentleman was against the Legislature for changing its attitude on this very proposition, and he suggested to the Convention that it was done because of the lobby and because of crookedness of the members of the Legislature that the vote was changed, — the merits of the proposition were so great that unless some sinister influence had been used he would have got his proposition through the Legislature, — and then to see this Convention take exactly the same attitude the Legislature took, that after they understood the proposition they voted against it. Now the gentleman comes here and puts up another "holler," or, as the boys would say a "squeal." Do not go back, but let us carry on the business of the Convention irrespective of the gentleman's disappointment.

Mr. BAUER of Lynn: I hope the delegates of this Convention will reconsider the motion of the delegate of Lynn in the third division (Mr. Creamer), because I do not believe they understand the import or the necessity for progress in taxation matters in this Commonwealth. I wish to call attention to the statement made by the delegate from Marblehead in the first division (Mr. Trefry), who has had more experience and has more intimate knowledge of different kinds of taxation and different kinds of people subject to taxation than any other man in this Commonwealth. He stated, when the measure was before us for a second reading, that in his judgment there could be no progress in taxation laws in this Commonwealth as long as that word remained in the Constitution which this resolution seeks to take out. I believe that statement is an authoritative statement. I do not believe the delegates to this Convention want to see Massachusetts sewed up so there can be no progress in taxation matters as long as the word "proportional" remains in the Constitution.

I was very much amused yesterday at the action of the delegate from ward 5 (Mr. Lomasney) in taking exception to a supposed desire to choke off debate on this matter. I have seen the chariot drivers in this hall drive the chariot horses through many legislative proceed-

ings; and I recognize the fact that when that statement was made the horses, while running true to form, were not present in the stable, and there was some delay about getting them there. I also noticed with a great deal of amusement how, immediately after the vote, those same horses answered the crack of the whip, ran true to form and left this hall, and when the time came for reconsideration the same gentleman righteously rose and proposed that we do now adjourn.

I want to call the attention of the members of this Convention to the fact that the real drive against this word is a drive from the men on State Street and those located in the localities of that character, who are fearful that the absence of the word "proportional" will permit the Massachusetts Legislature to enact a graduated income tax, and they are perfectly satisfied to let the income tax remain as it is, — not inquisitorial, and without the possibility of any graduated tax being forced on them.

I maintain it is an unfair proposition for the men in this Commonwealth who have an income of $500,000 a year or $100,000 a year, to seek to escape from the burdens of public expenditure on the same basis that a man pays who has an income of only $1,000 or $2,000 a year. I want to call the attention of members of this Convention to the drive that has been made and the methods that have been used, and the patriotic flag of the small home owner that has been flying as a cover-up and as a mirage over this whole matter. The drive on this matter is from men of great wealth who have succeeded up to date in ducking their public contributing responsibility; and they are using other men, with other propositions, as reasons to escape the possibility of paying a fair graduated income tax, as they will have to do without any doubt if the word "proportional" is removed from the Constitution. I again want to repeat that the greatest authority in this Convention on matters of taxation and men who pay taxes has stated before the Convention publicly that there can be no progress in Massachusetts along taxation lines as long as the word "proportional" is left in the Constitution. Reconsideration of this matter should be granted by this Convention.

Mr. Luce of Waltham: Objection has been raised that if this is reconsidered nothing but the skeleton will remain and we cannot get at what I think possibly a majority of the Convention would like to accomplish. If reconsideration prevails I will move as a substitute permission to the General Court to levy taxes on personal property and incomes at progressive rates. That I think has not been passed upon yet, and I trust its consideration may come within the power of the delegates.

This morning's newspaper says that it is proposed in Washington to tax the owner of an automobile, which originally cost more than $3,000, $20 for every $500 of original value, while if it cost only $500 or $1,500 the tax will be $10 for every $500 of original value. It happens that I am the possessor of an automobile. It was a used car when I bought it, and I paid nothing like the price which you might infer; but I am the possessor of an automobile that originally cost more than $3,000. By reason of that fact I am to pay $20 on every $500 of original value. I am glad to pay it. I think it is right I should pay. I believe that I ought to pay more proportionately than the man who owns a Ford car. That is the point.

I do not look with sympathy upon the argument in favor of exemptions. Were I in the Legislature, and such power as was contemplated yesterday should be granted to that body, I should vote against exemptions. It happens that as a matter of principle I have voted, I think, for every proposal to extend the powers of the Legislature, without regard to how those powers might be used; but in this particular case I should regret it if the Legislature used this power for the purpose of exemption, and I should not be at all sorry if the phraseology was so changed as to confine this to the matter of graduated taxes.

But I ask gentlemen to consider, in the present temper of the people of this State and this country, what judgment may be passed upon this Convention if we go out and say that we refused here to permit a system of progressive taxation, a system which is used by the United States to effect the greatest justice, which says that the stronger the shoulders the heavier the burden they shall be asked to carry. Shall we go out and say to the people that we will not let the Legislature of Massachusetts do that which we know to be useful, right and just, when it is done by the Congress of the United States?

Mr. LOMASNEY of Boston: With the gentleman's permission, I want to say to the members of the Convention that I hope reconsideration will not prevail; and I want to say to the gentleman from Lynn (Mr. Bauer) that this is not a stable; and we are not horses. This is the Constitutional Convention, and I regard it as an insult to characterize this body as a stable and the members here as horses. That is the language of the street. Reflections of that character should not be tolerated in a Convention of this size and intelligence. I am surprised that men should undertake to so characterize members of a body of this kind assembled here to debate questions of the utmost importance, and it does debate them fairly and honestly and then acts with the further fairness by having these different questions settled by roll-call.

Now, as to the gentleman from Lynn (Mr. Creamer) I never injected the word power-boat or automobile into the debate before the Convention. That was done by Mr. Luce, the chairman of the committee on Rules, who now for the first time undertakes to get this Convention to do what? To reconsider this question in order that it may change its attitude in the matter. Now he brings out the fact that he has an automobile. Thank God he has! I have not. The gentleman on my left (Mr. Creamer) has a power-boat; he, too, is a rich man; he is talking from his standpoint. The gentleman from Waltham (Mr. Luce) is a rich man; he has an automobile; he is talking from that standpoint. But who is talking for the real poor man? Both of the gentlemen from Lynn have property, earning, I understand, 15 or 20 per cent on land which they have leased. How many members of the Convention who are real estate owners of Boston are receiving an income of 15 or 20 per cent on leased land?

I trust the Convention will not reconsider this matter. Everything done here yesterday was done fairly and honestly. We all had our day in court at that time, and the chairman of the committee on Rules makes a serious mistake when he throws the power of his position behind this motion in order to change the attitude of this Convention after a full, fair and square discussion. I say, sir, do not

centralize the taxation power of the State, do not take away any more power from the local assessors, do not put it in the hands of any one man to control our whole system of taxation; because good men die, and the present man may be good, but he has gray hairs and cannot live a thousand years. I trust the Constitution will stand as it is.

Mr. Bennett of Saugus: I hope reconsideration will not prevail. I want to say that there never was a time when it was so easy for a small concern to go into the shoe manufacturing business in Lynn, and make money, as it is to-day. I should like to ask the mayor of Lynn (Mr. Creamer) who owns the shoe machinery in Lynn? Who owns it? Do the people who use it? No; it belongs to the United Shoe Machinery Company.

As I say, there never was a time when it was so easy to make money in shoe manufacturing in Lynn as it is to-day. The gentleman gave the whole thing away the other day when he repeated the expression which has been so familiar about this State House for many years, that securities, mortgages, stocks and bonds are not property. We are all familiar with that assertion. Let him go into any bank in the city of Lynn with some real estate for security, and let him take stocks and bonds of the General Electric Company, the Bell Telephone Company, or other large corporations, and let him see which he can get a loan on the easiest. Here is a man who has a real estate mortgage, here is a man who holds the mortgage. Everybody refers to the man who holds a mortgage as a man of property. The man who has the land, — the more land he has the poorer he may be, and very likely is.

There is nothing new in this. I was amazed the other day when this proposition went through, through a misunderstanding as to its purpose. Its purpose is not to free machinery from taxation. Its purpose is the same old purpose, to prevent any taxation of people who own the great bulk of the wealth in the form of stocks and bonds. I was glad when I heard to-day that that was voted down yesterday, and I hope reconsideration will not prevail.

Mr. Clark of Brockton: I should like to ask the honorable member from Boston in the third division (Mr. Lomasney), who claims to champion the cause and rights of the poor and needy, if he believes that the present income tax law of Massachusetts is operating justly upon the poor. The fact is we have two classes of people in this Commonwealth who are paying the income tax. One of them is composed of thousands of widows, elderly men and women, who have laid up a few thousand dollars, whose income is barely sufficient by the exercise of economy to support them under the present cost of living. The other class is composed of a few thousand people who are immensely wealthy, whose wealth has been obtained by profit from the labor of thousands upon thousands of employees who have worked in their factories. Is it just to allow the Legislature to impose the same taxes upon the poor widows and the men of moderate means, the same rate of taxes, that it does upon these wealthy men? I believe the Convention will have made a great mistake, an immense blunder, if it does not vote to reconsider this matter, and give an opportunity to authorize the Legislature to provide for a graduated income tax.

Mr. Hobbs of Worcester: An attempt has been made to ride this

proposition through upon the authority of the Tax Commissioner. I have a great deal of respect for that gentleman; I think we all have; and yet I question very much if this Convention, any more than the General Court, would set the seal of its approval upon all of the policies of the Tax Commissioner.

For instance, the General Court repeatedly has refused to do a thing which I think the Tax Commissioner has been very urgent for; that is, to place the assessment of property under the direct control of the Tax Commissioner, thereby abolishing practically all the local control over this most important subject of taxation. I think we cannot indorse unqualifiedly the proposition on his sole authority. I think that we must examine this matter on its merits. We must understand that unless some proposition radically different from the proposition that already has been before the committee on Form and Phraseology is adopted, that proposition cannot go before the committee on Form and Phraseology again.

The proposition that we have before us is defective in a number of important particulars. In the first place, it leaves two distinct sections of the Constitution in existence under which taxes can be levied, because it does not repeal the existing language of the Constitution. In the second place, it gives no explicit authority to classify property, leaving that very important power to be inferred from its language. In the third place, it provides that all excises shall be uniform throughout the Commonwealth. I call the attention of the Convention to the fact that a number of our most important excises are now levied locally and at varying rates; the one as to liquor licenses is perhaps the most striking example.

The motion to reconsider the rejection of the resolution was negatived, by a vote of 62 to 98.

XLVI.

COMPENSATION OF MUNICIPALITIES FOR LOSS OF TAXES ON PROPERTY OF EDUCATIONAL INSTITUTIONS.

Mr. John P. Good of Cambridge presented the following resolution (No. 61):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Cities and towns shall be compensated for loss of taxation on real estate and personal property of educational institutions.

An abatement of the State tax shall be allowed to every city and town in which there is real estate and personal property belonging to an educational institution exempt from taxation. The amount abated shall bear the same proportion to the total State tax levied on the city and town, as the valuation of real estate and personal property exempt from taxation, as aforesaid, bear to the total valuation of the city or town.

The committee on Taxation reported that the resolution ought to be adopted, and it was taken up for consideration Thursday, June 27, 1918.

Mr. Waterman of Williamstown moved that the resolution be amended by striking out, in line 4, and in lines 7 and 8, respectively, the words "and personal property"; by striking out, in lines 11 and 12, the words "real estate and personal property", and inserting in place thereof, in each instance, the word "land"; and by striking out, in line 12, the words "bear to the total", and inserting in place thereof the words "bears to the total land".

These amendments were rejected, by a vote of 53 to 65.

The resolution was rejected Friday, June 28, 1918, by a vote of 45 to 101.

THE DEBATE.

Mr. Cox of Boston: This matter of course is in the hands of the Convention. If any one will take pains to read the resolution he will find it is not only an amendment to the Constitution, but it is a legislative enactment, requiring the Legislature to do certain specific things in a certain specific way. It provides that "cities and towns shall be compensated for loss of taxation on real estate and personal property of educational institutions," and then it goes on to tell in what proportion those cities and towns shall be reimbursed.

If the Convention thinks it is wise to put such an amendment as that into the Constitution, why, it has the privilege of so voting. I think it requires only a passing notice, to say that the whole matter is in the hands of the Legislature now; and unless the Convention still should be of the opinion that it wishes to intrust all its hopes, as well as all its property and all its future, in the hands of the Legislature, I should suppose it would defeat this resolution.

Mr. Good of Cambridge: I rather hoped that those who served on the committee of Taxation who are opposed to this resolution would give some facts bearing on the subject rather than "reasons" as to why it ought not to find its way out of this committee. I am glad that I have as my authority the commission appointed by His Excellency the Governor, composed of Professor William B. Munro and the other two members, that this is a subject that should find its way into this Convention and could well be considered by the membership of it. They went to the trouble, not only of imparting information bearing upon all tax exemption, but gave some eight or ten pages to this proposition; and I may quote, from page 18 of that information, as to what the Supreme Judicial Court has had to say in relation to the constitutionality of these exemptions:

> The Supreme Judicial Court has had the following to say relative to the constitutionality of the various Massachusetts exemptions: The third article of the Declaration of Rights and article 11 of the amendments, which was substituted for it, recognize the importance of the public worship of God, and of instruction in piety, religion and morality as promoting the happiness and prosperity of a people and the security of a republican government. Accordingly, taxation for these purposes is authorized. As taxation to procure property for such uses is permitted, exemption of property so procured is legitimate, under the special provisions of the Constitution touching this subject. We have also constitutional requirements for the encouragement of literature and science, and the diffusion of education among the people.

And it goes on to say that

> The general purpose of the constitutional provision above quoted is to put the burdens of government equally upon all the people, in proportion to their ability to bear them.

Those of us who are interested in this particular resolution realize and appreciate that when our forefathers, in their quest no doubt for a better civilization, and in their quest for a higher grade of education, made it possible for dispensers of knowledge to come within the confines of our cities and towns and carry on their educational work, they little dreamed or realized that these institutions would grow so enormously nor multiply in such numbers. Had they done so, some provision would have been made whereby cities and towns, playing, as we maintain, an important part in the education of the youth, would have been afforded some relief. If good cause can be shown that these institutions become burdensome, that relief should be given to the different cities and towns of the Commonwealth.

We maintain that the Commonwealth of Massachusetts feels that these institutions are beneficial to the State as a whole rather than to the individual city and town in which they are located, and we are confirmed in our belief by ever so many different bequests and State aids that have been given to these institutions. The coming of the State College throughout our entire United States was brought about primarily by the vast sums asked for and always given in these States for the maintenance of these different institutions, thereby bringing about a condition where the Commonwealths saw fit to take over these institutions.

The condition as it exists in my city can well illustrate what may happen in any other city or town of this Commonwealth. We have a city limited in area to six and one-half square miles. We have a total population of 110,000 people. We have a tax valuation of $135,000,000

and we have within our confines over $51,000,000 of exempted college property beyond the grade of the high school. Two-fifths of our entire land area is taken over by exemptions.

Kindly bear in mind the fact that the city of Cambridge properly protects those who see fit to come to our city for education and the buildings that are controlled by the different universities situated there. We protect them with our police department, our fire department, and they enjoy every privilege that the citizenship of Cambridge enjoy, and we cannot collect a cent upon the property that they hold. Up to within five or six years ago there was a chance for the city of Cambridge to in some way benefit by the coming in of private capital to our city and the erection of privately owned dormitories, upon which we could collect a tax; but since the establishment of a dormitorial system, so that the classes might be segregated by Harvard University, or a zone system, if I may use the expression, that has ceased, and they have started to erect buildings owned and controlled by themselves. It is possible, if I may say so, for a man to come say from the western part of our State, from Springfield, and go down and get an electrically lighted steam-heated room on our beautiful waterfront for 85 cents a week; not all the rooms, but a vast number of rooms. And when it is possible to get that room one can see easily that the privately owned dormitories could not compete with the condition as it now exists.

What has been the result? Many of the privately owned dormitories have had to rearrange themselves into apartment-houses. Those that had the good fortune to have been built within the zone in time will be absorbed by the University, thereby removing more of the property upon which we now are able to collect some tax.

I might say that this amount of money that I mention, $51,000,000, just doubled itself in ten years. The tax rate in my city went from $18 to $24 last year, with a promise of increase this year.

To properly demonstrate what that $51,000,000 means, I had occasion to go over two or three of the catalogs of the University. I might say that we have more exempted property in our city than the entire valuation of the city of Beverly, and we have within $5,000,000 of the total valuation of Brockton; we have $20,000,000 more than the total valuation of Chelsea; more than twice the valuation of Chicopee, $18,000,000 more than the total valuation of Everett, $10,000,000 more than the total valuation of Fitchburg, $5,000,000 more than the total valuation of Haverhill, $18,000,000 more than the total valuation of Medford, $10,000,000 more than the total valuation of Pittsfield, and $20,000,000 more than the total valuation of Taunton, and more property exempted in our city than the entire valuation of the towns of Winthrop and Winchester and the city of Woburn combined.

Now we do maintain that the city of Cambridge, as an educational city, does play an important part in the educating of youth, and we ask for the passage of this resolution, in view of the part that we are playing, — and not only our city, but every city and town wherein there are located educational institutions, — and that we can say very properly to the Commonwealth of Massachusetts, in consideration of what we are doing for the education of the youth of the State and the Nation, that we should be compensated properly for that part that we are playing. I sincerely trust that this resolution will find its way to its third reading.

Mr. KILBON of Springfield: I rise simply to ask a question of any one who has experience regarding the form of the resolution. The resolution seems to have been put first in a general form, in lines 3 to 5, and then in a specific form, in lines 6 to 13. I should like to ask the gentleman in charge of the report of the committee what reason there is for leaving both of those statements in a form which may be adopted by the Convention. It has seemed to me, on a casual inspection, that it might be a duplication, and an unnecessary duplication.

Mr. UNDERHILL of Somerville: I would ask the gentleman if this is an illustration of the way the resolution which we have just been discussing, is going to work: If we are going to exempt the machinery of various cities and towns by vote of the Legislature, as we exempt educational institutions from taxation, at the next Constitutional Convention will somebody from Lynn ask the State to reimburse the city of Lynn for the loss of taxes on machinery exempt from taxation?

The gentleman from Lynn (Mr. Creamer) in his argument said that exemption from taxation is going to bring about a grand advancement in the prosperity and wealth of the community. I suppose, although I was not present at the time, that when the first educational institution was exempted from taxation the same argument would have been used. Now, if that is borne out by the facts, the most prosperous city in the Commonwealth ought to be the city of Cambridge.

Mr. GOOD: In answer to the gentleman from Somerville, I am awfully sorry that he has not been able to get away from the debate on the word "proportional," nor from the gentleman from Lynn to whom he refers. I might say, in answer to his direct question, bearing upon what might happen in regard to machinery at the coming of our next Constitutional Convention, that if it does not happen any sooner than the last as compared with this one, I do not know as either he or I will have much interest as to whether or not the iron industry will be cared for.

Mr. UNDERHILL: I suppose my illustration may have been a little far-fetched. But, sir, there is an analogy there, just as sure as you live, and I know of many lines of business in the city of Cambridge which have been benefited by the presence of these great educational institutions.

Furthermore, I suppose if we were to establish a State University in Massachusetts, several of our cities or towns immediately would put in a bid for the establishment of the institution within its borders. I do not want, as a representative of the city of Somerville, to pay Cambridge a part of my taxes because they have great educational institutions within their borders, when I derive no benefit from it in a business or educational way. Those who receive the benefits of education should pay for it; and the city of Cambridge, which offered no objection to the establishment of the Massachusetts Institute of Technology within its borders a few years ago, and in fact invited it there, should not "cry baby" because it is not getting taxes on the land occupied by these various institutions.

Mr. KNOTTS of Somerville: If I understand the argument of the gentleman in the first division (Mr. Good), it is something like this: A dormitory exempt from taxation makes it impossible for a privately owned dormitory, if taxed, to compete with the one that is not taxed, and this works great hardship in Cambridge.

The point is not well taken. Each year are there not several thousands of students normally in the great city of Cambridge? And is it possible, even in Cambridge, that four or five thousand students can live there and the city of Cambridge not benefit thereby?

I should like now to put the question to the gentleman that I desired to put to him had he yielded, — whether he sensed danger or not, and refused to yield, I do not know. But the question is this: Will the gentleman oppose the removal of Harvard College and other educational institutions from the city of Cambridge because of the hardship to the city by their presence there?

Mr. Good: In answer to the inquiry of the gentleman from Somerville, I want him to understand that, having been born in Cambridge and reared there, I would at no time interfere with any of the educational institutions which we have within our city. I wish to answer him further by saying that the association of the thousands of young men who find their way to my city for their educational requirements no doubt is helpful to the city. But when he realizes that they are housed, clothed and fed within the University buildings, and when he realizes that ever so many of the privately owned, what might be properly termed lodging-houses, have been driven out of that line of endeavor by the coming of these dormitories, and when he realizes that an educational institution has entered into public competition with individuals in letting rooms, and being in the position to be able to let rooms so much cheaper than the average man who has put his money in, or citizens who have come and paid their taxes, we feel on that one point alone that we might ask for some redress; but the big point, the point of those who ask for compensation, is that we ask it in view of what we, as a city, are doing to educate the youth of the entire Nation.

Mr. Aylward of Cambridge: I think the conditions in Cambridge on account of its geographical situation, have a great deal to do with the making of things as they are. I am very proud to have been born and lived in Cambridge, to a great extent because Harvard has been located in Cambridge. I do not suppose there is any man in Cambridge but would oppose taking Harvard from within its confines. But, as the last speaker indicated, Cambridge has a very small area; there is hardly any chance for future development. Up to about twenty years ago there did not seem to be the hardship that has existed for the last fifteen or twenty years. The gentleman from Somerville (Mr. Underhill) has indicated that we invited Technology there. We did. We are glad to have her there. And this cry, as he calls it, of "cry baby," since they came there has not been accentuated any, — since the Institute of Technology came there. That land was undeveloped or was very slow in developing, and the city was very glad to receive Technology, glad to have her there. It was because of a situation that was admitted, and so strongly was it admitted that the then president of Harvard University promised here, before a committee of the Legislature, that not again would Harvard take any land from the city of Cambridge; and when the now president of Harvard College built his dormitories, about four or five years ago, during my term as city solicitor of the city of Cambridge, Harvard College entered into a contract with the city to pay the then taxes, to pay the taxes on the amount that the land was assessed for.

A group of Harvard men, some years ago, in a desire to develop a

broad roadway from Harvard College down to the river, bought up, at exorbitant prices, the land of many poor people leading down there. I think they were called the Riverside Trustees. The city of Cambridge refused to lay out the roadway, so the project died. As this land had been bought by these wealthy people who were interested in the development of Harvard, when the time came to build those dormitories they turned it over to Harvard, and Harvard entered into an agreement with the city of Cambridge to pay the then taxes hereafter on that amount of land that they were going to cover with those freshmen dormitories.

I make that statement in order to show that the authorities of Harvard College admitted the hardship ten or fifteen years ago, when this question was discussed before the Legislature, and admitted that they would not do it any further; and in keeping that implied promise the authorities of Harvard College saw to it that when they really took the land from taxation they would agree to pay the taxes that had been paid on the land up to that time.

I am very sorry that there is such a burden on the city of Cambridge. I think the fact that these dormitories that have been built up have deprived certain smaller property owners of the revenues they had obtained, is merely an incident that practically was bound to come, and is bound to come in any city where there is an institution that is in the process of development. But the fact remains that it is a crying evil in Cambridge. Not that Harvard is to blame for it. We have not contended that. I do not know that anybody has. But it is such an evil that I believe that eight-tenths of the people in the city of Cambridge believe that there should be some remedy for it, and many of them believe that this appears to be the only remedy. This discussion that took place in the Legislature I believe came on a bill to do away with the exemption of the property of educational institutions, which of course, while there were some people who believed in that sort of thing, did not meet with the approval of a great majority of the people. I believe the people of Cambridge would be very sorry to have Harvard go from there, but they believe that there should be some assistance given to the city because of the great development of Harvard, and because the people of Cambridge feel that in the future it will be more onerous than it is even at present, and that taxes are rising and the opportunity to develop is small.

I might say, furthermore, that Cambridge finds itself in a unique position with various burdens. Cambridge has seven bridges crossing the Charles. Under the law it must contribute equally with the city of Boston to all those bridges. Time and time again the city of Cambridge has come up here to the Legislature to ask that the county of Middlesex, similar in manner to the metropolitan district, contribute to the building and maintenance of those bridges, but aid always has been refused. Two of the bridges already by a peculiar circumstance have come within that purview, namely, the viaduct, that runs from the west end of Boston to East Cambridge and the Larz Anderson bridge, that crosses over to the Stadium. These are under the control of the Metropolitan Park Commission now, and the maintenance of them must be paid by the metropolitan district. I mention these facts to show that the necessity of relief of some kind from the exemption from taxation of the large holdings of Harvard College

is imperative if the city of Cambridge is to meet the various obligations which the law has imposed.

Mr. HART of Cambridge: This question does appear to be one of proportional taxation so far as the city of Cambridge is concerned, to this extent, namely, that the taxes steadily rise in inverse proportion as the condition of the streets depreciates.

The proposition of the committee meets a difficulty which has been felt in one form or another for several centuries. Take for instance the property of Harvard College, which for over one hundred years was the only college in the Commonwealth: that property was free from taxation. Indeed, it was almost a State institution. In addition, in those happy early times, the property and the income of the professors also was free from taxes. That was a golden age, which long since has departed, for the simple reason that this exemption was looked upon as a kind of charity. Salaries were low. As late as 1867 the renowned Louis Agassiz was down on the records of the University as drawing a salary of $1,500 a year as a professor in Harvard College, in addition, I believe, to a special grant of $1,200, which made the munificent sum of $2,700 a year for the most distinguished teacher of his time.

Those distinctions have been taken away. Professors no longer feel that they need to be treated as special objects of the charity of the Commonwealth. The educational institutions, however, are on a very different footing. My colleague from Cambridge has spoken of the fact that the University pays taxes upon certain real estate. There are other pieces which he did not mention; for instance, the stores under Holyoke House, and also College House, so long as the University owned it, both buildings on Harvard Square. Under a decision of the Supreme Judicial Court of this Commonwealth the city of Cambridge taxes the portions of those buildings rented for business. Taxes are paid also upon the Harvard Union, a students' club, which seems a University affair; but when the Corporation considered the matter carefully, it made up its mind that it was reasonable to pay taxes and they have been paid ever since the building was opened.

There is undoubtedly a grievance expressed in this resolution, which my colleagues from Cambridge already have presented. The grievance is due in part to the limited geographical area of Cambridge; it is due in part to the considerable number of endowed institutions in the city and the corresponding area of real estate once paying taxes which has been withdrawn from the tax list. The three main institutions are Harvard College, Radcliffe College, and the Massachusetts Institute of Technology. For a long time there were people in Cambridge who were eager to tax college property. Some attempts were made; certain house property occupied by professors was assessed. The assessment was resisted by the Harvard corporation, and successfully resisted, because it was contrary to the constitutional and legal principles duly laid down by the laws and the courts. Those exemptions, therefore, have been reduced to a minimum, and the actual amount of property has been increased considerably which not only might conceivably pay taxes, but actually has paid taxes. But the idea of taxing the general college property disappeared when the city government of Cambridge generously invited the Massachusetts Institute of Technology to come and take up its home in that city; because the

other institutions of learning thereafter could not be looked upon as bearing such a relation to the city that taxation would be reasonable.

Nevertheless, the question here is not simply one of State taxation. It seems to me that in some ways resolution No. 61 does not in fact cover the case. I do not know that I comprehend it. "Cities and towns shall be compensated for loss of taxation." This cannot refer to taxation for State purposes, because there is no loss to the city due to taxes on property that is exempt from State taxation as well as from local taxation. On the other hand there is a loss in Cambridge and every other University town consequent upon the expense of maintaining the fire and police departments, the keeping up of streets, and so on, thus making a gift to the institutions of learning, by the unpaid advantages of the general support of the city, — of its facilities, so to speak. It is undeniable that those facilities are furnished, and that the taxpayers are called upon to pay a higher rate of taxation in order that these institutions may be set free.

The resolution goes no farther than to remedy this hardship. I have been converted from a good conservative point of view by the debate, by reading the proposal of the committee and by thinking more deeply about it. The real difficulty is that the other taxpayers must contribute, — for what? In order that the students, a body of persons, some of them from other parts of the Commonwealth and some of them from elsewhere, shall be situated more eligibly, and that they shall be better taken care of than otherwise would be the case.

I think perhaps my colleagues from Cambridge are not quite aware of the proportionate number of students who live in college dormitories as against those who live in private dormitories or lodging-houses. My impression is that not more than one-fifth of the students of Harvard University or of Cambridge are lodged in college dormitories. It may possibly be two-fifths. The others go out into the city and require no special consideration.

I submit, however, that it is a hardship, not simply for Cambridge, but for every town, every city, in which a considerable amount, not of personal property, but of the real estate, which is the main basis of local taxes for the support of local institutions, is thus diminished. In some other Commonwealths this matter is adjusted to the satisfaction of all parties. I understand that in the State of Maine there is, by vote of the Legislature, under a constitutional enactment, an allowance made, in order to compensate the cities for the loss of their local taxes. That is the only claim that Cambridge has. That is the only claim that any community may have. I trust that before this matter is adjusted in the final vote, the question of the loss as concerns the State, and the loss as concerns the city, — that those two things may be separated better than they appear to be in the text of this measure.

Mr. WATERMAN of Williamstown: I am sorry to project myself into this debate, for I have been up once before to-day; but I think in order to make this a more just proposition we should strike out, in line 4, and in lines 7 and 8, respectively, the words "and personal property"; strike out, in lines 11 and 12, the words "real estate and personal property", and insert in place thereof the word "land"; and insert after the word "total", in line 12, the word "land." That would make it clear that the exemption was because of the real estate withdrawn.

This is a subject that has occupied the attention of residents of the cities and towns in which educational institutions are located, and there has been a great deal of litigation in regard to it, a great deal of discussion; but the thing all comes down, I believe, under the mandate of the Constitution which says that the State shall foster charitable and educational institutions. That being so, we claim that in justice and equity the State should bear the amount of exemption, because that is given specially to aid these institutions; that is the help that they would get from the State. The way the courts have interpreted that help was by exempting them from taxation; and that exemption should be borne by the localities where they were located, on the theory that they were a great benefit to the localities and therefore they should stand that exemption.

Now, it is a long story, but the fact remains that most all of those that are supposed to be affected by this exemption are students without the Commonwealth of Massachusetts. The great majority, — most all of these exemptions, — are for people from without the State who receive the benefit of that exemption, and so it should be put on the same ground as the penal institutions of the State. The State every year appropriates from $40,000 to $50,000 to reimburse the localities where the institutions are, to compensate them for the loss of assessable property that is occupied by those institutions; and so it seems fair and just that because it is the policy of the State to exempt institutions this exemption should be given.

Mr. LYMAN of Easthampton: I should like to ask if that would apply only to the land and not to the buildings in the cities and towns. Is it only upon the land and not upon the buildings?

Mr. WATERMAN: Yes, it is for the land. Most all of the property of institutions has been donated from estates, from legacies and all that sort of thing. The land should not be shut out from the law regarding taxation, but the communities should be reimbursed. I move the amendment.

Mr. REIDY of Boston: This is not a new question. In 1909, serving as a member of the committee on Taxation, I heard it discussed thoroughly. It was agreed then by competent lawyers that the General Court had full power to deal with this question. I think the only man who appeared before the committee on Taxation in 1909 favoring this proposition was Representative Julius Meyers of Cambridge. We heard from important men connected with Harvard College, and their story was not quite the story that has been told to us to-day. There are, roughly speaking, 5,000 students at Harvard University in Cambridge; and allowing that each man spends $1,000 a year, and that is a low estimate, Cambridge must benefit very much more than the amount of the taxation which it is claimed she loses. But bear in mind that this $51,000,000 claimed to be untaxed is not all real estate. Most of it is intangible personal property gifts from Harvard men all over the country. If we do anything on this proposed amendment, and I say we should send our Cambridge friends to the next General Court, then the reimbursement should be for taking care of the real property, — police expenses, fire department expenses, etc. In that part of Cambridge where the University buildings are located the value of taxable property was very large, while in other parts of Cambridge valuation is astonishingly small. I want to be just to the city of Cambridge,

but I have not any hesitation in saying that Cambridge, even with Harvard's property untaxed, is a big gainer by the presence of this world-famed educational institution.

Mr. O'CONNELL of Boston: As a member of the committee on Taxation that reported this resolution, I feel that I ought to say a word or two as to the attitude of the majority of the committee. I hold a degree from Harvard University, and I would be the last one to vote to bring about any handicap to the University or to any other educational institution in this Commonwealth. I hold them very dear to my heart, and I want them to get all the help that can be given to them. But here is the situation that confronted the committee. Here is the city of Cambridge with $47,000,000 of taxable property on which she cannot get a dollar of taxation to run that city, — and why? Because the Commonwealth of Massachusetts has said that that particular kind of property is exempt. Now, then, inasmuch as the Commonwealth has said that property must be exempted, it does seem to me that it is up to the Commonwealth to find some way to reimburse that community for such amount of taxable property as is taken from them for taxation purposes. That is the first proposition that confronted me. What would you do, gentlemen, if you were on that committee? Would it not appeal to you to do something to relieve the situation, — not to injure Harvard, not to injure Technology, not to injure Williams College, or Holy Cross College, or Boston College, or any other institution in this Commonwealth, but to find some way by which those institutions can live, and live well, and also to have the community in which they are located live properly and live fairly.

The gentleman from Somerville (Mr. Underhill) asked: "Why should Somerville contribute?" Let us look at the comparative figures and ask ourselves if there is equality in this community. I read from the report of the Tax Commissioner for the current year, Public Document No. 16. We find that the city of Cambridge has $47,656,571 of taxable property exempted from taxation, because that very large total is assessed on property such as college buildings and other property owned by Harvard University and Massachusetts Institute of Technology. Now let us compare that with the city of Somerville. The city of Somerville adjoins Cambridge.

Mr. COX: Without wishing to interrupt the gentleman's argument or appear in any way offensive, I should like to inquire why he does not make his address to the Legislature rather than to this Convention.

Mr. O'CONNELL: My answer to that, Mr. President, is this: I believe in all fairness, inasmuch as the Constitution gave the power to exempt, that the Constitution also ought to give the power to reimburse; and inasmuch as the Legislature in its wisdom in the past, or want of wisdom, has not been able to deal with this subject, it does seem to me that we should clothe it with full powers, and that we should so write the organic law, that there would be no unfairness in the distribution of wealth in this Commonwealth, or in the taxation of it.

Now, I was mentioning the city of Somerville. The city of Somerville has only $1,000,000 of taxable property in the form of literary institutions exempted. Those two communities are located in the same zone. Both are on the water front. Both have railroad terminals. Both are close to the great big metropolis of New England.

Both have the same natural physical qualities. Both have the same type of citizenship. One has nothing different from the other in any exceptional way. Each of them, as far as this Commonwealth is concerned, ought to be treated equally. And yet the city of Somerville has exempted only $1,000,000 and the city of Cambridge $47,000,000. Is that fair? Does it appeal to the justice of any member of this Constitutional Convention?

Take the little town of Wellesley out here. Wellesley has $7,300,000 in the literary institutions exempted. Is that a fair proposition? The gentleman from Williamstown (Mr. Waterman) has a community with $3,500,000 exempted from taxation. No money can be raised on that taxable property in that small community. The same is true of South Hadley. The same is true of Northampton.

I cannot, for the life of me, understand why men should say: "Why, this is all right, because taxable wealth comes into that town in the person of some student ready to spend $1,000 a year." I know many a student at Harvard University who has not been allowed to spend $1,000 a year, for the simple reason that he never knew what $1,000 a year was, in any form of money, whilst he was at that institution. A great many of those boys have no means to spend, and there is no argument in saying that these boys come into Cambridge and spend this amount of money. Harvard students, — I judge from those whom I knew in my time and those who have been there since, — spend more money in the great city of Boston than they do in the city across the Charles. It is only ten minutes from Harvard Square to the heart of Boston, where everything that will delight the heart of the student may be found, as against walking down to their own dormitory, where there is little that appeals to the wealthy student's purse. The choice between Boston and her gay lights and her beautiful stores and the places where money may be spent, where there are plenty of attractions, is all in favor of the boy spending money in Boston rather than spending it in Cambridge. He stays there simply because the college regulation requires him to, and he does not stay there one minute longer than he has to, and he spends his money in Boston and elsewhere, because he finds it more convenient and more pleasant to do so.

After we go through this tax report, — and I should like to commend it to the members of this Convention, — the inequalities of a community having exempt from it $47,000,000 of property, that would have allowed it to raise a sufficient tax to bear more equally upon the people, force you to concede that the proposition of the committee ought to win support from this Convention. I am not asking you to support this committee because the committee has done something rashly. We acted because we felt in justice, in common decency, that an effort ought to be made to have equality in the way communities are taxed, — that the people of Cambridge, and Williamstown, and South Hadley, and Worcester, and Springfield, and the other places in this Commonwealth where educational institutions are located, should be treated the same as Chelsea, where there is only $20,000 exempted for an institution, as Somerville, with only its $1,000,000, as Lowell, as Lawrence, as Lynn, as Salem, and as all the other cities of this Commonwealth. We ask that the people of those cities be treated as they ought to be, namely, each city treated on an equal basis. If as a result of the location of an institution in Cambridge, in Worcester, in Welles-

ley, in Northampton, in South Hadley, the people of this Commonwealth are bettered, if we are made richer, if the institutions themselves are a glory to the Commonwealth, then let the Commonwealth share the burden and equalize the taxation.

Mr. WILLIAM S. KINNEY of Boston: I should like to ask the gentleman why the committee narrowed this proposition to educational institutions; why they did not include also charitable and religious institutions.

Mr. O'CONNELL: We addressed ourselves to what was the great evil that was presented to us. We did not understand that the evil of valuable property being in the hands of charitable institutions was the same as that of the educational institutions.

Mr. KINNEY: There is no complaint made along that line. I believe that was the principal reason. If that is the case, this committee received only a small part of the complaints which yearly are made to the Legislature in regard to the taxation situation in Massachusetts. The complaint goes further than the presence of educational institutions. For instance, the town of Belmont for years complained to the Legislature, to the committee on Taxation, that the presence in the town of Belmont of the McLean Institution worked a great hardship in the withdrawal of the real estate from their taxation account. Stoneham complained of the presence of the New England Sanatorium as a great burden. The town of Petersham complained that Harvard University had located a forestry school there and taken the most valuable forest lands, in fact, a very large portion of the available lands for taxation in the town of Petersham. There were many instances of this kind; I have not them all in mind.

The Legislature has commenced to deal with the situation. Two years ago, I believe it was, the Legislature passed an act giving the town of Belmont the authority to tax the McLean Institution. The McLean Institution, I understand, has resisted the payment of that tax, and the matter undoubtedly will be presented for adjudication before the Supreme Judicial Court. In other words, all I want this Convention to understand is this: That this proposition is a very wide one. In a sense it is an outgrowth of the so-called anti-aid amendment that we passed last year. In other words, it involves the whole proposition of the relation of the Commonwealth and of the several cities and towns to all of the educational, charitable and religious institutions in the whole Commonwealth, because individual instances of hardship to particular localities growing out of the presence of a religious or an educational or a charitable institution can be cited.

Mr. HART of Cambridge: May I ask whether there have been complaints from any religious denomination or body upon the question of taxation of real estate used for religious purposes? And further, why there should be such complaints, in view of the fact that religious property is divided throughout the Commonwealth, and that every city and town in the Commonwealth has some of it?

Mr. KINNEY: I will say for the information of the gentleman that I think there is presented every year to the Legislature, and it finally reaches the committee on Taxation, a petition asking for a constitutional amendment permitting the taxation of property held for religious purposes, and they bring forward the figures, hundreds of millions of dollars of real estate in this Commonwealth that are owned

by religious institutions. There are people who believe that the time has come when the Commonwealth should tax those. I do not say that I favor those views; I simply say that annually the Legislature has to consider that question.

Mr. Good of Cambridge: May I ask the gentleman from Boston (Mr. Kinney) if this particular bill that he calls to the attention of the Convention is not a hardy annual introduced by a particular individual acting for a particular class of people yearly. I ask this with the knowledge that I know he has of this matter that comes into the committee on Taxation in the Legislature every year.

Mr. Kinney: I will say that the gentleman is partly correct. There is a certain individual who annually has appeared when that bill is under discussion, and who has used the opportunity to voice certain personal sentiments of his, with which I have no sympathy, in attempting to attack certain religious institutions in the Commonwealth. But the point that I desire this Convention to understand is this: That this proposition, if we take it up in the form that this resolution brings it to us, is only a part of the whole subject, which involves the relation of the Commonwealth to these three classes of institutions. Perhaps this is the favorable moment to settle what shall be the policy of the Commonwealth on the question of the taxation or non-taxation of these three classes of institutions. The policy of the Commonwealth up to date has been to exempt them, and to allow the burden of that exemption to rest upon the shoulders of the individual locality in which they are located. There is an injustice, a local injustice, from the present situation. Perhaps this resolution presents the opportunity for adjusting the whole problem. But I do not think we should deal with the question of educational institutions alone; we either should go further and establish a State wide policy in regard to the taxation of these three classes of institutions, or else we should reject the proposition until such time as the Commonwealth is prepared to adjust the whole question equitably.

Mr. Benton of Belmont: The entire Commonwealth of course wants to bear the just burden of all taxation involved in carrying on the functions of government. In the immediate locality where I live, — the town of Belmont, — we have a very large institution, and the Legislature has relieved us by passing an act whereby we can tax the McLean Hospital, — which has been done. Whether or not the question of the validity of the act goes to the Supreme Judicial Court and is settled one way or another has no bearing on the proposition before us, because, if the Supreme Judicial Court should decide against the power of the town of Belmont to assess and collect this tax, the constitutional amendment before us still would be a beneficial thing, for it would make it possible to provide that the burden of loss to any locality by reason of the exemption of educational institutions from taxation could be distributed equitably over the entire Commonwealth. It is not a question of dear old Harvard, because there are lots of very brilliant men in this Convention who graduated from that college, and they are among the ablest members we have here. We have some few who came from colleges down in Maine and in other places, and they are very brilliant. But the mere fact that these members graduated from Harvard, that they live in Brookline, or other places than Cambridge, is no reason why, after having been so very vastly benefited by

their Harvard education, and having been fitted thereby to earn a livelihood more easily and more profitably, they should not in turn help to bear the loss in taxes to the city of Cambridge, or should forever leave that city and the people there to pay all the taxes for that institution which has benefited those members so very much.

The city of Cambridge is only one of the very many places in this State that should be helped and will be helped if this constitutional provision is enacted. A number of delegates have said that they would be very glad if Harvard College was moved to Brockton or Lawrence or some other place. Well, I think that it might improve some locations if they had a Harvard College there; but if they had a Harvard College, they certainly should have the whole Commonwealth help bear the loss in taxes and not have all of the taxes which otherwise would come from real estate of the institution imposed upon the people of the locality where this institution might possibly happen to be.

The city of Cambridge, in addition to having Harvard College there, has also the Middlesex County Court House and all those buildings, the inability to tax which must be taken into consideration, so that, although Harvard College may be singled out for illustration, Cambridge for other reasons offers a very good illustration to show you how inequitably the burden of taxation is imposed on a city under similar circumstances. But they are not complaining. Nobody who is connected with Harvard College or who ever graduated from Harvard College is complaining in any way. It is only placing a fair proposition before this Convention to decide.

It has been said here that nobody in Cambridge ever contributed a cent toward any of the buildings or any endowment for the college. Well, that may be true. I do not know that anybody in Cambridge ever did exchange a dormitory for a degree, although it may have been so. But a great many people have given millions and millions to the endowment fund of our biggest educational institution, and, gentlemen, do not forget that all that is exempt now from taxation. There is no proposition here to tax the millions and millions of the endowment funds of these institutions; it is simply a proposition to have the burden borne equitably by the citizens of the entire Commonwealth on educational institutions that now are exempt. It is a fair proposition for your consideration.

Mr. Williams of Brookline: I understood the chairman of the committee in the fourth division (Mr. Cox) to state in his early remarks that the Legislature already had authority to enact the very legislation which is contemplated under this proposed constitutional amendment. If that is so, I assume there is no necessity of passing this amendment. I would ask him if he would be good enough to explain to the Convention more fully in regard to that authority.

Mr. Cox: I am very happy to explain the matter, or rather it requires no explanation. I am in accord with the Tax Commissioner on this matter, as indeed I believe I always have been on the question of interpretation of our law. I wish to say, further, that there was no contention made by the petitioners before our committee that this was not a question which the Legislature could wholly settle. As a matter of fact, the only excuse given for coming before this Convention was that they had appeared year after year before the Legislature, first with the proposition to get the Legislature to tax these educational

institutions, so that the particular city and town in which they were located would lose no valuation and so have no reimbursement to be made to it. Having failed in that, then they came to the Legislature for specific relief, to have the charges of these exemptions borne by the State, but they have been unable to secure legislative sanction. As was stated by the gentleman in the first division (Mr. Reidy), one of the gentlemen who appeared before our committee was the same former Representative, Julius Meyers, who had appeared for so many years before our various legislative committees. Now, the city solicitor of Cambridge, and the mayor, and the representatives of the board of trade, and even the member who presented this resolution, sitting in the first division (Mr. Good), all agreed that the Legislature had full power to deal with this question, but they were not satisfied to leave it there. They said the Legislature would not act, they would not trust the Legislature, so they wanted this Convention to take this up and put it in our organic law. Now, it arises that the Legislature has full power to deal with the situation from this reason: There is nothing in our Constitution which requires our Legislature to exempt educational or charitable institutions at all from taxation on their property. The exemptions are all a matter of statute law, with the possible exception of a small grant made in Colonial days to Harvard College and continued in our Constitution. With that sole exception every exemption granted by the Legislature is a matter of statutory law alone, and so the Legislature has full power to change those statutory regulations and grant such exemption as it wishes to charitable and educational institutions upon such terms as the Legislature may write into the statute law.

Mr. Chandler of Somerville: I think that we should vote on this whilst we have the argument fresh on our minds, and I move the previous question.

Mr. Feiker of Northampton: Something has been said about this being an old, old story, — nothing new. It is an old, old story to have this proposition choked off before the Legislature; and now, coming into this Constitutional Convention, the member in the second division (Mr. Chandler) wants to move the previous question, for the purpose of killing a meritorious measure. But I hope the previous question will not be ordered. If the gentleman in the second division (Mr. Chandler) will study this question he also will hope that his motion will not prevail. I hope and trust that he will take into consideration what has been said here this afternoon, and to-night go into the proposition as carefully as possible, and then come here to-morrow morning and say whether he will vote Yes or No on this proposition.

Something has been said about "crying baby" on this proposition in regard to what the Cambridge folks have said, but they are not the only ones. We who are interested may have cried baby, but we have cried a good many years on this great problem, but in a different way from that which my friend in the fourth division (Mr. Underhill) thinks, and we shall begin to howl if relief is not given in some form. From a baby he rose, and worked and struggled and got ahead, and finally he has got into the Legislature and the Constitutional Convention. As I understood him in some of his speeches, he said he had to shovel coal for a living when he started as a boy, and he kept on shoveling until he got a load on a cart, and then he drove the

cart, and then he owned the horse and cart, and then he got a blacksmith's shop and everything else. And yet, after all his experience, he does not want to help out the people who are oppressed to-day in this Commonwealth of Massachusetts. I am very glad that he has been able to rise to the position which he has in this Commonwealth to-day, because it is a high position, and he is worthy; but I do not think that he understands this proposition as possibly I do. I have lived all my life in the city of Northampton, in which one of these institutions, Smith College, is located, and possibly know something of the conditions in that city. I am not a theorist, and I am not a man who knows a great deal about taxation; but I know what the actual conditions are in this case, and I am going to put them before you as fairly and clearly as I can this afternoon. It was not my intention to take up much of the time of this Convention in arguing this proposition, but I felt that I would be derelict in my duty if I did not back up what my constituents wished in the city of Northampton. I believe that I can say fairly and squarely that it is the consensus of opinion in the city of Northampton that something should be done in the way of relieving the conditions which exist in regard to the exemption of taxable property.

Mr. Adams of Concord: There is great difficulty in determining whether a city or town, as a matter of fact, is injured or aided by an educational institution. Opinions on the subject must differ, but one thing is clear. Some cities are benefited, some injured. There can be no objection to the Legislature, after a careful examination of the justice of each case, granting such aid as may be necessary; but the passage of a constitutional amendment settling such a question arbitrarily and without relation to the justice or injustice of each individual case hardly can be defended, I think, on any grounds. I therefore hope that we shall leave the situation where it is, because the Legislature already, I believe, has ample power to deal with the question.

Mr. O'Connell of Boston: May I ask the gentleman a question before he sits down? I should like to ask him if he does not think that something ought to be done to relieve the inequality that now exists, and if, if the constitutional method that now is proposed can do it, it is not well to do it in that way.

Mr. Adams: I think there are cases in the Commonwealth, I am inclined to think Northampton is one, where something ought to be done. The case of Petersham has been cited here. In that case Harvard College felt that some injustice had been done, and adjusted that difficulty. I do not think this measure does justice to the Commonwealth as a whole, because it helps every town or city irrespective of whether the town or city is benefited or injured.

Mr. Underhill: The gentleman from Northampton (Mr. Feiker) paid me a compliment, I suppose. I simply wish to say that one ambition I had which I did not attain was that of going to Harvard College and graduating from that institution, and that it is not any purpose on my part to deprive anyone of the benefits of an education or to refuse to assist the poor people of this Commonwealth. But, sir, the point I make is this: That if you are going to distribute this taxation or the money that really ought to be supplied by the cities of Cambridge or Northampton, over the rest of the community,

Lowell and Lawrence, with their thousands of mill employees with no possible hope in the world that they ever shall have the advantages which come from a college education, will be taxed for the support of those institutions, indirectly, then, by helping the cities of Cambridge and Northampton. It seems to me a fairer adjustment of the situation would be that those who go to college might pay a little more in the way of tuition, a little more in the way of board, or something of that sort, rather than that these people who can ill afford it shall contribute to the education not only of those who come from Massachusetts but of the thousands and thousands who come from beyond her borders. I recognize that a college education is partially charity. I heard it stated at one of Harvard's class day exercises that a college education was in a large measure charity. If that is a fact, I do not know why the poor people who are struggling for existence should contribute to that charity. I have had the privilege of sending two of my children through colleges of this State. I am in hopes that two more of them may go, but I do not ask that the people of Pittsfield or the people of Lawrence or of New Bedford shall pay a share of the expenses of the advantages for which I am sacrificing something in order to give to them. That is my attitude on this question.

Mr. Good of Cambridge: I simply want to correct an impression that I think has gone into this Convention, coming from the gentleman in the fourth division, chairman of the committee on Taxation (Mr. Cox), wherein he says that either I or somebody connected with the Legislature had said that we would not trust the Legislature in regard to this proposition. Personally I made no such statement, nor have I at any time ever questioned the wisdom and judgment of the Legislature in its action on matters finding their way through that body. But I want to say that the Legislature to-day has not the power to tax these colleges and has not the power to tax these institutions. And when she has not the power to tax them how is it right and possible, — I am not a lawyer, but at least I have given some thought to that matter, — to say that the Legislature will have the right to reimburse something when it has not the right to tax those institutions? I do not want that impression to go broadcast that the Legislature has not been appealed to. Of course it has been appealed to.

The motion for the previous question having been defeated, the debate was resumed Friday, June 28.

Mr. Feiker of Northampton: In the time at my disposal it will be impossible to do justice to this great subject. As I was saying last night when the adjournment took place, if this matter could come to the attention of my constituents I believe that there would be an overwhelming vote in favor of this resolution, and I believe if the members of this Convention will take this question into consideration seriously there will be no question as to giving this matter a second reading. If you will bear with me for the time that I have I will go into this subject the best I can.

There has been some talk in this Convention as to the benefit received by the cities and towns in which these institutions are located. My friend the delegate from Boston in this division (Mr. Reidy) and my friend the delegate from Somerville in the third division (Mr. Knotts) have told you that thousands of students go to these institutions in these cities, and that it is of great benefit to the cities to have

these students there. We admit all this. But the question is: Do the benefits overtop the burdens? Do we get enough benefit to take into consideration the burdens which we bear? That is the whole question, I believe, for you gentlemen to decide here.

This problem has been before the Legislature for many years, in the form of petitions from cities and towns in which universities and colleges are located, including Cambridge (Harvard University), Williamstown (Williams College), Amherst (Amherst College), Wellesley (Wellesley), Northampton (Smith); and with the indorsement of the city government of Northampton and other cities in aid to these petitions, we feel that we have had a good standing before the people. The statute which operates at the present time is Revised Laws, chapter 12, section 5, clause 3.

We submit that the intention of the Legislature, when this statute was enacted, was to have the real estate used for strictly business purposes taxed; but the courts always have construed this statute liberally, and it is impossible to get a favorable decision. Chief Justice Morton says in the case of Phillips Academy *v.* Andover, Massachusetts Reports, Volume 175, page 125:

> The statute is not to be construed narrowly but in a fair and liberal sense and so as to promote that spirit of learning, charity, and benevolence which it has always been one of the fundamental objects of the people of this State to encourage.

It is the dominant use which decides cases and the courts hold in most of the decisions so long as the occupancy is that for which the institution was incorporated it shall have the controlling effect.

Chief Justice Knowlton in the case of the Mt. Hermon School for Boys says:

> The practical difficulty in case of this kind is to ascertain the purpose for which the real estate is occupied. When that is determined the result is reached.

From the words of the Chief Justice I can deduce only one conclusion, and that is, the statute is ambiguous; and we submit that if this is so the ambiguity should be eradicated. The Chief Justice further says:

> But if it seeks to promote its educational and charitable objects by obtaining profits from its treasury for the future use, that purpose is within the exempting clause.

The Legislature of 1874 authorized Governor Thomas Talbot to appoint a committee to inquire into the expediency of revising and amending the laws relating to taxation and exemption therefrom. The commissioners were Thomas Hills, Julius H. Seelye and James H. Barker. James H. Barker for the Commission, recommended that present laws be not changed on the broad ground that every encouragement to any efforts for the promotion of knowledge among our people in every department of literature, science and art should be given, wisdom and knowledge as well as virtue diffused generally among the body of the people being necessary for the preservation of rights and liberties; but he further says: "It should be remembered that the exemption in question so far as real estate is concerned only relates to the premises from which these institutions derive no revenue."

The questions now come: Shall these institutions be exempt in part or entirely? Are they of such benefit to the community in which they are located that they should come under the exemption clause? Should the college make a profit from its dormitories? Judge Chapman in

giving his decision in the case of Wesleyan *v.* Wilbraham says: "The object of the institution is to furnish education at the lowest possible price." These institutions take advantage of the ambiguity in the statute and say they will not pay a tax until a law is framed which will force them to do so. This is the situation to-day.

We admit that the college is a great benefit to the city in many ways, and the question in my mind is whether or not the benefit is more than offset by the benefit derived by the college from the city. In other words: Is the college a burden to the city at the present time? We submit that it is and that it should pay a certain share of the expense of running the city. Our city supplies all the necessities required by the smaller city which the college is, such as police and fire protection, sewerage, electric lights, libraries, etc. To be sure, we receive a certain benefit in trade from the students, but the bulk of the business is done outside the city of Northampton.

This institution buys where it can buy the cheapest, contracts for dormitories where it can contract the cheapest, without regard to home interests. It is a little city in itself, having separate social affairs, and really is entirely distinct from the city proper. It has been possible for Northampton, my home city, to meet its obligations only by the strictest economy and with good financial management; but the time has come when the best financier Northampton ever has had says that the burden is becoming too great to be met with economy and that something must be done to alleviate the condition that exists. Under this resolution the city would be able to raise about $7,000 per annum at the present tax rate. The property affected would be infinitesimally small compared with the holdings of Smith College. The personal property of about $2,500,000 would be entirely exempt and of the $2,000,000 in real estate, I estimate that only about $400,000 would be affected.

We do not wish to antagonize or jeopardize the interests of Smith College or any other institution of learning in this State or country, but we are forced to consider the question of our own ability to exist. To insure the future success of these institutions the cities and towns in which they are located must have an eye to their own preservation. The one cannot exist without the other, and to make success doubly assured the institutions should meet the towns and cities half-way in their efforts to bring about legislation which will be fair to both and make possible amicable relations between town and gown.

Out of a total valuation of about $27,000,000, no less than $7,000,000 represents untaxed property. There are only two solutions to the problem which confronts us, — either an immediate and severe curtailment in expenditures, or an immediate and marked increase in the tax rate, putting it perhaps beyond a reasonable limit. Indeed, it is for the interest of this institution, of which we all are justly proud, that the community in which it is situated, and which fosters and protects it, shall not be weakened or seriously hampered by the very fact of its existence. It is true that chapter 12 of our Revised Laws provides that "the personal property of literary, benevolent, charitable, religious and scientific institutions and the temperance societies incorporated within the Commonwealth and the real estate owned by them and occupied by them or their officers for the purposes for which

they are incorporated, and the real estate purchased by them for the purpose of removal thereto" shall be exempt from taxation, "provided that such property shall not be exempt, if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes"; and in my city this statute affects the Northampton State Hospital, the Clark School, the Forbes Library, the Clarke Library, the Y. M. C. A., the Home Culture Clubs, all the churches and property used for religious worship, parochial schools and Smith College; and of the $7,000,000 valuation exempt, as I previously have stated, the portion of real estate of Smith College is $1,859,364.85. The college is exempt in real estate and personal property to the amount of $4,500,000, and it annually is absorbing more and more of the real estate of the city, and thereby rendering this beyond the power of the city to tax.

I have taken occasion to examine the assessors' books and they tell the alarming story, looked at from the standpoint of the city's material welfare, of how the college has expanded and taken out of the heart of the city some of our most valuable taxable real estate. I will read you some of the figures, and you will note, not only the extent to which this absorption of taxable property has gone on, but also the rapidity with which it has proceeded in the later years.

From the figures taken from the assessors' books we find that from 1874 to 1917 real estate occupied has increased in value from $35,000 to $1,859,364.85, according to the reports of officers of the institution; that real estate not occupied has increased from nothing to $46,900, and that personal property has increased from $230,000 to $2,705,872.57; that the income from 1885 increased from $60,783 to $509,242.78 in 1916–17, and the current expenses from $49,635 to $523,458.15. This corporation has been established a little more than 46 years. Northampton, the city founded over 260 years ago, had an income in 1917 from State and county and city taxes of $480,077.75, interest and debt to be deducted $78,901.20, or an annual income of $401,176.55 as against an actual income of $509,242.78 for Smith College.

Smith College is a little city in itself, walled about, one might say, by a "Roman wall," and enjoying all the privileges of the greater city outside, without being called upon to carry any of the burdens which necessarily must be, if the interests and welfare of the citizens are looked after as they should be. This little city within the greater one, and still greater than the greater one, receives benefits and privileges for which it pays practically nothing. What are these benefits and privileges? Police protection, fire protection, public libraries, churches, good roads, the freedom of the city, electric lights, etc., and all public entertainments and public functions.

Now the question is: Should this property pay taxes in full or only in part, and, if all or in part, by what method? My idea is that a certain part of the college property should be taxed, and particularly those buildings used for strictly "commercial purposes". It seems to me that the college has gone away beyond the scope of the intention of its founder. It was founded for educational purposes, and not for commercial purposes, not to run dormitories for gain, and not to use that increment to compete with our institutions which pay taxes.

Originally the idea was that a college-educated man or woman was

of great benefit to the community and the country at large, and that so great was this benefit that the community should contribute gladly whatever it could afford to increase the number of people of this class. As always happens under such circumstances, the inducement for institutions of learning to come into existence and to grow was made as strong as possible, and no thought was taken then of the question of the ability of a community to contribute toward a charitable or educational institution by way of exemption from taxes, because the relative amount of property so exempt was insignificant, especially in comparison with the benefit to be derived. To-day all this has become changed in a marked degree.

Never was there a time when endowments for charitable and educational institutions came so fast and in so large amounts. The physical growth of these institutions has gone beyond the wildest dreams of the founders. They have become in many instances financial powers; they are financial institutions, and are managed and run as such; and it becomes no longer a question of the desirability of the growth of the institution, for that has been accomplished, but a question of where the principle, excellent in its foundation, has led the community in its actual working out. When these institutions were founded the additional cost of maintaining for their benefit streets, police protection, fire protection and public facilities was insignificant, but in Northampton to-day the burden upon its citizens is becoming approximately like that borne by the feudal subjects in historic times for the support of the castles and palaces of the lords. In short, we would not detract from the growth of the educational or charitable institutions, but we would have the burden for their support more evenly and fairly distributed. It is argued that from a material point of view the existence of the college in Northampton enhances the value of real estate in its immediate vicinity. Undoubtedly that is true up to a certain degree, but that increase is limited, and is not in proportion to the relation between the exempt property of the college and the total valuation of the city; and if it should happen that the college, as it plans, shall be able ultimately to accommodate all of its students on the campus, those homes which now are carried on for the purpose of keeping college boarders will become of relatively small value and their tax value will have to be reduced. Or, again, if this does not occur, it will happen inevitably that the property in the immediate vicinity of the college, whose tax value thereby has increased, will be absorbed by the college itself and yield nothing whatever by way of taxes to the city. If this process goes on much longer, the poor man who owns a modest home, which he would not care to leave because it is his home and because of his business surroundings, will be taxed far and away out of proportion to his fair share and perhaps beyond his means. The manufacturing corporations, by the working out of this principle, will be obliged to pay and to-day are paying in Northampton a contribution toward the education of the rich and well-to-do, for it is the very exemption from taxation which permits the fee for college education to be reduced. While it is desirable that this fee should be as small as possible, all fair-minded men will agree that it should not be so small, if that reduction must come about at the expense of the laboring men and those who ill can afford it. We are contributing thereby in taxes toward the education of students who come from California to Maine, and for lack

of public money our own children are left to suffer lack of school facilities. Surely this was not the intention of the founder of Smith College, and it was not the intention of those wise legislators who originally passed the exemption act, an act made for other times and other conditions, which has not changed as those conditions have altered, and which, intended as a benevolent help to all the people, now threatens to become a menace to the poor but deserving many.

How many of our families can afford to send their sons and daughters to college? Not many. How many Northampton girls have graduated from Smith College? What we want, in the words of Roosevelt, is a "square deal". The college of to-day is being run on the same basis as a business concern. In the first place, it competes with the boarding-house keeper; second, with the merchant; and third, with the financial institutions. For instance, it makes money on its boarders. Second, about 75 per cent of the necessaries of life are bought out of town; third, the college loans money, competing with the Smith Charities and the banks. The college can afford to make a loan for less money than an institution that is taxed. That great trust for the people, Smith Charities, is not exempt. Why should Smith Charities have to pay a tax on all of its property? Which does the most good in the community, Smith Charities or Smith College?

Again, they say that the college girl leaves a lot of money in the town. Now I understand that the average expenditure of a student is about $765.55. After paying their tuition and board there is not much left for them to spend excepting for soda and candy. A certain few may be benefited, but the great majority receive no benefit. For illustration, it is claimed that the United States Armory pays no tax, and yet is a great benefit to Springfield. I admit the fact and pick up the gauntlet thrown down. The Springfield Armory employs hundreds of men, capable of earning from $5 to $10 per day and upwards. They buy their homes, they purchase all their supplies, they leave the bulk of their money in Springfield. They pay a tax on their holdings. Do Smith College girls buy homes? Do they purchase all their supplies here? Do they bring business to town? I am sorry to say, and I say it without malice, that to my mind the college drives business away from this city. What we want for our material welfare is more manufactories, more business. A manufacturing and literary community may well go hand in hand, but only if conditions are such that the corporation can live as well as the institution.

Look at the homes of the working people of Northampton. These people work hard; they are thrifty, and take pride in their little homes. And what makes these homes possible? The corporations for which the owners have worked and from which they have received their weekly wages. Early and late the people have labored and with the sweat of their brows they have wrung sustenance and a pleasant home, willing to bear the burdens of life, paying their just debts to creditors, proud of their citizenship and willing to accept the responsibilities through their officials for the support and maintenance of their city. But how do they feel when they look at their tax bills, and find that the rate is very high, and that with all that the city has to economize to keep within the limit? Certain improvements, such as walks, lights, repairs of schoolhouses, etc., cannot be had, because the amount received from the tax will not allow of further expenditure.

To my mind, the college receives great benefits from the city of Northampton, much more than the city receives from the college, and why should it not pay a proportion of the expenses of the city for the benefits it receives?

Now we come to the question as to the manner in which the college should pay its share of the expense of running the city.

First, reimbursement by the Commonwealth? I do not favor this proposition, as it is too drastic. My reasons are these: In the first place, I do not think that all the property (real estate) of a college should be taxed. I believe that the buildings used strictly for educational purposes should be exempt from taxation, and that only those buildings that are used for commercial purposes, — such as dormitories and the like, — should be taxed.

Secondly, I believe that the tax should be direct; that if the benefits derived by the college from the city are greater than the benefits derived by the city from the college, then the city should be paid directly for the benefits given. The Commonwealth is made up of the cities and towns, and Northampton is a part of the Commonwealth and would have to pay part of the tax. And again, why should Boston or Hadley pay any part of Northampton taxes? These towns may send students here and in a way receive benefits, but so do many of the cities and towns all over the Union. Why not ask the United States to pay the tax? My idea is that, if we are entitled to any remuneration, we should have it directly and not indirectly.

My opinion is that a bill for direct taxation would be well received. I do not say that you could get such legislation the first year. The matter is in its infancy. From time immemorial these institutions for learning have been untaxed, and it will take time to make the public appreciate our predicament; but it surely will come, and must come. The most valuable property has been taken and is being taken. The campus is no limit. These institutions reach out into all parts of the town. Take, for instance, Smith College. The square bounded by West Street, Green Street, College Lane and Elm Street, practically now all college property, used to be on the tax list. Take the east side of Bedford Terrace, South Street, 70 Elm Street, all the houses on the west side of College Lane. And now comes the climax. By gift the college acquires the John Storer Cobb property on Paradise Road and the Whittlesey property. Within ten years by deed or gift it will own all the property between West Street and Kensington Avenue. Where will it all end? The property which they claim is enhanced in value will go on the unassessed list. Those houses now used as boarding-houses will deteriorate in value, for the reason that dormitories will be built to house all the students. For illustration, Plymouth Inn, built at a cost of about $100,000 and assessed for something like $70,000, built expressly for college students, was used as such for a few years, and now has no college students. Foreclosure proceedings followed; the mortgage was only $40,000 and the property stands in the name of the Northampton Institution for Savings. It is assessed for $45,000. This is only one illustration. The time has come for action and we must get together and map out a plan of campaign. There are differences of opinion as to how this matter should be brought to a head, and three distinct propositions have been advanced as the best way to bring about the desired end:

First, payment by Commonwealth; second, by assessing; third, by direct taxation.

I have given my reasons as to why I cannot support the first proposition, and I think there will be small chance of the adoption of any such community scheme. As to the second proposition, my position is this: I have looked into all the cases decided by our court of last resort, and have found that by assessing you immediately would bring on an expensive lawsuit, and it is my firm conviction that in the end the Supreme Judicial Court would decide against you. You have heard the substance of the statute which provides for the exemption of real estate, and all the decisions in connection with this statute have determined practically that the Legislature meant to exempt the real estate of colleges without distinction as to the use to which it should be put, so long as the income derived therefrom was not paid into the private pockets of the founders. The Supreme Judicial Court in a word construes the statute liberally. We all believe that statutes affecting charitable and religious institutions should be so construed. It would be utterly impossible to get our Supreme Judicial Court to change its views upon this question.

As to the third proposition, it is my opinion that a bill should be presented at the next session of the Legislature to provide for the payment of taxes directly by the institution to the city or town in which it is located, these taxes to be assessed upon the property, real or personal, of that institution in excess of a minimum amount. It is upon this principle that we already, following the Legislatures of other States and the law of England, have based our inheritance tax. This law certainly never would affect any struggling, growing educational institution. Smith College was founded originally upon an endowment of less than $400,000, and its founder doubtless thought that was ample, sufficient and generous. When one deals in hundreds of thousands or millions, one is no longer in a frame of mind to contemplate charity; he is then in the field of finance. A bill to tax all property used exclusively for commercial purposes might be advisable at the present time; but whichever way, it is for you to set in motion machinery to bring about a revolution in the system of taxation in towns and cities that protect educational institutions in their midst, and are proud to do it, but that can continue so to protect such institutions only if they are permitted by the Legislature to exercise the fundamental principle of self-preservation.

We are not in antagonism to Smith College or any other educational institution in the country. We are forced to consider the question of our own ability to exist under the most favorable circumstances. We are working in the line of progress, and it remains for you to make up your minds and set in operation the first portions of a force which shall mean in the end your own self-preservation and secondarily the benefit of the institution that we all admire. [Applause.]

Mr. Pillsbury of Wellesley: I regard the reasons already given against the adoption of this resolution as more than sufficient; but as I have the honor to represent here, so far as I am able, one of the college towns, it may not be inappropriate to contribute the attitude of Wellesley to the debate. I have never been able to learn of any substantial complaint in that town at the loss of taxation involved in the exemption of the college property, and I do not think that Welles-

ley has ever shared in the feeling expressed in this resolution or joined in any of the movements for compensation. I do not think the people of Wellesley regard the presence of the college as an economic advantage to them, and I do not think it is; but with them, as with all the college cities and towns, it is a source of great civic pride, and properly so. I have no doubt that if the question were submitted to the vote of the people of Wellesley whether they would continue to bear this loss of taxation or part with the college, the vote would be overwhelmingly for the former.

I think they recognize that this is only one of the many causes which contribute here or there to the increase of local taxation and to the inequality of the tax rate as among the cities and towns, and that unless and until the Commonwealth enters upon the task of standardizing taxation and making the rate uniform in all cities and towns, which at present nobody proposes to attempt, there is no sufficient reason to make a special exception of this feature of the system.

Mr. Cox of Boston: I hesitated to speak upon this matter at all. I have absolutely no interest in the matter any more than the casual observer of this Convention; but I did feel it my duty, as chairman of the committee and one of the seven dissenters, to lay before you the fact that this is clearly and distinctly a legislative matter. I may say also that when I was a member of the Legislature this matter was discussed before me, and I agreed at one time that it might be proper in certain cases to make some concession to the demands of the towns and cities affected by educational property, and I still would say so, probably, if I were a member of the Legislature; but you must see that it is a legislative question and all cases do not stand alike, and there must be a specific method of treating each city and town that comes here for relief if you are to settle the matter justly. I simply want to point out in this connection that this bill as drawn, — I call it a bill, for that is what it is, — in some respects has a joker in it, what is known as a legislative joker, because when the State tax is now assessed upon the city or town in computing that tax the valuation of exempted property in that city or town is not included, so the State now makes a concession to all these cities and towns affected by educational institutions in their midst by not including that valuation when the State tax is assessed upon them. But this bill, as I have called it, does not take that into consideration, and the particular city, — as Cambridge was mentioned yesterday, — having received already that concession from the State, now wants the full proportion of this valuation to all its valuation taken from the State tax that is assessed upon it, a manifest injustice which was admitted by the mayor and the city solicitor of Cambridge, and they said that they would not ask a report of the committee for a resolution in this form.

With one single statement more I will leave this matter, so far as I am concerned, in the hands of the Convention. If any such thing as this is put into our Constitution you will make the subject-matter of exemption of educational property from taxation a burning question in the Legislature; and so far as I am able to foresee things the direct result of this will be that you will force the Legislature to put a tax on educational property. But however that may be, I say if you pass this you will be sowing the wind and you will reap the whirlwind, because you will force that issue upon the Legislature. And remember that it

will not be confined to colleges. Educational institutions include parochial schools and all kinds of educational institutions. It will not end there. It will arise as to charitable institutions and religious institutions.

I felt it my duty to point that matter out to the Convention; otherwise I should have remained silent.

Mr. FEIKER: I should like to ask the gentleman whether or not at the present time in the case of charitable institutions the amount is returned to the city for the tax on the land on which the institutions are located.

Mr. COX: I understand that in certain cases the Legislature has made that concession, and in my opinion very properly, because when you put an insane asylum in a city or town and take out hundreds of acres of land for that purpose which by no possibility can be a benefit to the town, the Legislature has seen the wisdom of making a concession in that regard; and so if the Legislature had seen the wisdom of making a concession in regard to educational institutions, it would have done the same thing.

Mr. BARRETT of Cambridge: Those of us who have followed the debate here, including the legal gentlemen who are giving advice to the Convention, would arrive immediately at the conclusion that this was a matter for this Constitutional Convention to deal with, and not the Legislature. Particular reference was made to the city of Cambridge during the debate of yesterday afternoon, and the average delegate may be under the impression that this is special legislation asked for by the city of Cambridge. We ask for nothing that we do not wish to have the other cities and towns that are incumbered as we are derive the same benefits and the same privileges. I believe that the resolution has a great deal of merit, and that it should be adopted by this Convention.

The gentleman in the first division (Mr. Reidy) yesterday asked what the city of Cambridge had done for Harvard College. I might answer and name three donators in the city of Cambridge who have contributed almost $50,000,000 or thereabouts to Harvard College. We have in the city of Cambridge less than 5 per cent of our young men attending the college, out of 5,500 students who are there now. I believe it is not fair to Cambridge and other cities and towns that are situated as we are. We are incumbered perhaps with the highest tax rate in the metropolitan district, and the taxes are going higher, mainly because of our educational institutions' exemption. I do not for a moment stand here and advocate the taxation of educational institutions; but I believe, where we have to take care of the students coming from throughout the civilized world, giving better police protection, better streets, better fire protection, and all that makes up an ideal municipality, that there should be some reimbursement.

I might mention three donators who have been the chief benefactors of the city of Cambridge for the last half a century. In the first place, Morrill Wyman has donated $100,000 to Harvard College. Alexander Agassiz, a name well known to you all, has donated $1,500,000, and Daniel McKay has donated $20,000,000. The college authorities informed me that one-third of the estimated expense of the maintenance of Harvard College and the several buildings has been donated by the men and women of Cambridge. And we are doing

our share to-day. When the United States Government wanted the most historical site in our university city, namely, the Cambridge Common, the city council of Cambridge by unanimous vote passed that over to the United States Government, and I believe it is the only city now that is looking out for the future defenders of our Nation in a most practical way. At a meeting a week ago last Tuesday the city council of Cambridge, of which I am a member, donated $5,000 to make it comfortable for the boys who are our guests, temporarily at least, to exterminate the mosquito. What has the great city of Boston done? What have our other cities and towns done? From the time of John Harvard until to-day we have been doing what we can for Harvard College and the other educational institutions. The relations are most harmonious between the civic authorities and the college authorities. But we believe it is fair and just and a matter of equity that a small portion, at least, of the burden should be taken from us and equally distributed. In view of that fact, I hope the amendment offered to the resolution by the gentleman from Williamstown (Mr. Waterman) will be adopted by this Convention.

Mr. HARRIMAN of New Bedford: It might be well to call the attention of the gentleman to the fact that if we have anything in the Commonwealth that needs to be governed by the Commonwealth, it is education; and so long as the higher avenues of learning are given over to private influence it is my opinion that such discussions as this will occur in Constitutional Conventions and in the Legislature. The only real cure, to my mind, is for the State to separate its higher system of education and establish a State University, and such discussions as this and such burdens as are thrown upon different localities will bring about this much desired result. While this may be a bit foreign to the subject now under discussion, I want to close by reiterating what I said in the first place, that the education of our people is a public function and should be controlled by our people and not be allowed to get into the hands of private individuals and industries.

Mr. GOOD of Cambridge: I also was a member of the Legislature, back some few years ago, when this particular matter found its way into that Legislature, and there were some ninety-odd members favorably disposed toward legislation similar in character to what is proposed now; and the only reason that it did not pass the Legislature that year was the thought that was spread broadcast through that Legislature that a constitutional change was necessary, and that if the Legislature did pass that legislation court proceedings would be brought at once on account of a constitutional change being necessary.

I wish to call to the attention of the members of this Convention that in 1915, while a member of the board of aldermen of the city of Cambridge, a conference was held with the President of Harvard University, A. Lawrence Lowell at that time, and he favored legislation similar in character to this. Before that committee he said that he certainly hoped that something would be done to stop for all time those agitators who felt that education ought to be taxed, and that he felt that this was a fair, decent way for the State and the different cities and towns to get together, — that was his statement before the committee, — rather than have agitators.

The gentleman from Boston (Mr. Reidy) spoke of the matter coming before a commission of which he was a member and which was dealing with this subject, and said that a member who appeared before that commission was in favor of taxing Harvard University and taxing other universities. I want it understood that I am not in favor of any such thing, nor is any member of your committee on Taxation in favor of anything of that character. I sincerely trust, with the information given to the delegates, that they will see their way clear to allow the people of the Commonwealth to pass judgment, Yes or No, upon this proposition.

The amendments moved by Mr. Waterman of Williamstown were rejected, by a vote of 53 to 65.

The resolution (No. 61) was rejected, by a vote of 45 to 101.

XLVII.

UNIFORM APPLICATION OF TAXATION LAWS.

Mr. Michael F. Shaw of Revere presented the following resolution (No. 296):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

1. That all statutes subjecting the property of the Commonwealth or of lesser political divisions thereof or all persons or corporations shall be of uniform application to all of the property of the Commonwealth or such lesser political division or of all persons or corporations similarly situated throughout the Commonwealth; and no taxes shall hereafter be levied or assessed by the force of any existing or future statute unless the same is of general application to the Commonwealth or any lesser political division thereof or to such persons or corporations, unless all property or persons or such lesser political division similarly situated are likewise subjected to taxation.

2. All statutes exempting the property of the Commonwealth or of a county or lesser division thereof or of any person or corporation doing business therein shall be of general application to all similar property and to all persons or corporations similarly situated: *provided, however*, that nothing herein contained shall prevent the Legislature from exempting public monuments or individuals or public corporations by name from any or all taxation.

3. The Legislature may exempt by special statute the property of the Commonwealth or any lesser political division thereof, provided that no part of the same is used for a commercial, manufacturing, or mercantile purpose, but no profit producing property of the Commonwealth or any such lesser political division therein shall be so exempted, unless by a statute of general application to all of such property similarly situated in any part of the Commonwealth.

The committee on Taxation reported that the resolution ought NOT to be adopted; and it was rejected, without debate, Friday, June 28, 1918.

At the next session, Tuesday, July 9, Mr. Shaw moved a reconsideration of the vote by which the resolution had been rejected.

The motion to reconsider was negatived.

THE DEBATE.

Mr. SHAW of Revere: I move we reconsider resolution No. 296, which was defeated on Friday without any debate, — being a resolution relative to making uniform the application of all statutes relating to the taxation of property.

In connection with this matter, the Legislature of 1904 enacted a statute in which it singled out one particular piece of Commonwealth property, and in that statute specifically stated that one who holds under a certain paper right shall be taxed as if he were the owner of the fee.

This matter strikes at the very root of our system of taxation. The people of the Commonwealth have an inalienable right to be taxed by general law, and the fact that this matter was passed by the Legislature in 1904 and codified in the tax statutes of 1909 places it, in my estimation, within the purview of the 14th amendment of the Federal

Constitution, which guarantees the equal protection of the law to all citizens.

It is a maxim of constitutional law that the Legislature, in acting, acts with full knowledge of all the facts which pertain to the matter in hand; and if the facts that existed at the time such legislation was passed are such that the legislation necessarily would result in the violation of the constitutional prohibition, then it is treated as coming within its terms, because the necessary result of such legislation would be to violate the Constitution. The violation may be deliberate and intentional, or it may be in disregarding those facts which no reasonable man would disregard knowing the necessary result of violating the spirit of the Constitution.

In 12 Mass., 252, 255, the Court said, in part:

> To select any individual or company, or any specific article of property, and assess them by themselves, would be a violation of this provision of the Constitution.

In Trumble *v.* Seattle, 231 U. S. 683, at page 689, Mr. Justice Holmes, formerly Chief Justice of the Massachusetts Supreme Judicial Court, in rendering the decision, says in part:

> When interest in land whether freehold or for years is severed from the public domain and put into private hands the natural implication is that it goes there with the ordinary incidents of private property, and therefore, subject to being taxed.

In Milford &c. Water Co. *v.* Hopkinton, 192 Mass. 491, 496, the Court, Mr. Justice Hammond, said:

> The true test [of the exemption] is whether it is engaged in the administration of a public trust with power to take lands for that purpose. It is the character of the use to which the property is put, and not of the party who uses it, that settles the question of the exemption from taxation.

In Cooley on Taxation (2d ed.), 215, it is said:

> It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them a subject of capricious legislative favor. Such favoritism could make no pretence to equality; it would lack the semblance of legitimate tax legislation.

In State *v.* Express Co., 60 N. H., 219, 237, Judge Stanley says:

> The essential characteristics of any system of taxation, properly so called, are certainly equality and universality. All the persons and property within a State, district, city or other fraction of territory having a local sovereignty for the purpose of taxation, should, as a general rule, constitute the basis of taxation.

Chief Justice Doe, 60 N. H. 219, at page 251, said:

> Each one's payment of his share (of the taxes) is not merely his constitutional duty; it is the constitutional right of his neighbors. Morrison *v.* Manchester, 58 N. H. 538, 549; Edes *v.* Boardman, 58 N. H. 580, 587.
>
> And as his non-payment of his full share is a violation of their right, so his forced payment of more than his share is a violation of his right.

In Cutting *v.* Kansas City Stock Yards Co. and the State of Kansas, 183 U. S. 79, at 105, the Court, speaking by Mr. Justice Brewer (1901), in citing with approval the language of Mr. Justice Catron in 2 Yerger, 260, 270, said:

> Every partial or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise, odious individuals and corporate

bodies would be governed by one rule, and the mass of the community, who made the law, by another.

The Fourteenth Amendment forbids any State to "deny to any person within its jurisdiction the equal protection of the laws."

The Court then quoted from Cooley's Constitutional Limitations (5th ed.), pp. 484, 486:

Those who make the laws "are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at the plow." This is a maxim in constitutional law, and by it we may test the authority and binding force of legislative enactments.

So we have the clear declaration of the Supreme Court of Kansas that legislation by which one individual or even one set of individuals is selected from others doing the same business in the same way and subjected to regulations not cast upon them, is a discrimination forbidden by the constitutional provision which obtains both in the Constitution of Kansas and in that of the United States to the effect that the equal protection of the laws is guaranteed to all.

Illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of procedure. This can be obviated only by adhering to the rule that constitutional provisions for the security of persons and property should be construed liberally. Otherwise they are deprived of half their efficacy and lead to a gradual depreciation of the right, as if it consisted more in sound than in substance. The policy of the law no longer should impliedly exempt any State property from taxation unless exclusively used for purely public purposes.

No one can question the propriety of a general act taxing profit producing property when the actual right to use is vested in a private person. But to uphold a tax statute which can apply only to a few persons in one ward of a city would be to sanction an unreasonable and unjust law necessarily resulting in the destruction of those safeguards with which the framers of our Constitution so carefully surrounded it.

Mr. Trefry of Marblehead: The chairman of the committee on Taxation is not here this morning, — I see he has just come in, — and I should like to say in relation to this matter that it probably has some merit in it, but I always have felt that it was a matter not to be taken up by the Convention, but which could be handled quite as well under a general law. It seems to me that it embodies quite as much a question of the Commonwealth's policy with respect to public lands as it does the question of taxation. And as I have said before, in the minds of the committee who voted against the proposition it seemed that it could be dealt with by the Legislature and does not require an amendment to the Constitution.

The motion to reconsider was negatived.

XLVIII.

POWERS OF THE GOVERNOR.

Messrs. John Q. A. Brackett of Arlington, George H. McCaffrey, Jr., of Boston, H. Heustis Newton of Everett, Robert Luce of Waltham and Josiah Quincy of Boston presented resolutions numbered, respectively, 74, 76, 78, 165 and 166.

The committee on the Executive reported, July 16, 1917, the following new draft (No. 311):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined articles of amendment: —

ARTICLES OF AMENDMENT.

1. The executive department of the government of the Commonwealth shall include all executive and administrative functions and offices and all offices not coming under the judicial or the legislative department. All State officers and employees included in the executive department, excepting officers whose election by the people is provided for by the Constitution, shall be under the authority and control of the Governor, and all such officers and employees without exception shall furnish him with any official report, information or opinion which he may require.

2. The Governor may remove any officer subject to appointment by him and coming under the executive department for such specific cause as he may assign in writing, provided that he shall first give such officer an opportunity, with three days' notice, to be heard by him upon the question of such removal and to file any reasons against the same; the order of removal and any such reasons against the same shall be filed with the Secretary of the Commonwealth and shall be a public record.

3. The term of office of the Governor and of the Lieutenant-Governor elected at the regular State election in the year nineteen hundred and eighteen, and in every alternate year thereafter, shall be for two years from the first day of January next ensuing.

4. At the beginning of each regular session and at such other times as he may deem proper the Governor shall give to the General Court information as to the state of the Commonwealth and recommend to its consideration such measures as he shall judge necessary or expedient. He may make such recommendations, either orally or by written message, to either branch of the General Court or to both branches convened in joint session; so far as practicable he shall accompany any specific recommendations so made with drafts of bills proposed by him. Every such bill shall be designated as an executive bill and shall be before the General Court for its action, subject to any amendment thereof which the Governor may make by message while the same is pending. If any such bill is referred to a committee of the General Court or of either branch thereof a report

shall be made thereon within thirty days of the date upon which the same was recommended by the Governor; and after the expiration of five days from the time when it is made such report shall be given precedence in consideration in both branches over all other reports or bills. No such executive bill shall be rejected in either branch of the General Court except by a vote taken by yeas and nays.

5. In case an executive bill which the Governor has by message recommended to the General Court is not enacted, in a form approved and signed by him, during the session at which it was so recommended, the Governor may refer such bill to the people by filing with the Secretary of the Commonwealth not later than the first day of August next following a notice of such reference accompanied by a copy of the bill so recommended. The question of approving or rejecting such bill shall be placed upon the official ballot, in a form approved by the Governor, and voted on at the State election, whether regular or special, next ensuing; and if such bill is approved by a majority of the voters voting thereon the same shall become law and shall take effect at the expiration of thirty days after the election at which it was approved, or at such time after the expiration of the said thirty days as may be fixed in such bill.

In case any bill disapproved by the Governor shall be passed by the General Court notwithstanding his objections, the same shall not take effect until thirty days from the date of such passage, and the Governor shall have the right at any time within such period to suspend the operation of such bill until the same has been referred to the people by filing with the Secretary of the Commonwealth a written notice of such suspension and reference. The question of approving or rejecting such bill shall be placed upon the official ballot, in a form approved by the Governor, and voted on at the State election next ensuing; and if such bill is approved by a majority of the voters voting thereon the same shall become law and shall take effect at the expiration of thirty days after the election at which it was approved, or at such time after the expiration of the said thirty days as may be fixed in such bill.

If any bill disapproved by the Governor fails of passage by the General Court in the manner provided in the Constitution, the General Court may, by resolve which shall take effect without being laid before the Governor for his approval, refer such bill to the people in the manner and with the effect prescribed and set forth in the forty-second article of amendment of the Constitution.

6. The Governor may at any time attend a session of either branch of the General Court and speak upon any pending bill. Upon the written request of the Governor any executive or administrative officer shall be admitted temporarily to a seat in either branch of the General Court with the right to speak upon any matter coming within or under his official authority, but without a right to vote; and upon the request of either branch made through the Governor any such officer shall appear in person before it.

Either branch of the General Court shall have the right to call upon the Governor, or through the Governor to call upon any executive or administrative officer, to furnish in writing information as to any matter coming within or under his official authority, provided that such information need not be furnished if the Governor deems

it incompatible with the public interest to communicate the same.

7. The Governor shall have the right to return any bill within five days after it shall have been laid before him to the branch of the General Court in which it originated with a recommendation that any amendment or amendments specified by him be made therein; such bill shall thereupon be before the General Court and subject to amendment and reënactment, but no amendment so recommended by the Governor shall be rejected in either branch except by vote taken by yeas and nays. If such bill is reënacted in any form it shall again be laid before the Governor for his action, but he shall have no right to return the same a second time with a recommendation to amend.

The Governor shall have the right before acting upon any such reënacted bill to disapprove and to strike out in the same any portion thereof which he may deem properly separable from the remainder, provided that within five days of the time when such bill was laid before him he shall return to the branch of the General Court in which it originated a true copy of the portion so disapproved, together with his objections thereto in writing; such portion shall thereupon be subject to reconsideration and repassage in the same manner and subject to the same requirements as a bill disapproved by the Governor, and if so repassed such portion shall be deemed to be reinstated in such bill and shall have the force of law as a part thereof.

8. Whenever the offices of the Governor and Lieutenant-Governor shall both be vacant, by reason of death, absence from the State, or otherwise, then one of the following officers, in the order of succession herein named, namely, the Secretary, Attorney-General, Treasurer and Receiver-General, and Auditor, shall, during such vacancy, have full power and authority to do, and execute, all and every such acts, matters and things as the Governor or the Lieutenant-Governor might or could lawfully do or execute, if they, or either of them, were personally present. Article VI of Section III of Chapter II of the existing Constitution is hereby annulled.

In these articles of amendment the word bill shall be deemed to include a resolve.

Accompanying the resolution reported by the committee on the Executive was the following report signed by Mr. Josiah Quincy of Boston, for the committee:

In recommending the adoption of the above Articles of Amendment, the committee on the Executive submits the following report: —

In accordance with the order passed by the Convention the proposals recommended are divided into amendments, numbered from 1 to 8 inclusive, each of which can be separately submitted to the people. The proposals here grouped together are, however, so related to each other, as steps in the carrying out of a consistent policy, that the question of separate or joint submission, if they meet with the approval of the Convention, should be left for final determination later.

Moreover, some of these proposals are closely connected with action to be taken upon interlocking subjects referred to other committees, particularly to the committee on State Administration; when such action has been decided upon this committee will be glad to join in any effort to coördinate all such related amendments into one consistent group. Obviously the above proposals numbered 1 and 2 are related to the comprehensive plan of administrative reorganization, originally drafted in document numbered 267, which is still under consideration by the above-named committee, and should ultimately be brought into harmony with any such plan, if adopted; the proposal numbered 6 also has a similar relation to some extent. But the committee on the Executive has thought it the best course to make the present report within the time fixed by the rules and to lay its present proposals

before the Convention for consideration; and these proposals will be found in entire harmony with the underlying policy upon which the comprehensive plan of administrative reorganization above referred to is based. If, however, further consideration, by two or more committees sitting jointly, of such related subjects should be deemed advisable, under a new reference by the Convention, this committee will be glad to participate therein.

The desirability of such further consideration is particularly clear in respect to proposals affecting the Executive Council. The committee on the Executive has not yet been able to agree either upon the abolition of the Council, with transfer of its powers to other branches of the State government, or upon the proposed reorganization of the Council as a Cabinet made up of heads of departments appointed by the Governor, similar to the Cabinet in our National government. The chief difficulty which stands in the way of a change relates to the confirming power now exercised by the Council, which clearly could not well be vested in a Council whose members were appointed by the Governor. The objections to abolishing any confirmation are strongly urged, particularly in the case of judicial appointments; but if any power of confirmation is to be retained, the problem of finding any other authority more suitable than the Council to entrust with its exercise has yet to be solved. The reorganization of the Council on wholly new lines is a central feature of the plan under consideration by the committee on State Administration; the committee on the Executive therefore believes, and recommends, that it should be discharged from further separate consideration of this subject and that the same should be referred to the above-named committee and this committee sitting jointly; and the committee on State Finance might well be added to sit jointly under such new reference on account of the important relations which exist between executive and administrative reorganization and the finances of the Commonwealth, particularly if a budget system is to be adopted.

It should be stated in this connection that in the opinion of this committee the amendment establishing a comprehensive budget system which the committee on State Finance has now reported is closely related to the group of amendments herewith reported by this committee; each of these reports is complementary to the other and there is no conflict between their several recommendations. A coördination of administrative and executive departments under the authority of the Governor, and an enlargement of his powers and responsibilities, as recommended by this committee, seems almost essential if satisfactory results are to be secured under the proposed budget system. This committee had voted to include in the group of amendments now reported provisions for the submission of department estimates to the Legislature by the Governor before appropriations can be made and for giving the Governor the right to veto or to reduce items in appropriation bills; these provisions are of primary importance from the standpoint of giving proper financial control to the executive department, and they have been omitted in the group of amendments now submitted only because this subject has now been dealt with in a broader and more comprehensive form than was possible for this committee within its province. On account of the relation which these two reports bear to each other it is suggested that they might well be considered together by the Committee of the Whole. State finance in its broad aspects and the establishment of a budget system are certainly related very closely to the position of the chief executive in the government of the State and the authority which is to be vested in his office.

Coming to the group of amendments now reported by this committee, the proposal numbered 8, providing for succession to the office of Governor, may first be disposed of, as this is largely formal in its nature. The need of some amendment of this character was brought before the committee by a resolution introduced by our oldest living ex-Governor, now a distinguished member of this Convention. In case of a vacancy in the offices of Governor and Lieutenant-Governor, the Constitution now places the succession in the Executive Council or a majority of its members. It certainly seems undesirable to provide for a plural-headed chief executive in a contingency which is by no means a remote one. It has seemed to the committee desirable to provide for the succession of individual executive officers, naming a sufficient number to insure against any reasonable possibility of a vacancy, as has been done by Congress in the case of succession to the Presidency of the United States.

A brief explanation of the amendments numbered 1 to 7, inclusive, may here be given for the information of the Convention. This committee believes that each of these amendments is important in itself, and that the adoption of the whole group would effect a far-reaching improvement in the administration of our State govern-

ment, giving the chief executive the position and authority essential to secure sound and efficient administration. This is accomplished, it is believed by the committee, not only without diminishing any of the proper functions of the legislative department, but with an important increase in the legitimate powers of the Legislature to throw all necessary light upon the operation of the administrative machinery of the State and to hold the Governor to a responsibility fully commensurate with the powers of his office.

One of the evils of the present system is that executive and administrative power has become diffused among a large number of boards, commissions, bureaus and departments, created from time to time under various laws, which are neither coordinated with each other, nor subordinated to the authority of the Governor, nor under any effective legislative control. The primary purpose of the amendments now reported is to integrate our State government as an organic whole and to introduce effective responsibility into all its workings, — responsibility to the Governor so far as honest and efficient administration is concerned, responsibility to the Legislature in respect to observance of the laws which it passes and the proper expenditure of the public money which it appropriates. An effective weapon of the Legislature in enforcing such responsibility is its power to call for official information and to throw the full light of publicity wherever it may be needed; this of itself will secure the remedy of most abuses or glaring administrative defects. The Governor or the Legislature are therefore both interested, for the protection of the public welfare, in securing a better coördination of the powers of the State government and in bringing under more effective control and responsibility the large number of branches of our State government which at present are not practically responsible to any superior authority. Even if we grant that in the past evolution of our State government the creation of a multitude of semi-independent boards and commissions has been the only feasible method to secure the specialized attention necessary to meet the economic and social demands of a period of unprecedented development, — and even if we recognize, and take pride in, the faithfulness and ability with which these newer organs of government, many of them unpaid, have upon the whole performed their functions, — the time for a change of system has now arrived. Coördination and centralized responsibility should now take the place of the present wide and complicated division of governmental powers. This committee believes that the effecting of such a change is one of the larger opportunities and duties of this Convention. Even the brief provisions of the first two amendments recommended will in large measure bring about the integration which is so much needed.

The amendments numbered 4 to 7, inclusive, are calculated to secure a very important object closely related to efficient and responsible executive government. Under our American system of written Constitutions, and in spite of the attempt to observe the theory of a strict division and separation of powers between the executive, judicial and legislative departments, the chief executive is given important power and influence in respect to legislation. The right to disapprove or veto legislative bills has given the executive a participation in law-making which is none the less real because it is negative in form. No argument is needed to demonstrate the importance and the advantages of the Executive veto in the working of our governmental system; and the potential veto shapes legislative action so constantly that the actual veto does not have to be used very frequently in practice.

But the executive has also been given an important right of a positive nature in relation to legislation, and although this lacks any legal power of compulsion it is none the less influential in practice. In spite of the doctrine of separation of powers above referred to, with its calculated checks and balances, it is the recognized right and duty of the American executive to advise and counsel the Legislature in the exercise of its power to make laws, — to recommend and to urge the passage of particular measures. Thus the President of the United States is required by the Federal Constitution from time to time to "give to the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary or expedient." And such executive recommendations are by no means confined to matters relating to the administrative side of government, or to subjects within the special knowledge of the executive; they cover the whole field of legislative measures and of proposed changes in public policy.

Moreover, this advisory but potent influence of the executive in shaping of legislation, in securing the consideration of those measures which are believed to be most urgently required to meet changing conditions, — even in the formulation of such measures in elaborate bills, — has been constantly growing in the development of our political life. The people have of late years been expecting more and more of the executive in the way of political leadership, even of party leadership where

legislation is under party control. This is a natural development in our political growth, — is indeed almost inevitable in the effort to adapt our governmental organization to meet the urgent demands of economic and social change accelerated beyond all precedent. However faithfully and ably a legislative body may perform its duties, it cannot supply the element of political leadership, of responsible initiative; its very numbers, its very method of election by a large number of constituencies, prevent this. The executive alone represents the whole body of the people because he alone is elected by and is responsible to them; in State government it is therefore chiefly to the Governor that the people look for improvements or reforms, whether these are to be secured by administrative or by legislative means. They expect him to put forward and to push to success legislative policies of his own, — not merely to content himself with ceremonial and supervisory duties.

This tendency in our political development now calls for corresponding constitutional changes, particularly needed in this State, in order that through formal recognition this newer function of the executive may be made more effective for good and at the same time subject to greater publicity and responsibility. If the Governor is to be in fact a leader of political thought, an initiator of progressive measures, or even an authoritative party leader, it is certainly desirable to recognize these conditions and to provide more fully for the powers and responsibilities which should accompany such a development of the executive function.

This can best be accomplished by giving formal recognition to the extra constitutional relations between the executive and legislative departments which now exist to so considerable an extent in fact. If the growth of our institutions is in the direction of giving to the executive, in some measure at least, the influence or control over the initiation and passage of legislation which is exercised by the prime minister under the parliamentary or cabinet system of government, it is best to recognize this relation; but at the same time we should give to the legislative department some of those methods of holding the executive to his full responsibilities which have been so effectively developed under the parliamentary system.

It would certainly seem both possible and desirable under our constitutional framework to bring the executive and legislative departments into closer contact with each other, strengthening the advisory influence of the executive over legislative policies and measures, and making more effective and operative in practice the means possessed by the Legislature, — through its control of the purse-strings and its powers of investigation and inquiry, — for exercising a salutary check upon the administrative side of government. The amendments reported by this committee will tend to develop in an open and logical manner, and to formulate in concrete and intelligible form for final decision by the people, those issues and conflicts between the executive and legislative departments of the government which have so often in the past been the stepping stones of political progress. Of course it is not claimed that the executive will always be right and the legislative branch always wrong when such issues arise between them; it is merely urged that the formulation of a clean-cut issue for decision by the voters at the polls is the best method yet discovered for insuring intelligent democratic control.

If the Governor proposes definite bills to the Legislature, embodying the political program which he favors, and if the Legislature deems it unwise to pass such bills, we have an excellent issue of policy upon which to go to the people. The provisions of the amendment numbered 5 supply a simple method of making this appeal to the voters, and a method more direct and authoritative than is possible under the parliamentary system. This amendment allows the Governor to invoke the decision of the people upon any measure which he recommends if it is rejected by the Legislature. Under the parliamentary form of government such a decision is secured only by a dissolution of the legislative chamber, with a new election of its members; and this means that all the issues involved in a change of government are presented to the people at once, — there is no direct and immediate popular decision upon the particular measures in dispute which have brought about the dissolution. But under the plan proposed by this committee the legislative measures over which the issue between the executive and legislative departments arises are submitted by the Governor to the people, through a referendum taken at the next election, for final adoption or rejection by them. This proceeding is direct and final and the questions at issue are definitely settled, — either the policy of the Governor or the disapproving attitude of the Legislature is endorsed, and if the proposed measures meet with favor at the polls they go into effect at once. The general interest can thus be made paramount over the balancing between local or special interests which often paralyzes legislative action.

Coming now to the proposed amendments *seriatim*, the first defines in two sentences

the scope of the Governor's executive authority. It subordinates to him, as "supreme executive magistrate," the administrative and executive organization of the State so far as this is or may be created by statute; the constitutional offices filled by election by the people are not here affected. It is worthy of note that our Constitution is particularly lacking in any definition of the executive power; the Governor is given his high-sounding title and little else in the way of civil authority, even in combination with the Council. He can indeed "hold and keep a Council for the ordering and directing of the affairs of the Commonwealth"; but it would be difficult to give a definite meaning to this vague phrase. His military powers are to be sure considerable, but any enumeration of his civil powers is conspicuously absent.

The second amendment gives to the Governor independent power of removal; this seems to the committee essential if any real responsibility is to be introduced into our administrative system. The power of removal is of a very different nature from the power of appointment; whatever confirmation of appointments may be required the right to remove should be unhampered except by provisions to insure publicity and a short delay. If a permanent State Civil Service Board is established by constitutional amendment, — and this committee would heartily support such action, — such board might well be given the authority to secure such publicity and delay before a removal takes effect, but without impairing the full and final responsibility of the Governor.

The third amendment provides for the election of the Governor and Lieutenant-Governor for a two-year term. Independent of any action which may be taken upon the general question of biennial elections, this committee believes that the chief executive at least should be given a two-year term. The ordeal of an annual political campaign and election to which the Governor is now subjected is peculiar to this Commonwealth, all the other States of the Union now choosing their Governors for terms running from two to five years; it seems unnecessary and undesirable to continue the practice of electing the Governor annually in this Commonwealth, and it certainly hampers him seriously in the development of his policies and in giving the thought and energy which should be called for to performing the duties of his office.

The fourth amendment gives formal recognition and authority, now lacking in our Constitution, to the practice, established in this State no less than in others where it has formal sanction, of executive recommendations to the Legislature. It further places these recommendations upon a new footing by establishing a class of bills designated as executive bills, which must be acted upon by the Legislature within a reasonable period. The Governor is thus encouraged to give definite formulation to recommendations which might otherwise be left in the form of glittering generalities, never resulting in definite bills. There is no better test of the practicability of a suggested change than to require its proponent to reduce it to a concrete proposition in the form of a carefully thought out and properly drafted bill. The more novel and important recommendations of the Governor should be subjected to just this step; if his bills will not stand legislative scrutiny and criticism he will justly invite the diminution in his influence and prestige which will follow.

The fifth amendment gives the Governor the right to submit directly to the people, for adoption or rejection by them, any executive bill which the Legislature refuses to pass. Some of the reasons supporting this proposal have been indicated above. It is believed by the committee that such a provision is a safe one, as the official responsibility of the Governor will cause him to use such a power with discretion, and only when he believes that the public interest requires direct action by the people. Such a provision will certainly tend to introduce more definite and important issues in our political campaigns and to place more emphasis upon the attitude of candidates for the office of Governor in respect to proposed policies and measures.

The amendment numbered 6 is intended to bring about closer contact between the executive and legislative departments and to bring them into better working relations with each other. As every bill passed by the Legislature has to come before the Governor for his action there seems no reason why he should not take part in the discussion of any pending measure if he sees fit to do so. Any other executive or administrative officer is also to be allowed to appear upon the floor and to speak upon any matter under his official authority provided that the Governor shall request that he be allowed to do so. While such officers frequently appear at present before committees of the Legislature it is believed that good results will follow from affording them in proper cases an opportunity to be heard by the whole body which finally passes upon a question. To balance this new executive privilege of participa-

tion in legislative discussion, the right of the Legislature to require information in the possession of the executive is formally recognized; and it is also given the right to call for the personal appearance of an administrative official, if this is deemed desirable.

The amendment numbered 7 gives the Governor a very desirable power which is provided for by the Constitutions of a number of States. Instead of being confined to the two courses of signing a bill or returning it with his disapproval, this proposal would allow the Governor a third alternative, — he would be permitted to return a bill with recommendations for its amendment. Even with all possible legislative care errors are sometimes found in bills after they reach the Governor's office, and these can only be corrected by the cumbrous process of having the Senate recall the bill, and this can only be done by unanimous consent. Aside from the correction of errors or defects, it would certainly seem advantageous, and consistent with the other provisions reported by this committee, to allow the Governor to recommend amendments. Whether these are adopted or not the bill would be returned to him for his action; and it is further provided in the case of such a bill that the Governor may approve a portion and disapprove another portion, the disapproved portion being then sent back to the Legislature with a right to pass it over his objection.

For the Committee,

JOSIAH QUINCY.

[Mr. Benton of Belmont, having been prevented because of illness from attending the sessions of the committee, has taken no part in this report.]

The resolution (No 311) was taken up for consideration by the Convention Tuesday, July 16, 1918.

There being no objection, at the request of Mr. Quincy the proposals contained in the resolution were considered and acted upon separately and in the following order: 1, proposal No. 8; 2, proposal No. 6; 3, proposal No. 7; 4, proposal No. 1; 5, proposal No. 2; 6, proposal No. 4; 7, proposal No. 5; 8, proposal No. 3.

Proposal No. 8 was ordered to a third reading Tuesday, July 16, as follows (No. 397):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

Whenever the offices of the Governor and Lieutenant-Governor shall both be vacant, by reason of death, absence from the State, or otherwise, then one of the following officers, in the order of succession herein named, namely, the Secretary, Attorney-General, Treasurer and Receiver-General, and Auditor, shall, during such vacancy, have full power and authority to do, and execute, all and every such acts, matters and things as the Governor or the Lieutenant-Governor might or could lawfully do or execute, if they, or either of them, were personally present. Article VI of Section III of Chapter II of the existing Constitution is hereby annulled.

This proposal was passed to be engrossed Tuesday, August 6, in the following form as changed by the committee on Form and Phraseology (No. 401):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Article VI of Section III of Chapter II of the Constitution is hereby annulled and the following is adopted in place thereof:

Whenever the offices of Governor and Lieutenant-Governor shall both be vacant, by reason of death, absence from the State, or otherwise then one of the follow-

ing officers, in the order of succession herein named, namely, the Secretary, Attorney-General, Treasurer and Receiver-General, and Auditor, shall, during such vacancy, have full power and authority to do and execute all and every such acts, matters and things as the Governor or the Lieutenant-Governor might or could lawfully do or execute, if they, or either of them, were personally present.

It was voted, Tuesday, August 15, to submit the proposal to the people.

The proposal was ratified and adopted by the people, Tuesday, November 5, 1918, by a vote of 172,125 to 78,245.

Proposal No. 6 was rejected Tuesday, July 16, by a vote of 37 to 124.

Mr. Clarence W. Hobbs, Jr., of Worcester moved that proposal No. 7 be amended by striking out, in lines 120 to 122, inclusive, the words ", but no amendment so recommended by the Governor shall be rejected in either branch except by vote taken by yeas and nays"; and by striking out, in lines 127 to 140, inclusive, the words "The Governor shall have the right before acting upon any such reënacted bill to disapprove and to strike out in the same any portion thereof which he may deem properly separable from the remainder, provided that within five days of the time when such bill was laid before him he shall return to the branch of the General Court in which it originated a true copy of the portion so disapproved, together with his objections thereto in writing; such portion shall thereupon be subject to reconsideration and repassage in the same manner and subject to the same requirements as a bill disapproved by the Governor, and if so repassed such portion shall be deemed to be reinstated in such bill and shall have the force of law as a part thereof."

These amendments were adopted.

Proposal No. 7, as amended, was ordered to a third reading Wednesday, July 17, by a vote of 99 to 32, as follows (No. 398):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

The Governor shall have the right to return any bill within five days after it shall have been laid before him to the branch of the General Court in which it originated with a recommendation that any amendment or amendments specified by him be made therein; such bill shall thereupon be before the General Court and subject to amendment and reënactment. If such bill is reënacted in any form it shall again be laid before the Governor for his action, but he shall have no right to return the same a second time with a recommendation to amend.

This proposal was passed to be engrossed Tuesday, August 6, in the following form as changed by the committee on Form and Phraseology (No. 402):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The Governor, within five days after any bill or resolve shall have been laid before him, shall have the right to return it to the branch of the General Court in which it originated with a recommendation that any amendment or amendments specified by him be made therein. Such bill or resolve shall thereupon be before the General Court and subject to amendment and reënactment. If such bill or resolve is reënacted in any form it shall

11 again be laid before the Governor for his action, but he
12 shall have no right to return the same a second time with
13 a recommendation to amend.

It was voted Tuesday, August 15, to submit the proposal to the people.

The proposal was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 164,499 to 76,972.

Proposal No. 1 was amended, on motion of Mr. Josiah Quincy of Boston, by inserting after the word "Constitution", in line 10, the words ", and officers having quasi-judicial powers or functions, which officers may be designated by law".

Proposal No. 1, as amended, was rejected Wednesday, July 17, by a call of the yeas and nays, by a vote of 59 to 115.

Proposal No. 2 was withdrawn.

Proposal No. 4 was considered Thursday, July 18.

Mr. Ralph L. Theller of New Bedford moved that the proposal be amended by inserting after the word "bills", in line 51, the words ", except the general appropriation bill".

This amendment was rejected.

Mr. Charles G. Washburn of Worcester moved that the proposal be amended by striking out, in lines 40 to 53, inclusive, the words "designated as an executive bill and shall be before the General Court for its action, subject to any amendment thereof which the Governor may make by message while the same is pending. If any such bill is referred to a committee of the General Court or of either branch thereof a report shall be made thereon within thirty days of the date upon which the same was recommended by the Governor; and after the expiration of five days from the time when it is made such report shall be given precedence in consideration in both branches over all other reports or bills. No such executive bill shall be rejected in either branch of the General Court except by a vote taken by yeas and nays", and inserting in place thereof the words "referred to the appropriate committee and thereafter take the regular course of a legislative bill".

This amendment was adopted, by a vote of 115 to 4.

Proposal No. 4, as amended, was rejected Thursday, July 18, by a vote of 66 to 108.

Proposal No. 5 was considered Thursday, July 18.

Mr. Joseph Walker of Brookline moved that the proposal be amended by striking out, in lines 56 and 57, the words "during the session at which", and inserting in place thereof the words "before the first day of July after"; by inserting after the word "Governor", in line 57, the words ", if said bill has received the affirmative votes of one-third of the members of the House of Representatives present and voting thereon,"; and by striking out, in lines 71 to 95, inclusive, the words "In case any bill disapproved by the Governor shall be passed by the General Court notwithstanding his objections, the same shall not take effect until thirty days from the date of such passage, and the Governor shall have the right at any time within such period to suspend the operation of such bill until the same has been referred to the people by filing with the Secretary of the Commonwealth a written notice of such suspension and reference. The question of approving or rejecting such bill shall be placed upon the official ballot, in a form approved by the Governor, and voted on at the State election next ensuing; and if such bill is approved by a majority of the voters voting thereon the same shall become law and shall take effect at the expiration of thirty days after the election at which it was approved, or at such time after the expiration of the said thirty days as may be fixed in such bill.

"If any bill disapproved by the Governor fails of passage by the General Court in the manner provided in the Constitution, the General Court may, by resolve which shall take effect without being laid before the Governor for his approval, refer such bill to the people in the manner and with the effect prescribed and set forth in the forty-second article of amendment of the Constitution."

These amendments were rejected, by a vote of 25 to 70.

Proposal No. 5 was rejected Thursday, July 18, by a vote of 25 to 99.

Proposal No. 3 was taken up for consideration by the Convention Thursday, July 18, but the further consideration was postponed until the other matter in the Orders of the Day had been disposed of. It was rejected Wednesday, August 14.

THE DEBATE.

Mr. QUINCY of Boston: I desire to move, on behalf of the committee on the Executive, that the eight amendments included under this one resolution be considered in a different order from the order in which they are numbered in the report. This motion is made for the purpose of expediting discussion, and with the view of having the most contentious amendments, if there be such, acted upon last. I desire to move, and this is a motion on behalf of the committee, that the amendments reported by the committee on the Executive and printed in document No. 311 be considered and acted upon in the following order: First, the amendment numbered 8; second, the amendment numbered 6; third, the amendment numbered 7; fourth, the amendment numbered 1; fifth, the amendment numbered 2; sixth, the amendment numbered 4; seventh, the amendment numbered 5, and eighth, the amendment numbered 3. These amendments are all independent of each other, although, as stated in the text of the report which accompanies the resolution, somewhat related. Any one of these amendments can be adopted whether the other seven are adopted or not, and in that sense each amendment stands upon its own independent footing. As a matter of convenience, and in conformity to the wish of the committee, I trust that there will be no objection to taking the amendments up in the new order which is proposed.

Mr. BENTON of Belmont: The present Article VI of Chapter II, Section III, of our Constitution provides that:

> Whenever the office of the Governor and Lieutenant-Governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall during such vacancy, have full power and authority to do, and execute, all and every such acts, matters and things, as the Governor or the Lieutenant-Governor might or could, by virtue of this Constitution do or execute, if they, or either of them, were personally present.

That means that in case the Governor and the Lieutenant-Governor for any reason have vacated their office, that the duties of the office of chief executive pass to the Executive Council. The committee is unanimous in its report to you, gentlemen, that our Constitution should be amended in this respect, and that some one person should assume the office of chief executive of the Commonwealth, and therefore this provision No. 8 is offered to be substituted:

> Whenever the offices of the Governor and Lieutenant-Governor shall both be vacant, by reason of death, absence from the State, or otherwise, then one of the following officers, in the order of succession herein named, namely, the Secretary,

Attorney-General, Treasurer and Receiver-General, and Auditor, shall, during such vacancy, have full power and authority to do, and execute, all and every such acts, etc.

If the Executive Council becomes automatically Governor, or the chief executive, I do not know how much of a headed proposition you would have there, but your committee unanimously thinks it is not workable. We believe that the Executive Council should still be the council of advice and consent, but when they become the principal that is taken away from them, and therefore we recommend the change. It seems to me no more need be said upon the subject.

Mr. Washburn of Middleborough: I understood the motion of the gentleman from Boston (Mr. Quincy), in charge of the pending resolution, to mean that a separate vote was to be taken upon each provision. Am I correct in that?

The President: The Chair understood that the committee desired that the amendments be considered as separate amendments, each one forming a separate resolution.

Mr. Washburn: So that we are now voting on provision No. 8 and ordering that to a third reading, and nothing else; that is true, is it?

Mr. Quincy: If members will look at the resolution on page 2 of document No. 311 they will see that it reads that "it is expedient to amend the Constitution by the subjoined articles of amendment", — not singular, but plural, — and if they will look at the text of the report which follows they will also note that the proposals are divided into amendments each of which can be submitted separately to the people. The committee adds, however, that the proposals here grouped together are so related to each other as steps in the carrying out of a consistent policy that the question of separate or joint submission, if they meet with the approval of the Convention, should be left for final determination later. It seemed to the committee that that was the most orderly and desirable course. It may be that after the Convention has acted upon these eight separate propositions it will be desirable to combine two or three of them in one amendment.

Mr. Creed of Boston: I should like to ask the gentleman who has just taken his seat (Mr. Quincy) what we are going to do now. Are we going to vote for them as separate amendments, and after the whole eight have been voted upon, supposing either the whole or a part were in the affirmative, then join them, but not do any joining at the present time?

Mr. Quincy: That is absolutely correct.

The resolution numbered 8 was ordered to a third reading.

The President: The matter before the Convention at the request of the committee is No. 6.

No. 6 was as follows:

The Governor may at any time attend a session of either branch of the General Court and speak upon any pending bill. Upon the written request of the Governor any executive or administrative officer shall be admitted temporarily to a seat in either branch of the General Court with the right to speak upon any matter coming within or under his official authority, but without a right to vote; and upon the

request of either branch made through the Governor any such officer shall appear in person before it.

Either branch of the General Court shall have the right to call upon the Governor, or through the Governor to call upon any executive or administrative officer to furnish in writing information as to any matter coming within or under his official authority, provided that such information need not be furnished if the Governor deems it incompatible with the public interest to communicate the same.

Mr. QUINCY: Before proceeding to an explanation of amendment No. 6 on page 5, which in the revised order we are taking up second, I desire to occupy the time of the Convention for a few moments with a brief general statement.

In the first place, all of these eight amendments, of which we now have adopted one, are the subject of a unanimous report from the committee upon the Executive. The only qualification to that statement is this: The gentleman from Belmont (Mr. Benton), who has just spoken, was prevented by sickness from attending the sessions of the committee, which were numerous last year, while these matters were under consideration, therefore he was not at the time committed to the report. Recently, however, he has considered the report amendment by amendment with the members of the committee, and as I understand it dissents, or reserves his right to dissent, on only one of the series of 8 amendments, which he doubtless will state for himself when that amendment is reached; that is amendment No. 2, relating to the power of removal of the Governor. I should state also, as qualifying the general statement of unanimous action by the committee, that the gentleman from Boston who sits in the fourth division (Mr. Mansfield) also reserved his rights as to the resolution which is numbered 3, and which in the new order is No. 8, fixing the term of office of the Governor and the Lieutenant-Governor. With these two exceptions the report of the committee recommending these eight amendments represents its unanimous judgment.

Let me also ask on behalf of the committee the consideration and patience of the Convention that we may have the benefit, which has been accorded to other committees, of a presumption that the amendments which we have recommended have been maturely considered and *prima facie* are worthy of adoption. We ask serious consideration of these amendments, which are some of them among the most important that have been brought before the Convention. We will try not to weary the Convention with too lengthy expositions, which might be indulged in without exhausting the subject; and, following the evident desire of the Convention, we will try to expedite action so far as is consistent with intelligent decision, based upon understanding on the part of the Convention of each and every amendment which it is voting on.

Now let me say a word as to the make-up of the committee on the Executive and its work. I am the more anxious to say this because the committee, with the possible exception of its chairman, is composed of rather a modest body of gentlemen who do not take the floor as frequently as some other delegates. But the members of this committee are entitled to the weight which attaches to the fact that eight of them out of fifteen have served at one time or another in the General Court. I find that the aggregate legislative service of the eight members of the committee on the Executive who have so served comes to nineteen years, and one member of our committee,

its clerk, the gentleman from Westborough (Mr. Gates), enjoys the distinction not shared by many other delegates, of having served three years in the House and two years in the Senate. I dwell upon that fact in order to negative at the outset, if possible, any idea that the committee on the Executive is biased in any way in favor of extending the powers of the executive as against the powers of the legislative branch of the government. That is not our attitude.

If I may be personal to this extent, I will say for myself that while I have held an executive office, not under the Commonwealth of Massachusetts, for four years, I also, — many years ago I am sorry to say, — have had four years of service in the lower House of the Legislature; and I intend to be, and I think that I am, even-handed in my point of view as to the powers and responsibilities which it is desirable to impose alike upon the executive and upon the legislative branches of our government.

In short, this is no attempt to see how much power the committee on the Executive can take away from the legislative branch and can vest in the Governor. These amendments, and I am speaking particularly of the one which is now before us, constitute an attempt to secure a better coördination between the executive and the legislative branches, a better balancing of powers, — a basis which will give the Legislature more effective power within its domain and will give the Governor more effective power within his proper sphere.

There is one other plea that I also want to address to the Convention. We are all of us human, which means that we have our personal likes and dislikes. Members of the Convention may be disposed to consider these amendments from the standpoint of how they think they would have operated under certain Governors. Now, I want to make as strong a plea as I can to this Convention to consider these amendments impersonally. Let us forget the individuals who have held the office of Governor. Let us not be influenced by our friendships for, or our enmity to, or disbelief in, any particular gentlemen who have held the office of Governor. This is not a personal question. It does not turn upon the personality of the present chief executive or upon that of any chief executive in the past, or in the future. We are making a Constitution; we are not holding an election. We are trying to put into the Constitution those readjustments, redistributions or rebalancings of powers which, upon the average, will work for the good of the Commonwealth, — regardless of the particular individual who happens to be Governor, regardless of the particular men who from time to time may make up the General Court.

Now, coming specifically to the amendment numbered 6 in the original report, now renumbered as No. 2, which is immediately before us, let me call attention to the fact that by our adoption the other day of the resolution contained in document No. 325, providing for the preparation of a budget, we have passed upon one question closely related to the proposals contained in this article. That amendment, as already adopted and advanced one stage by this Convention, contains this clause:

> The Governor shall have the right, in person or by representative, to discuss any appropriation bill before either House of the General Court.

If my memory is correct I think that that particular clause, which introduces a very novel procedure, passed without specific objection. At any rate, it is contained in the resolution as adopted. And therefore we already have taken one important step in the direction of coördinating the executive and the legislative power, by bringing the executive into direct contact with the Legislature and by bringing the Legislature into direct contact with the executive.

We also find in this same budget amendment another clause which is related closely to the amendment numbered 6, now under discussion, that is the clause:

> The Governor may disapprove of any items or parts of items in a bill or resolve appropriating money.

That very greatly extends, so far as financial matters are concerned, the present veto power of the Governor. That clause I believe was adopted without any specific objection. Therefore it seems to me that the action of this Convention the other day in favorably acting upon this budget amendment at least has paved the way for considering favorably the proposals contained in amendment No. 6 on page 5.

The debate was resumed after the recess.

Mr. QUINCY: Continuing at the point where I left off before the recess, I should like to call attention to the fact, if any members were not then present, that the Convention now is considering not the whole of this report in document No. 311, but only the amendment on page 5 of that document numbered 6. Now, I will continue by reading to the Convention the comment upon that proposed amendment contained in the report which accompanies the amendments:

> The amendment numbered 6 is intended to bring about closer contact between the executive and legislative departments and to bring them into better working relations with each other. As every bill passed by the Legislature has to come before the Governor for his action there seems no reason why he should not take part in the discussion of any pending measure if he sees fit to do so.

In other words, while we lay down in our Constitution, as other State Constitutions do, the theory of the strict separation of executive, judicial and legislative powers, we know that the Governor exercises one very important legislative power, namely, the power of declining to approve, or of vetoing, the action of the Legislature. That is strictly a legislative function; it is a negative upon legislation, and to that extent, by universal American practice, the Governor does take part in the exercise of the legislative power. Moreover, by universal practice, he also takes part in the exercise of the legislative power to the extent of sending messages to the Legislature from time to time recommending such measures as he believes should be adopted in the public interest. Continuing the report says:

> Any other executive or administrative officer is also to be allowed to appear upon the floor and to speak upon any matter under his official authority provided that the Governor shall request that he be allowed to do so.

He does not have that right of his own initiative or as a matter of course. We do not propose anything of that sort. That privilege might be too much used or abused. We propose this only in cases where the Governor deems the matter of so much consequence that

he asks that the executive or administrative officer in charge of that particular branch of the State's business may be heard in person before the Legislature. That is the only occasion on which the officer comes before the Legislature.

Mr. WASHBURN of Middleborough: I do not on first reading so understand provision 6: "Upon the request of either branch made to the Governor" these various heads are to appear, I understand, not at the Governor's request.

Mr. QUINCY: The gentleman from Middleborough overlooked the language of paragraph 1. There are two paragraphs under section 6, containing correlative propositions, as they might be described. The first paragraph deals with the right of the Governor to appear or to send an executive officer before the General Court upon making a written request. The second paragraph covers a new correlative right which is given to the Legislature to call upon the Governor or upon any executive officer to appear before it. I was speaking upon the provision contained in paragraph 1 which gives the Governor the right upon his written request, not otherwise, to send an administrative or executive officer on to the floor of the Legislature to discuss some matter coming within his province.

To continue the report:

> While such officers [that is, administrative or executive officers] frequently appear at present before committees of the Legislature it is believed that good results will follow from affording them in proper cases —

which would be upon the initiative either of the Governor or of the Legislature, not on their own individual initiative —

> an opportunity to be heard by the whole body which finally passes upon a question. To balance this new executive privilege of participation in legislative discussion, the right of the Legislature to require information in the possession of the executive is formally recognized; and it is also given the right to call for the personal appearance of an administrative official, if this is deemed desirable.

In other words, the executive gets certain rights which it does not now possess and the Legislature acquires certain rights which it does not now possess. The whole object is to bring these two branches of our government, — which now operate very often too much at arms' length, with too little understanding on the part of each of the position of the other, — into closer relations.

Mr. NEWTON of Everett: Do I understand the gentleman to say that the Governor has no authority now to go before the Legislature on any matter that he sees fit?

Mr. QUINCY: By written message, yes. I know of no authority vested in the Governor, however, to enter the Legislature and to participate in a debate.

Mr. NEWTON: Does the gentleman know of any constitutional authority that forbids the Governor to appear before the Legislature in person or by written messages?

Mr. QUINCY: I do not know of any constitutional provision which prevents the Governor from doing so; but I should suppose that there would be general agreement that in the absence of a constitutional provision expressly authorizing such a proceeding, if the Governor entered the House of Representatives and seated himself on the floor and asked for the recognition of the Speaker to take part in a debate, his right to participate might be very seriously questioned.

And I am very sure that in the absence of an express constitutional provision the Governor would have no right to secure the presence of an administrative official upon the floor of the Legislature. Surely that can be done only by express constitutional provision.

Mr. NEWTON: May I ask the gentleman if it has not been the practice of the Legislature always to have executive or administrative officials appear before committees of the Legislature and explain any matters or to confer with them on any matters that are before the Legislature for consideration?

Mr. QUINCY: Certainly, that has been the practice, but this proposal is taking a step further. It is proceeding from the committee to the whole body of which the committee is a part, and it is providing simply the machinery by which, if the Governor, the chief executive of the State, thinks it in any case of sufficient importance, he can secure to a State official the privilege to be heard not merely by a committee which makes its report but by the whole body, by the branch of the Legislature before which the question is to come. This involves the right of members of the Legislature to question the official who so appears and to draw out information from him, which information will go directly to all of the 240 members of the House and make its impression upon them, instead of being confined to the members of a committee 12 or 15 in number.

Mr. NEWTON: May I ask the gentleman why that is not a direct and very violent interference with the right of the Legislature to be separated entirely in its work from the executive, if the Governor upon his own initiative can order an administrative officer to appear before the Legislature?

Mr. QUINCY: I cannot see any difference in principle between the present right of the Governor to get information, which may be simply the report of an administrative officer made to him, before the Legislature by written message, and the right of the Governor as provided for here to secure the personal presence of the administrative officer making such report. It is a difference in procedure, an important difference in procedure, or we would not be advocating it; but it is no invasion, in my mind, of any right of the Legislature. The presence of the official upon the floor of the Legislature is for information, in order to better enlighten members of the Legislature. I do not think the gentleman from Everett would suggest that the mere presence of an administrative official upon the floor is going to overawe the Legislature, is going to induce it, regardless of the merits of the case which he represents, to do whatever he may advocate. I do not think it is going to work that way at all. I think it is going to give a better chance to present a good case, but if the case is not a good one it is going to give a better chance to the Legislature, or to members of the Legislature, to show that the case is not a good one, and to secure the rejection of the administrative or executive proposal.

Mr. PARKER of Lancaster: I would inquire of the gentleman in charge of this measure whether it is not his opinion that under our present system of constitutional and legislative law the Legislature today upon its own motion, if it considers the proposition of sufficient importance, can request and indeed require the attendance before the Legislature itself of any executive officer of the Commonwealth,

thereby upon its own invitation and upon its own initiative acquiring directly the fullest information from any such executive officer with respect to any proposition advocated by the executive branch of the government.

Mr. QUINCY: The Legislature undoubtedly can so request at the present time. I think the power of the Legislature to so require might well be doubted under the constitutional provision for the separation of powers. But the question of the gentleman suggests the desirability of having such procedure taken upon proper occasion. If it can be taken now, what is the objection to having a formal constitutional provision by which, — and this I think the gentleman from Lancaster will agree is not provided for now, — the Governor can have the privilege of sending an administrative officer on to the floor, and by which, upon the other hand, the Legislature will be given the express power to call for the attendance of any administrative officer. At least this constitutional provision will tend to encourage the adoption of a procedure which to my mind brings the executive and the legislative into a better and closer working relation with each other, and thus enables questions to be got at at first hand and by the spoken word which now are dealt with only at arms' length, and as presented upon the printed page. I think we all recognize the value of debate. I do not think that experienced members of the Legislature will deny that in a great many cases if they had had the power to call an administrative officer who was back of a certain proposal on to the floor and to examine him, a much more illuminating view of the real essence of the matter could have been obtained. It might be favorable to the executive proposal or it might be unfavorable. That would all be threshed out in debate. The personal appearance of the man who backs the proposal will tend, to my mind, without bringing either authority under the domination of the other, to bring these two authorities, legislative and executive, into more efficient working relations with each other.

Mr. BUTTRICK of Lancaster: In relation to the Governor and Lieutenant-Governor having the privilege of the floor, I desire to call the attention of the gentleman from Boston to rule No. 99 of the House of Representatives:

> The following persons shall be entitled to admission to the floor of the House, during the session thereof, and to occupy seats not numbered: —
> (1) The Governor and Lieutenant-Governor, members of the Executive Council, etc.

And I would ask the gentleman from Boston if this is a fact, — and we must assume that it is, that these gentlemen have the privilege of the floor, — if it is not possible, in fact proper, for the members of the Legislature, if they desire information, to ask the information of the Governor and Lieutenant-Governor or whoever else may be in attendance upon the subjects under discussion.

Mr. QUINCY: As the gentleman from Lancaster must know very well, that is a privilege "more honored in the breach than the observance." I think that experienced members of the Legislature can recall very few, if any, occasions when the Governor has availed himself of the privilege given by that rule. But that explicitly states "admission to the floor." The rule does not recognize or provide

for the right of the Governor when he is on the floor to participate in debate or to address the General Court.

Mr. LOMASNEY of Boston: I should like to ask the gentleman if he has taken into consideration how much longer the Legislature would be liable to sit if we had the Governor and these other officials coming in to be examined by the 240 members of the House of Representatives rather than by a committee of the same.

Mr. QUINCY: My view is that this would be a power which would be used only very rarely. I do not believe that it will interfere with the normal operation of the committee system. I think that it will be used only in a very few cases in the course of a session.

Mr. LOMASNEY: If that is the case and we have the power to order or request them to appear now, why do we need a constitutional amendment?

Mr. QUINCY: I have endeavored to make clear my own view that the Legislature has the power to request only and has not the authority to require; and I believe that it is a matter of enough consequence to put into the Constitution, to provide for these two rights, — the right of the Governor to be heard himself, or by an administrative official upon his written request, and the right of the Legislature to call for the presence for such administrative officer.

I think that that covers in a general way all that I desired to say at this time before listening to the objections which may be made to this particular amendment.

Mr. EDWIN U. CURTIS of Boston: I should like to ask the gentleman what he means by the words in line 99, "any executive or administrative officer".

Mr. QUINCY: The gentleman from Boston in the first division, as an administrative officer of long experience himself, doubtless is quite aware of the difficulty of making any exact definition of what constitutes an executive officer or what constitutes an administrative officer. The writers upon political science do not seem to be able to draw the line very closely. If I may try to enlighten the gentleman from Boston as to what the committee is trying to do, our theory is that every branch of the government which is not in its nature judicial or legislative should be classed under the executive. We mean, I think, to include under the term "any administrative or executive officer" any officer not judicial or not legislative.

Mr. CURTIS: The gentleman has referred to my long service on a certain commission. The secretary of that commission is the executive officer of that commission. Does the gentleman mean that that executive officer could be sent here to the Legislature to answer questions for his superiors, the board?

Mr. QUINCY: That is very far indeed from being my idea. Any officer is admitted only upon the written request of the Governor. Now I have no doubt at all that in the case of a board it would have to be the chairman of the board, — that the Governor would not request, nor would it be in my mind proper, to have the secretary, who is a subordinate officer, appear for the board. It should be the head of the board, or where there is a plural head, one of the heads. The term "executive or administrative officer" is not intended to apply to the executive officer of a board, but the term is used in a broad sense.

Mr. NEWTON: I want to ask the gentleman one more question in regard to paragraph 6 — the last four lines, 110 to 113:

provided that such information need not be furnished if the Governor deems it incompatible with the public interest to communicate the same.

Will the gentleman kindly illustrate what he means by a danger to the State or any question that would be incompatible to public interest for the Governor to refuse a request of the Legislature? Is he not mixing this with the rights of the President, who deals, of course, with foreign relations?

Mr. QUINCY: Of course, as the gentleman recognizes, this phrase is taken from our Federal practice, where it is used partly in connection with foreign relations. The phrase appears here for this reason: The committee, in considering whether it was proper and safe to make an absolute requirement that in every case whatsoever the Governor should be obliged to furnish written information as to any matter coming under his official authority, thought that it would be safer to make this reservation. I can conceive of cases where it would not be wise or in the public interest to furnish such information in full at the time when it is asked for. Of course the Governor cannot transact public business secretly and cannot ultimately keep anything away from public knowledge; but, for instance, there might be a very dangerous and a delicate labor dispute, of a very threatening character, and it might not be in the public interest to have all information upon that acute situation furnished to the Legislature while the difficulty was in process of settlement. That does not mean that the Legislature is not entitled at the proper time to get the whole story about every matter which affects the interests of the State. I am not particular about that clause, but it seemed to me and to the committee a proper safeguard to insert in laying down this absolute hard and fast obligation upon the Governor to furnish written information.

Mr. LOMASNEY: I should like to ask the gentleman who has just taken his seat another question. On page 12 I find these words:

The people have of late years been expecting more and more of the executive in the way of political leadership, even of party leadership where legislation is under party control.

And then it is said further down the page:

They expect him to put forward and to push to success legislative policies of his own, —

and then further down the page these words appear:

If the Governor be in fact a leader of political thought, an initiator of progressive measures, or even an authoritative party leader, etc.

I should like to ask the gentleman if he is trying to change the Constitution in this State so as to make it easy for a man like Benjamin B. Odell to become Governor of this State?

Mr. QUINCY: I am obliged to the gentleman for calling attention to those sentences, and if he will permit me I should like to lay them in full before the Convention. What we say in our report on page 12 is this:

The people have of late years been expecting more and more of the executive in the way of political leadership, even of party leadership where legislation is under party control.

Now we all of us know the conditions which exist in Massachusetts, — that there is not very much of a party line drawn in our General Court. But that statement also is perfectly true, in the knowledge of everyone who follows developments, in our other States and in the Federal government. But in many States the Governor is the leader of his party and does propose what may be called party measures. Now this proposal, to my mind, does not tend to introduce any more of party government into Massachusetts than we have now. It is not so intended. Of course it may prove to be the case that certain measures advocated by the Governor will be backed by his party and opposed by the other party, and thus may become party issues. But in that case will they not be legitimate party issues? Will it not be a good thing for our politics to have more party issues in the broad sense of the word?

Now the gentleman from Boston in the third division also reads this sentence:

> They expect him [that is, the Governor] to put forward and to push to success legislative policies of his own, — not merely to content himself with ceremonial and supervisory duties.

Are not the duties of the Governor of Massachusetts at the present time largely ceremonial, — important as ceremonies are, — and supervisory? And would it not be a wholesome thing to introduce into our political life more legislative policies put forward by the Governor? But this is a change only in degree and not in principle. The Governor at the opening of the session puts before the Legislature his legislative policies. This amendment merely provides machinery for making it easier for the Governor to introduce legislative policies in the course of the session, and by direct personal contact with the Legislature instead of putting down his ideas on paper.

Then the gentleman reads this:

> If the Governor is to be in fact a leader of political thought, an initiator of progressive measures, or even an authoritative party leader, it is certainly desirable to recognize these conditions and to provide more fully for the powers and responsibilities which should accompany such a development of the executive function.

Now the idea of the committee, as I endeavored to say at the outset, is in every case to balance increased power with increased responsibility. We use that phrase "or even an authoritative party leader," but that does not mean that by these proposals we are trying merely to make the Governor into a party leader. He will remain, in my opinion, a leader of State policies, much more than he will become a party leader in the narrow sense of the word.

Mr. LOMASNEY: It seems to me that this is a bad amendment. It does not seem to me that it will bring good to the Commonwealth. The gentleman admits that the Legislature has few partisan divisions now. How can the members of the Legislature obey their oath of office and divide on strict party lines? They cannot, and they very seldom do. The people gain rather than lose by their action. He admits that is the situation to-day, yet he is trying now to change it so as to bring about another and thoroughly bad condition of affairs in our State government. The members here who have served in the Legislature know that the upper branch has had a great deal said against it, and it has been criticized in many cases by obeying orders from the executive chamber, such as "Kill this bill, kill that

bill, do not let them come to me". You will recall a great deal of that experience in your legislative careers. You know that you have been called upon frequently to sacrifice your own personal views and those of your constituents for the purpose of saving your party. Everybody knows that the Governor's office is not without its connection with the Legislature. The Governor's office has its messengers. The party in power seeks to put measures through that will be favorable to him and it does not try to embarrass him very often.

Now I suggest, sir, that this proposal will create in this State, for the first time under our Constitution, party government inside these legislative walls after the members have left party government behind on inauguration day when they took their oath of office. And that is one of the worst features of this measure. It has been my privilege to sit in the Legislature for a few years. I have served under several Governors. I have seen the bad effect of the Governor trying to control the Legislature, he, for the time being, forgetting his oath of office.

Mr. CREAMER of Lynn: I should like to ask the delegate from Boston if it is not better to have those influences open and aboveboard rather than secret.

Mr. LOMASNEY: You never hear very much of bad influences being exercised openly and aboveboard. The gentleman knows that as mayor of Lynn. [Laughter.]

Mr. CREAMER: That is the reason it seems to me healthier to have the proposition of the delegate from Boston in the second division (Mr. Quincy) accepted by the Convention. If the Governor has to come before the Legislature and plead his case openly to the whole Legislature, that to my mind is a much more healthy state of affairs than to have him appeal to representatives of that Legislature in secret.

Mr. LOMASNEY: That is what the Governor does. That is what the fathers of this Constitution intended that he should do, — that he should put his address in writing so there would be no question what he meant and so that the Legislature would have time to consider it. He could not in such a case deny afterwards that he ever said it, as men frequently do. [Applause]. He could not then do, as many of us frequently do here, change a word or two so as to make our remarks read right. [Laughter].

Mr. CREAMER: The member from Boston has not dwelt to any extent on the secret influences that the Governor under the present method is enabled to use with the Legislature. He confines himself to the Governor's present method of publicity by an inaugural address. As I understand it, what the delegate from Boston in front of me proposes is simply that he may do it by speech instead of by a written message. That is now being done by our President. I see no reason why it would be unwise for our Governor to do it. But I really would like to have the delegate tell me something about those secret influences.

Mr. LOMASNEY: The gentleman comes from the city of Lynn. He knows all about secret influences just as well as I do. The gentleman from Boston is making no reflections or insinuating that there are any secret influences. I imagine this Convention is composed of intelligent men and I made no suggestion about improper secret in-

fluences. I said what I believed to be the fact, that a Governor frequently reaches members of the Legislature who are of his own party and he often appeals to them to assist him because it might affect his political fortunes in the fall. And you now are starting to inject partisanship into the Constitution. I believe that the present system works all right. The Governor has the right to send his views in writing and no Legislature ever refuses to give them proper consideration. He also has the right to veto any improper legislation.

I have seen Governors change, — so have you. We know that Governors send in messages to the Legislature and then talk with members of that body in regard to them. We had an instance of that last year. Governor McCall sent in a message on the last day of the session requesting the Legislature to raise the fares on the Boston Elevated Railway. He sent for Representative Benjamin Loring Young and told him to put the bill through. And then when the young man, honestly thinking he was doing his duty, started to put the bill through the Legislature, that body balked and materially changed the bill. The Governor then denied that he had ever asked him to do it. There is no doubt about the truth of the above statement.

The newspapers of last year will give you the facts.

Now I say that the members of the Legislature are sacrificed many times because Governors take unfair advantage of them. I do not say that the Governors are right, I do not say that they are wrong, but I object as one man, to creating out of our Governors what has been tried to be created out of the mayors of some of our cities. I do not believe in having our Governor the recognized party leader in the Legislature so that everything that is done there shall be done with the one idea in mind, — of what effect it will have on his political fortunes in the Fall. I do not believe it is wise to change our Constitution to bring about such a situation. Governors interfere enough with the Legislature now without giving them a chance to point to the Constitution as their authority for doing it. That is the distinction I make. The Governors of this State are not selected nowadays from a class who do not understand something about politics, and they do these things. I was about to say that I never saw a worse condition of affairs than a few years ago here, when two or three members of the Legislature, in order to secure positions for themselves, sacrificed their party interest and stood and voted and did nearly everything for the policies of a Governor, which was not for the benefit of their own party, not for the good of the State, but for their own personal ends. And that is what this amendment would lead to more and more as time goes on. Let the Governor be impartial; let the Governor maintain a free mind; let him send in his communications to the Legislature; let him speak to those members whom he knows that he can trust, who have the people's interest at heart, and then be fair and impartial. Then if the Legislature does something it should not do, let him veto the bill or resolve, and it has its effect. And seldom does the Legislature override the Governor's veto now. It is sometimes done, but it is in a case where the Governor does not understand the sentiment. I remember, sir, the veto of Governor Wolcott of the bill relating to days of grace on sight drafts, when the Legislature almost unanimously voted to pass

the bill over his veto. The veto of that bill was a mistake of judgment on his part; it was no question so far as the Governor was concerned in that matter of trying to obtain political control. But if you put this amendment into the Constitution and thereby declare that you are creating this great power for the express purpose that is stated here, I cannot see how afterwards you can complain that the Governor should not attempt political control of the Legislature. Now, sir, I do not believe that this amendment is good legislation. The Governors are all human beings and I think they will do enough interfering without being authorized to do it by a Constitutional amendment, and I think we had better leave well enough alone.

Mr. CREAMER: I simply would like to submit to this Convention the fact that the delegate from Boston who has just sat down has made a very able argument in favor of this amendment without intending to do so. He already has alluded to an instance here of the present Governor of the State sending for a member of the last Legislature in order to get something done, and then, according to the delegate from Boston, going back on what he asked him to do. Now without entering into the merits of that question, I should like to respectfully submit to this Convention that it would be much better if the Governor had a message of that kind to deliver to the Legislature, that he should deliver it in person on the floor of this House instead of privately to members of the House.

Mr. GEORGE of Haverhill: If I understand anything about the history of the government of Massachusetts, I have come to the conclusion that this is the most mischievous piece of legislation ever proposed in any Convention or in any Legislature. We all understand, those who have had any experience, that the government of Massachusetts is a very simple proposition. We have our executive, legislative and judiciary departments. Everybody can understand that. It is not the business of the Governor to legislate. It never has been in this Commonwealth. The Constitution provides that he has a right to recommend legislation to the Legislature, and it is up to the Legislature to say whether those recommendations should be enacted into law; and it is the business of the Governor to administer the affairs of the Commonwealth, not to legislate.

This proposition seeks to make the Governor not only the executive but the Legislature as well. It is adopting the English system. That is, a Governor, if this constitutional amendment is adopted, not only tells the Legislature what to do but he threatens them. He says: "If you don't do as I tell you I propose to take this proposition to the people." He not only becomes a party leader but he becomes a party boss, and this sort of legislation makes him a party boss, and more than that, it makes him a State boss. While we are talking about establishing democracy throughout the world, this Convention is trying to establish an autocracy in this State the like of which does not exist in any nation on earth.

Now, what is the Governor going to do under this new dispensation? Why, he is going to recommend a certain law. Then if the Legislature does not pass it as he says, he can send in an amendment. He can amend that proposition, at any time, if he sees fit, during the session of the Legislature, by message. Then when the Legislature, made up of representatives representing people in all parts of the

Commonwealth, say it is their deliberate judgment that this bill ought not to pass, this proposal allows him not only to take it to the people, but allows the Governor to write the question out that shall be put up to the people.

Mr. QUINCY: May I suggest to the gentleman from Haverhill that he is discussing other amendments which are not now before us. We have the right to range over the whole general question, but it certainly would clarify our consideration of these amendments one by one if the gentleman would postpone his objections to amendments which are not now before us, namely, the executive initiative so called, until those amendments are reached.

The PRESIDENT: The Chair will state that under the action of the Convention taken by unanimous consent, the matters are being taken up separately, and the only matter before the Convention at the present time is that contained in No. 6 on page 5 of the document.

Mr. GEORGE: As I understand it, this is part of a system that has been promulgated by the gentleman from Boston (Mr. Quincy), and the report that he has read from was proposed by himself and nobody else had anything to do with the writing of the report except him. When he says "we," it means "I."

I happened to be in the Legislature some years ago during the time that the delegate from Boston was mayor, and I am familiar with the way that he thinks an executive ought to run the governorship of Massachusetts, because I am somewhat familiar with the way he ran the city of Boston. He was at the State House and bothered us more than all the rest of the mayors in the State. The reason for that was that he wanted to run Boston, and when he found the city council would not let him run Boston alone, he came to the State House to get the Legislature to make laws to permit him to run Boston without interference by the city council.

As I said at the beginning, this is part of the system. I do not believe that the Governor should go before the Legislature and make a stump speech. If you think it is more dignified than it is for him to stay in his office and write a message to the Legislature, then this proposal ought to be adopted. But I still think the proper place for the Governor is in the executive chamber. We have had a very peculiar situation here in Massachusetts. There are Democrats who seek the Democratic party nominations, and after they are nominated and elected they commence to traffic with people of other political parties; they care nothing for their Democratic party except to use it to get into office. We have Republicans who seek Republican nominations, and use the Republican party only for that purpose; when they get safely into office they commence to trade and dicker with their political opponents. Some high-toned people who masquerade as reformers call this non-partisanship; they have all sorts of names and devices to describe their infidelity to their party.

I am one of those who believe in political parties. As I understand it, political parties are simply an aggregation of gentlemen who believe in certain principles and policies of government. They do not agree upon all things, they do not see all things alike, they do not look at all things from the same viewpoint, but they agree upon certain general principles. There are always some very wise men who go round through the State representing themselves as being greater

and wiser than their party. Within the last eight years we have not had a Democratic candidate, or a Republican candidate for Governor, but wanted to make the platform for all the rest of their party. Why should one man make the platform for a great party? It is my judgment that it is for the party to make the platform, and then tender the candidate a nomination, and if he does not want to stand on the platform made by his party let him get off and go by himself. We have a lot of independents in Massachusetts, men who want to travel alone, they think they are a little better and wiser than other people, therefore they do not want to associate with other people. Nobody objects to that. Nobody cares whether a man wants to walk alone or not; nobody ever will bother him; people as a rule do not have any use for men who have no use for them.

This complicated system involved in these proposals is to make the Governor a greater factor than it ever was intended. The Governor holds the greatest office in Massachusetts, and they have got along very well for the last 140 years. We never have had any trouble. Governor Russell never had any trouble, all the preceding Governors never had any trouble until about the year 1911. Then of course we elected a reformer, that is, a man who had changed his politics six times in seven months. The moment he got into office he commenced to parcel out the offices and recommend the creation of more. We had at that time 13,000 names on the pay-roll of the Commonwealth. He had not been Governor six months before they began to build the east wing to the State House; they did not have room enough to take in all the people he wanted to appoint to office. After he and his successor got through, in five years, the names on the pay-roll amounted to 23,000-odd, — almost double. In the meantime the east wing had been completed, and they began the west wing, and it will be only a short time before we will have to have other wings to take care of all these people who are seeking public employment; and they contend on the floor of this Convention that our Governors have no authority. They have appointed all sorts of commissions to create other places when they could not find offices enough to go round. Up to the year 1905 we had expended more than $150,000,000 on the metropolitan district improvement, and it looked as though they had run out. Then they commenced on the system of special recess committees. Since then we have spent over $600,000 finding out how we could spend more money. I never knew of a recess committee or a commission that ever was created or appointed to see whether they could save money or to make the administration of government more efficient. It means more money; more positions, which means the same thing. I remember, while I was in the Legislature they had in Boston certain individuals, — descendants of the old families, — who had rather scant subsistence and had to be provided for, so they created public positions for them. Some of them are still in evidence, even to this day.

I think we ought to stop right here. I do not think this Constitutional Convention ought to pass any proposal that will give the Governor any more authority than he now has. He has all that the President of the United States has, and he has all that every other Governor has had in Massachusetts, and we can get along for the

next hundred years a great deal better with present methods than with what they have suggested.

Mr. Lowell of Newton: I hope this No. 6 will pass and I want to give my reasons for it in a way which apparently will lead me a little afield, but I shall not be long.

It was the theory of our forefathers that there should be three departments of the government, as we all know. Now, that never has worked. The executive and the legislative never were entirely separate from each other, and, so far as our system has succeeded, — and it has succeeded very well, — it has been because that theoretical distinction, which nearly everybody thinks still exists, did not exist even from the very first of the Republic.

For instance, we all know that in Washington's time his Cabinet officers sat in the Congress. That is a mere illustration. Now what has happened? The idea at first was that you should not give so much power to one man. The people in all the States, and Massachusetts was no exception, were jealous of a person who might become a tyrant. They purposely tied the hands of a Governor. What has happened? Throughout the breadth of this group of States the Legislature has fallen into disrepute and the Governor has been trusted by the people. What else has happened, and this rather lately? This has happened: Everything is becoming centralized. We now are governed from Washington. There is not one of us here who would object to that during the time of war, but it began long before the war and it will continue long after the war. People who want prohibition, what do they do? They go to the National government. Why? Because there is an efficient government. They want woman suffrage; they go to the National government. Why? There is an efficient government. They want restriction of child labor. Where do they go? They go to Washington. Why? Because there is an efficient government.

Now, there is a danger, in my opinion. I do not like to think that we here in Massachusetts shall be governed entirely from Washington. Many of the things they do in times of peace are good things, but it seems to me that we should so frame our government as to make it possible for Massachusetts to do a job, and not for the people to say: "We cannot do anything here in Boston, we have got to go to Washington."

Now, what are the remedies? It seems to me that the remedies are, in the first place, to make a more efficient Legislature, and I understand there will be a measure in, if it is not already in, trying to make that more efficient, by minimizing the evil of special legislation. That is one thing, — give the Legislature more power.

Another thing is to give the Governor more power. Now, it always is asked: "Why do you do this thing? It will be very dangerous; if we have a gentleman like the one who was here several years ago in office he will raise havoc with our institutions."

We are not building the Governor's chair, or we should not build the Governor's chair, so that a bad man can do no harm in it. We should build it so that a good man can occupy it fully and direct and carry out the duties of his office efficiently. So that I say, give the Governor the power which he ought to have, give the Governor

the power which most people in this State, I venture to say, think he already has, except as to details, in this No. 6 which we are talking about.

It is a part, as the gentleman from Haverhill (Mr. George) already has said, of a larger whole. Now, this part, it seems to me, is a very good part. Whether we agree with all the rest of the proposition, — No. 5 has the so-called referendum in it, — whether we believe in that, as personally I do, but many of us may not, it seems to me that No. 6 is a good step in the right direction. It allows the Governor to attend the session or send his representative. It allows the General Court to ask for them to come. It seems to me that it brings together the Governor and the Legislature in a way toward which they constantly have been tending since the beginning. The theory of the forefathers was that the Governor would sit in a chamber entirely apart from the Legislature and merely would perform acts which were not much more than clerical acts, except in time of war. That theory did not work; it never could work. The actual practice is that the Governor is becoming a part of the system of making laws.

If we put through this No. 6 it seems to me that we shall be going a step, and it is only a short step in this instance, toward giving to the Governor an authority which he ought to have. If we give to the Governor this authority, and more I hope, we shall make the office open and attractive to the leading spirits of this State anxious for a political career. This measure, in my mind, drawing the attention of the people toward Boston and not toward Washington, makes them understand that the political concerns of Massachusetts can be taken care of right here, and that it is their duty to see that they are taken care of properly. Pass this resolution and you will help that out.

It has been said that if you pass this you will make the Governor a party boss. I do not think that is the fact. But if it were the fact, is it not better to have the party boss in a place where everyone can see him, question him, and hold him accountable, rather than have him somewhere else, where nobody can get hold of him and where he is entirely irresponsible?

Mr. WILLIAM S. KINNEY of Boston: I venture to suggest that the propositions contained in this document No. 311 are erroneous. The analogy which they seek to apply to State government is the analogy of the business corporation. Business corporations are conducted for profit. The business of government is to govern the people. But in a democracy what kind of a government is it that the people want? Is it not government by the people? Is not that the essence of democracy?

The language on Page 12 of this report fairly summarizes the intent and purpose of the whole report, particularly the paragraph quoted by the gentleman from Boston in the third division (Mr. Lomasney), where it says that they, meaning the people, expect him, meaning the Governor, to put forward *and to push to legislative success policies of his own.*

If I have learned the fundamental lessons of government correctly, in a democracy the theory of the fathers was, — and I believe it still should be the theory upon which this government should be

conducted, — that policies should emanate from the people, and that a wise government should follow and not lead the people; that no government should be maintained or set up by legislation or by the Constitution under which the people are to be ruled or governed, either by an executive or by a Legislature, but, rather, that machinery should be provided in the form of a proper legislative assembly and a proper executive, by which the policies of the people may be expressed in proper legislative form and enacted into law with the approval of the executive.

Mr. QUINCY: I should like to ask the gentleman from Boston in the second division (Mr. William S. Kinney) if it is not an historical fact that the standing with the American people which gained for Governor Hughes the leadership of his party and his presidential nomination, and the standing of Governor Wilson of New Jersey which gained for him the leadership of his party and election to the presidency of the United States, were gained in both cases by their success in advancing and in carrying through legislative policies?

Mr. KINNEY: I think the gentleman is in error. I think that he is confusing effect with cause. It is true that certain figures in our National life have become prominent because of their identification with certain great causes which have created enthusiasm among the American people, and that by their prominence in the advocacy of particular issues individuals have forged to the front and have been rewarded by those who believe in those policies by election to high office. But the theory in a democracy is that the policies which should shape the government should emanate from the people.

Mr. CREAMER: I should like to ask the delegate from Boston in the second division (Mr. William S. Kinney) whether or not he does not think that the Governor is more apt to be a true representative of the people of Massachusetts as a whole than individual legislators.

Mr. KINNEY: I was coming to that phase of the question in a moment. What I was about to say is this: That the fundamental purpose of this measure is to change that principle of policies emanating from the people, diametrically change it, and, as it says on page 12, the Governor is to push forward to legislative success policies of his own. In other words, this is to establish an elective autocracy. That is not what we want in the old Commonwealth of Massachusetts.

Now, in answer to the gentleman from Lynn (Mr. Creamer) if we have had any difficulty in Massachusetts, both under Republican and under Democratic Governors in the last ten years, it is because of the fact that in order to attract public attention, candidates for office, — the Governors, — have espoused certain hobbies, and they have gone round the Commonwealth and preached their hobby. After they were elected they have attempted to enforce their hobbies, and to force them, as this resolution says, to a legislative success.

Mr. CREAMER: I should like to ask the delegate from Boston how Governors would have had a chance to enforce their hobbies if they had not convinced the people that the "hobby" was desirable.

Mr. KINNEY: It does not necessarily follow that because a man is elected to office, all the constituents were converted to each particular idea which he advocated. Many times there are individual planks in his platform not approved by all the people electing him. The political influence of the party is behind him.

Mr. LUMMUS of Lynn: The gentleman from Lynn in this division (Mr. Creamer) asked whether the Governor is not more truly representative of the will of the people than individual legislators. I should like to supplement that inquiry by the inquiry whether, in the opinion of the gentleman addressing the Convention, the Governor is any more representative of the will of the people than a majority of the legislators.

Mr. KINNEY: I do not think that the Governor is more representative of the people than the legislative body. Of course, if you pick out a particular representative, from a particular locality, you might well argue that, at least, before he became a member of the legislative body, before he has had any particular State wide experience, that up to that moment the Governor, who probably has had a longer political experience than the individual legislator, might have a wider view of State affairs. But when a question is brought in before the Legislature, made up from representatives from practically all of the cities and towns in the Commonwealth, and submitted to their judgment, I contend that they are more truly representative of the prevailing sentiment in the Commonwealth than the executive.

Mr. CREAMER of Lynn: Is it not true that the members of the Legislature in most cases are elected on local issues, from small communities; that they are here, not representing the people of the State as a whole, but representing the interests of some small town or ward of a city, and thus in much less better shape to represent the people as a whole than the Governor, who is elected perhaps on some issue which he has promised the people he would endeavor to put through in case he is elected?

Mr. KINNEY: The gentleman is in error in his conception. It is true, of course, that representatives, coming from small communities, have, as a rule, some little local improvement that a town wants, and undoubtedly they do use their influence in the Legislature for the purpose of securing, if possible, that small improvement. But the members of the Legislature, as a rule, never are elected in contemplation of any particular State wide policy. Their minds are open when they reach the State House on State wide policies except as they are affected by the party platform.

Mr. ANDERSON of Newton: Is not the very fact that legislators are not elected on any State wide policy the reason why we must have some one man, the most conspicuous man we elect, the Governor, to stand for certain State wide policies? If the people approve the State wide policies for which he stands they elect him, and thus we have the opportunity of putting those policies before the people.

Mr. KINNEY: The distinction which the gentleman raises would bring up questions perhaps a little aside from this, but which nevertheless enter into this discussion, — the question of party government and of party responsibility. When I said members of the Legislature were not elected on any general issues I of course did not intend to say they were not elected pledged to the issues which the political party under whose designation they were elected espouses. I believe, — and I should like to argue the question at length, — in party government; and it is this tendency to get away from party government, the tendency in this measure to permit the executive, after he once has been elected, to force his own individual policies onto the

Commonwealth, if possible, which I believe ultimately would destroy democracy. [Applause].

Mr. LUMMUS: I should like to ask the gentleman from Boston when a Governor is elected on a party platform, and also has announced various policies of his own, — whether there is anything in the vote of the people electing him to show that a majority of the people have approved any particular one of those policies.

Mr. KINNEY: The gentleman's inquiry almost answers itself. It is practically what I said in reply to the gentleman from Lynn: That the vote of the people, even after a Governor has announced certain projects, is not conclusive evidence that they have been converted to his individual ideas on those particular policies.

Mr. ANDERSON of Newton: How can the gentleman say that the executive is going to foist these policies upon the people, when they must be submitted to vote, and the people can say Yes or No just as they please?

Mr. KINNEY: Up to date, sir, the policies of the Governor have not been submitted to the people for their vote. I suppose the gentleman is assuming that when the initiative and referendum, which he voted for, becomes operative, that everything that the Governor proposes will be submitted then in the form of legislation to the people.

Mr. ANDERSON: I am asking what would happen if this particular proposition, that is before the Constitutional Convention at this time, was approved.

Mr. KINNEY: If this particular proposition goes through it means practically this: Legislatures will become of no importance. Representative bodies will cease to have the influence in the community and to represent the sound, sober, second thought of the people as they have in the past. Under this measure a Governor who is a practical politician catering to the temporary passions of the moment, catering to some idea temporarily popular, can espouse those things for the time being, and if the Legislature, not carried off its feet by the temporary gust of wind, resents in any way his proposed legislation, then the theory is that he can take it immediately to the people and there secure action.

Take an illustration of what I mean. A few years ago a gubernatorial candidate ran on the issue that party enrollment was a very unwise thing. He hammered away on that issue, he was elected Governor. He continued to hammer away on that issue. He practically forced the Legislature to carry that issue through. A great many people thought, from the eloquence of the man, carried away by his charming personality, that he was on the right track. The Legislature adopted his suggestion. In two years the people of Massachusetts were disgusted with it and it became necessary to repeal it and go back to the old system.

Mr. BROWN of Brockton: I want to say that I am in thorough sympathy with the gentleman's argument. But, on that particular referendum question, is it not true, if you are going to speak about the people as you have spoken about them, were not the people led off on the wrong track by the title you gave to the last resolution upon which they voted?

Mr. KINNEY: In using the illustration that I did I had no desire

to cast any reflection upon the Governor who advocated that reform. I never find it necessary to make a personal attack upon any one in public life in order to strengthen any argument which I may advance on a public question. I merely used that illustration to show this: That if you are going to put into effect the system of government which this proposition is permeated with in every line, you are going to destroy legislative government, representative government, and substitute for it an elective autocracy, a system of government which to my mind is absolutely destructive of the fundamental principles of democracy; and I hope, sir, that this whole proposition will fail.

Mr. CREAMER: The gentleman says that if this amendment goes through we are substituting for representative government an elective autocracy. I should like to ask him, in the first place, if he thinks that the government of England is an elective autocracy. Then I should like to call his attention to the fact that in this particular thing, that some recent Governor put through, in regard to party enrollment, he succeeded in getting this great protective body that the gentleman from Boston talks about, the Legislature, to follow him.

Mr. KINNEY: Reasoning by analogy always is dangerous. Frequently in discussions in this Convention the government of England has been used for the purpose of drawing comparisons. The government of England unquestionably is a democratic government, but it is a different form of democracy than ours. In the first place, the government of England proceeds without a written Constitution. Every act of Parliament writes a new provision into the Constitution of England. And therefore, reasoning from the English theory of government to our form of government, under a written Constitution, is not to my mind at all conclusive. The analogy is not clear, not correct, and not convincing.

Mr. WASHBURN of Middleborough: I should like to ask the gentleman from Boston in the second division (Mr. William S. Kinney) if it is not true that under the English system, Parliament is wholly supreme and that the members of the Cabinet are responsible to the Parliament, and are in fact members of it.

Mr. KINNEY: The gentleman's question amplifies the point which I just made, to wit, that it is impossible to compare the system of government in England with the system of government here. The checks and balances which our Constitutions, Federal and State, provide between the executive, the legislative and the judicial departments, are absent in the English form of government. There is no Supreme Judicial Court in England to pass judgment upon the constitutionality of acts of Parliament. Those checks and balances do not exist, and, as I stated, they are not bound by the provisions of a written Constitution. Therefore I think it would be almost a futile waste of time to make a comparison between that form of government and ours.

Mr. LUMMUS: Is it not true that this resolution provides for a personal government of one man, whereas, under the English system the measures that are put through Parliament by the government are not personal measures but party measures, upon which, as a party platform, the government has gone to the people?

Mr. KINNEY: The gentleman is quite correct in the assumption contained in his question. The English system does follow party

government to its logical conclusion. Policies that are put forward there are put forward as party measures. When the party in power fails to carry a measure of sufficient importance to be considered a National question, then there is a dissolution and a reformation of the Cabinet, etc., — all of which are incidents to a system of government from which, as I have stated repeatedly, you can draw little aid in organizing our own system.

The dangers under this proposition are these: That it will permit the Governor to foist on to the people his own individual policies, as stated on page 12. They do away with the principles of representative government; they render the Legislature a mere rubber stamp. It is a fundamental attack on the whole system of government which I think this Convention should hesitate to adopt.

Mr. CREAMER: I should like to have the delegate explain to me how this amendment would enable a Governor to foist a policy on the people of the State against their will.

Mr. KINNEY: Policies are not foisted on the people against their will in the sense that the gentleman's question may seem to indicate, or that perhaps my remarks may be considered to mean. I do not mean that a people who are aware of the dangers of a specific piece of legislation could have that legislation foisted upon them in spite of their protest and in spite of their suffrage. That is not what I mean. What I mean is this: That an executive, elected on certain hobbies, could ignore the consideration and deliberation of those projects by the legislative body, and by oratory, by propaganda, could induce the people, or those who voted at the particular election at which the projects are submitted, to adopt his projects.

Mr. ANDERSON of Newton: May I ask the gentleman whether there is not a provision in this proposition for full debate by the Legislature, so that all of the infelicities and all of the wrong policies which might be involved in a proposition of the Governor would be set fully before the people?

Mr. KINNEY: There is such a provision, but the trouble is that in this age the attention of the people of Massachusetts is not fixed upon the debates in the Legislature; the people really are not aware of the far-reaching effects of legislation until it actually has become law and made operative. Then, in its working out, they see its defects. If the whole people sat as a great outer gallery and heard the debates and heard the defects in the measure pointed out in advance, I would be willing to accept their judgment, but that would not be the proceeding under this resolution.

Mr. ANDERSON of Newton: Is it not also a fact that there must be a campaign before the people, and that, if a majority of the Legislature are opposed to the Governor's policy, there will be plenty of men to harangue the people against it, as well as supporters of the Governor to speak for it?

Mr. KINNEY: The difficulty with that suggestion is this: A man is nominated by one of the great political parties. The fact that he receives a nomination will secure him to a large extent the support of the voters of the particular party. He may have several pet projects of his own which are not at all espoused by the rank and file of the party, which perhaps are only features of some speech which he makes during the campaign, to which no large number of

the voters give any attention prior to election. After election that executive is apt to assume that by electing him the electorate endorsed the proposition, and then bring it in under this measure. That is the danger.

Mr. GEORGE: I want to suggest a word in line with the numerous questions asked by the delegate from Newton (Mr. Anderson). I was about to remind the gentleman who is speaking (Mr. Kinney) that some eight years ago we had a wonderful political campaign. A gentleman ran for Governor on the issue of reciprocity with Canada. Of course it was a very intelligent issue, I suppose the candidate understood it, for after his election he claimed that he was elected on that issue. I should like to have the gentleman give us an idea how that situation would be treated if the pending proposal was adopted.

Mr. KINNEY: Such remarks as I had intended to make on this question are practically exhausted. One other point and I have finished. I have stated that, in my opinion, this measure is destructive of the fundamental principles of democracy. I make the further assertion that this measure will be destructive of party government. In case it becomes operative you will encourage executives to leave their party principles of government and to formulate individual policies. We have had many illustrations in the past ten years on both sides of the political arena of executives who after election have stood for individual policies of their own, in entire disregard of the policies of the party which elected them.

Mr. HART of Cambridge: May I ask the gentleman to point out some policies with regard to State affairs, State issues, State administration, — what you like, — upon which the present leading parties in Massachusetts have declared themselves in the Legislature; that is, what party principles have been maintained through their Representatives in the House, — in which a Governor could interfere?

Mr. KINNEY: I dislike very much to criticize the administration of any of the executives, but, pressed for an illustration, take the question of old age pensions. We have had a Governor for the past few years who bears the designation of the same political party that I do. Annually, I, and I presume many thousands of Republicans, have marched to the polls and voted for him. He has created a favorable impression among a certain element in the community by the advocacy of this so-called reform. The Republican party in the Legislature, however much it might have been in sympathy with this reform, created a commission to investigate the subject. They discovered that, in dollars and cents, the system would cost about $17,000,000 a year, annually. The report of the commission which studied it is in print; it is a very long and exhaustive document.

Now, what was the situation? Knowing the condition of the State finances, with the State tax mounting each year for necessary expenditures, already in excess of $10,000,000, if the Legislature, and the Republican majority in it, by one piece of legislation adopted a system which would cost the Commonwealth of Massachusetts $17,000,000, and that resulted in an increase of almost 200 per cent in the State tax, what would the sober-minded people of Massachusetts have said about the extravagance of a Republican Legislature? Further than that, the Republican party and the Legislature knew that

Massachusetts was not financially equipped to put that doctrine into practical effect. And yet each year this gentleman ran on this platform before the electorate and secured perhaps additional votes outside the party ranks because of a theory which every man in his heart would like to see put into effect, because it is a humanitarian project, and undoubtedly the time will come when the economics of the Commonwealth have so adjusted themselves that such a system can be put into effect, without disturbing the finances of the Commonwealth. But at this time a project of that kind is not possible financially, and yet we found an executive advocating it, knowing that it would be disastrous to his own political party to put it into effect.

I did not care to use any further illustrations. I had supposed that the argument which I was making was patent to every thinking man. I could take similar illustrations from the administration of every executive who has sat in the Governor's chair during the last ten years. It simply emphasizes this point: That in a democracy the policies on which the government should be run should emanate from the people, and that when the people demand certain legislation, then, in the proper channels, through the legislative body and with the executive approval, those policies can be put into the form of legislation; and that we do not want, in a democracy, a system of government which will permit the executive to do as this document on page 12 says, — force his own policies to a successful legislative conclusion. [Applause].

Mr. Washburn of Worcester: This discussion has covered rather a wide area. I have studied this document now before us with some care, and I am in entire accord with some parts of it and hope to vote for some of the recommendations, but I believe that this particular section now before the Convention should be rejected. I desire to protect the office of chief executive of this Commonwealth as well as the Legislature. It is my belief that if this section were to become part of the Constitution we would make of our executives either autocratic, dominating personalities or nonentities. Under this provision, if adopted, the chief executive could enter this legislative chamber and participate in the debate upon any question. Let me assume that the Governor for the time being is a Republican; of course he will command the fealty of his party followers. Individual opinions will be quieted, and the Republicans in the Legislature will remain mute while the leader of the party speaks, and in that way free, untramelled debate in this chamber will be absolutely throttled. [Applause]. Or, again, suppose that the Governor is a Democrat, he will command the fealty of the Democratic members of this House, who will remain silent while he speaks. And if, perchance, as has been the case, we have a Governor who is neither Democrat nor Republican, he will be kicked about from one end of this chamber to the other and made a laughing-stock for the people of the Commonwealth. We must invest the chief executive of the Commonwealth with a certain amount of dignity, a certain amount of seclusion. The Constitution points out now orderly and definite ways in which he can approach the Legislature and the people of the Commonwealth. Do not make it possible for the Governor to play politics continually by appearing in this legislative chamber and perchance to bring discredit on his great office. When a single man is matched

against a legislative assembly the odds are always with the individual. Let me read you a short extract from Mr. Bryce's Commonwealth on this subject:

> An individual man has some great advantages in combating an assembly. His counsels are less distracted. His secrets are better kept. He may sow discord among his antagonists. He can strike a more sudden blow. Julius Cæsar was more than a match for the Senate, Cromwell for the Long Parliament; even Louis Napoleon for the French Assembly of 1851. Hence when the President —

He was speaking of the office of President of the United States —

> happens to be a strong man, resolute, prudent and popular, he may well hope to prevail against a body whom he may divide by the dextrous use of patronage, may weary out by inflexible patience, may overawe by winning the admiration of the masses, always disposed to rally round a striking personality.

Do not strike a blow at our legislative system in Massachusetts by making it possible for a political despot to dominate this legislative chamber. [Applause].

Mr. SULLIVAN of Salem: I hesitate to take the honor away from the gentleman from Somerville in the second division (Mr. Chandler) but I think we have heard this subject debated at length and we are ready to vote upon it. I therefore move the previous question.

Mr. GATES of Westborough: I do not rise to make an argument, but I do rise to answer a statement made by a gentleman in the fourth division (Mr. George). The statement was that the chairman of the committee on Executive brought in what might be called a scheme originated by these amendments, and I want to say that that statement is not correct. I, being clerk of the committee on Executive, know something of the source of these amendments, and I will say that the chairman of our committee did not originate any of these eight amendments. We had a large number of amendments or resolutions before the committee, about thirty, and we had public hearings on those resolutions, and many prominent men came before the committee at these public hearings. We had an ex-Governor from the Democratic party and an ex-Governor from the Republican party, and many prominent men who had held public office in this State and also in the Federal government came before the committee and advocated many of these amendments. We offered no amendment here that did not seem to have a demand by the public that it should be offered. Instead of the chairman of our committee originating these amendments ex-Governor Brackett originated one of them, and I myself originated one of the amendments, which I believe the chairman would not favor if it stood as an amendment alone. I rise at this time to say that it is not right, it is not fair to claim that these are any one person's amendments that are brought before this Convention. The reason they are brought in in this form is that at the time we were considering them in the committee we expected they would go before the Committee of the Whole and the Committee of the Whole would approve and recommend to the Convention any one of the No. 1 to No. 8, but you know before the Committee of the Whole could consider these it was put out of existence, and so they come here to the Convention. Any one of these amendments can be adopted separately without affecting the others. When I have heard it stated in the lobby that this was "Quincy's bill," and we had better adopt this as the Constitution and do away with the main

Constitution, there may be more truth in that than the man expected when he said it, but I do not believe that it is fair to give any one man the credit of originating all these amendments when it is not so.

Mr. William H. Sullivan of Boston: Though the question is: Shall the main question be now put? Still the rule never seems to be observed, and I shall speak briefly on the main question to make a few friendly suggestions to the committee, because I remember the other day, when the gentleman from Worcester (Mr. Washburn) made a most delightful and convincing address against biennial elections, the Convention did not adopt his conclusions. To-day, although he has made an equally eloquent and to my mind even more effective address, they may not agree with him. So in the event of the Convention adopting this article 6, — and again the question is on article 6, nobody has discussed that, — let me make this friendly suggestion, having served in the Legislature and knowing that sometimes the Governor and the Legislature are not in close harmony, as was said about this last Legislature and the Governor. You see there is no provision in section 6 by which a member of the Legislature is prevented from moving the previous question while the Governor is present. That might well be taken care of, and something incorporated therein, so that one could not move the previous question and thereby shorten the Governor's address.

And then, again, if the Governor was not popular, or was not a member of the dominant party, it is barely possible that those who ought to listen to him would be in the lobby and so unable to hear. And I make this suggestion because this measure has been so carefully drawn that it is a real legislative act, and nothing should be left to chance. There ought to be a rule by which when the Governor or any of his representatives comes in to the House or Senate chambers to speak all exits should be closed immediately and those in the corridor should be dragged in to listen and should be compelled to listen.

Then, again, to protect the sanctity of the Governor, this man whom some think is bigger than any Representative, the man whom they think is closer to the people than the man who lives right in the midst of the people, no Senator or Representative should be allowed to cross-examine him. Let me interpolate, disconnectedly, that I think the men closest to the people are the ones who live with the people. I think the best representative government, if we are to have a representative government, such as we have had, is that every man should represent his own district faithfully, and then the whole State will be well governed. Further, there should be incorporated in this article 6, if cross-examination is permitted, the mandate that it must be done in a friendly and ladylike manner; there must not be incorporated in their questions any sneers or any sarcasm, — only obsequiousness. And then, again, it might well be suggested, because the picture has been presented by the delegate from Worcester (Mr. Washburn), that it is possible that the Governor might be made ridiculous if too many questions were hurled at him.

So I say in the most friendly spirit, not that I am going to vote for this article or any part of the resolution, but that it may be made as perfect as its author could wish, and that it may reflect all the credit possible on this assembly, let us incorporate into article 6 such

amendments that the Governor must be listened to, must not be interrupted, that the previous question must not be moved while the Governor or his representative is present, that all the members must come that day to hear him. And perhaps it might be well to suggest that a certain day and a certain hour in the day should be set apart when the Governor or his representative should come forth, and nobody should be allowed to challenge or answer him.

Mr. MANSFIELD of Boston: I shall not oppose the motion made by my friend from Salem, because I do not desire to take more than the time which I think I have a right to take after his motion is made, but in justice to section 6 of this resolution, in justice to the gentleman who it is said fathered the resolution, I desire to say to the members of this Convention that the entire committee on Executive stands back of this measure and each paragraph of it. Let this Convention judge the resolution and this paragraph fairly and on its merits, regardless of the personality of any men. Now, what does it mean?

My learned friend from Haverhill (Mr. George) and my friend from Boston (Mr. Lomasney) say that this will bring politics into the Legislature, that it will make of the Governor a tyrant, who can have his will as he may. I ask the members of the Convention to read and to ponder the language of this paragraph 6, and at least to understand upon what they are voting. This paragraph does not confer power upon the Governor and the heads of departments of the Commonwealth, it confers power upon the representatives of the people sitting in Legislature assembled, with the right to interrogate, to hear and to require the Governor and those representatives to carry out and to properly perform their duties.

Let me speak briefly of an incident in which I figured when I was a member of the Legislature. I had presented a bill dealing with the question of the price of gas. There was a committee hearing. The members of the Board of Gas and Electric Light Commissioners appeared before that committee and strongly favored my proposition. I took down in shorthand the language that was uttered by those commissioners, strongly eulogistic of my proposal. Later, when a negative report was made upon that measure, the commissioners sitting on the Gas and Electric Light Board had changed their attitude and opposed the measure. Why, under such circumstances, would it not be right for me, if I were then a Representative, representing the people in my district, to ask those commissioners to come here and to state to the 240 members of this House why they had changed their ground?

The Representatives in the Legislature are closer to the people than the Governor or the members of any board appointed by him. A member of the Legislature, a representative of the people, my friend from ward 5 (Mr. Lomasney), my friend from Haverhill (Mr. George), every member who has sat during any time, whether it be one year or more, as a member of that Legislature is in close and daily contact with his people. He knows what they want.

Mr. WALKER of Brookline: If the main question on this matter had not been ordered I would have discussed this measure at some length, or at somewhat greater length than I will be permitted to discuss it now. I am greatly interested in the question of the grant

of power to the executive and of the relations of the executive to the General Court. I may take an opportunity at a later time to go more fully into the subject, but I wish at this time simply to remind this Convention that this is one of the great matters before the Convention. We are now about to deal with the powers of the executive in relation to the finances of the Commonwealth, in relation to the administrative departments, and in relation to legislation.

I wish to say that in the main I am in entire accord with the provisions of this measure. I think that the Governor should have the right to come before the legislative assembly, and if he does come before it on any matter, he should have a right to speak. I am perfectly clear that it is wise to permit the General Court to summon, if they see fit to do so, acting through the Governor, any executive or administrative officer. For that reason I trust that this section will be passed.

Let me say that there are two things that we must accomplish in this Convention if this Convention is to do that which the people expect it to do and that which in my judgment it clearly ought to do. In the first place, it should establish a more efficient and responsible government in Massachusetts. We have not an efficient and responsible government in Massachusetts to-day. In the second place, it should provide some means by which the chief executive, elected by all the people, may devise and put before the people in the form of concrete measures a definite policy.

We speak of policies. It has been said that policies should arise from the people. How can policies arise from the people? There is only one way, and that is for the people to elect for themselves a spokesman. Then indeed policies will arise from the people. Is not the President of the United States to-day a great leader of his own party and a great leader indeed of the Nation as a whole? Does he not formulate policies, and in the interest of the whole Nation urge them upon the legislative branch of the government? That is the way and the most effective way, in which policies can arise from the people.

What is this power that the Governor is to be given in this measure? Why, it is simply the power to say to the Legislature: "In my opinion this measure should be enacted." I say "measure" advisedly, because this amendment provides that the Governor shall incorporate in a measure his recommendation, that then he may come before the General Court and advocate, — what? Not a general indefinite policy but the measure which embodies the policy. Now, no Governor can recommend old age pensions and put that general question up to the people. He has got to embody the policy in a measure, and he has got to defend that measure before the General Court and the people. All the difficulties, the fact that it takes $17,000,000, if you please, many other difficulties, can be pointed out when a definite measure is presented to the Legislature. But if the Legislature says: "We will not stand for the Governor's measure but will turn it down", then the Governor may do what? He may take, not the policy, but the measure that incorporates the policy, to the people and ask them whether they approve of that measure or not.

Mr. LUMMUS of Lynn: This proposal is a part of the movement for a governing Governor, as it is called. If they should propose

that we have a governing executive, that we have a Governor with more power and responsibility within the limits of the executive department of government, I could favor that proposal; but for my part I am old-fashioned enough to believe in the separation of governmental powers. I am not prepared to adopt the Continental mixing and muddling of the departments of government. I believe that the separation of the departments of government which we have had in America still has virtue and still has vitality.

The Governor is not elected on any one issue. He is elected by getting a majority of votes; some because of one issue, some because of another, some because of his personality. Many votes he gets simply because people like him on the whole better than they do some other man. He does not come into office, and never will come into office, because his policies are approved in their entirety by the majority of the people; and I believe that although the Legislature is elected upon local issues, if you will, it nevertheless is a cross-section of the people and more truly represents the will of the people of Massachusetts than the Governor.

The comparison that has been made between the proposed scheme and the English system of government is absolutely untrue. The proposed scheme is to give the right to initiate legislation, to interfere with the legislative department, to one man, who determines how far he shall interfere according to his own judgment. The English system is purely a party system. The policies of each party are thought out and prepared by the best minds of one of the great parties of the empire, desirous of the permanent success of the party policies and not merely the attainment of some transient individual ambition. Then those policies are put before the people in an election, and in a general way the policy of a particular party is approved, and then that party carries through its program, if possible, in Parliament. It is as far from this scheme as anything can be. This scheme is one to put into the hands of one man, who may not belong to any party, the power to interfere in this powerful and dangerous way with the workings of the legislative department. It is a scheme, it seems to me, to put a premium upon demagogues in the Governor's chair.

This present suggestion contained in article 6 of the resolution may be thought comparatively harmless. It is not the most dangerous part of the resolution; but the whole tendency of this scheme of which this article is part, — this scheme of gubernatorial control of legislation, — is bad, and I think a good place to stop it is at article 6, without waiting to discuss the more radical and more dangerous parts of the resolution.

Mr. HART of Cambridge: It is a great pleasure to agree with the gentleman from Boston in the second division (Mr. William S. Kinney) in three of the principal points that he made in his eloquent speech, in which he won the admiration of us all for his courage under shrapnel. In the first place, it is a delight to know that the gentleman from Boston (Mr. Kinney) believes that legislation ought to proceed from the people and then go through some sort of perfecting machinery which he did not quite describe. So far as I could understand, what he had in mind was something resembling a proposition that we call the initiative, although I regret to observe that on the test votes on that question last fall the gentleman from Boston and myself seem

to have been on opposite sides. In the second place, I cordially agree with the theory, — or rather, the principle, for it is not a theory, — that public business cannot be measured by the standards of private business. The city of Boston, the city of Cambridge, are carried on not to make money but to spend it. That is a significant difference. In the third place, I cordially agree that this is a government of the people, and that the people are entitled to rule. The only question is how they shall rule and how far they are now ruling in this Commonwealth and in others.

I observe in various remarks that have been made upon this subject a disposition to infer that because Massachusetts has a weak executive therefore ours must be the nominal form of State executive. As a matter of fact, Massachusetts is one of the two or three States in which the executive is most hedged in. The other States in the Union somehow have reconciled popular government with a much greater freedom of the government than we have seen fit to give in this Commonwealth. I will admit freely that that enlargement is largely in the direction suggested by the gentleman from Lynn in the third division (Mr. Lummus), a direction in which we may well go farther, that is, in the enlargement of the executive side of the State government.

There is only one thing I want to say, and that is that we want a people's government, we want a government reflected through the Legislature and likewise through all the departments of government. Have we, has any State in the Union, really a people's government, in the sense that the people and the community have a method by which they can determine, after a Legislature is elected, the results of the action of that Legislature? All the world knows that the only way to get systematic legislation, to get a body of legislation in which one part will agree with another, is to put forward leaders. In this State we give to the President of the Senate, we give to the Speaker of the House, the power of concentrating legislation through their appointment of committees and in other ways; and everybody knows that such concentration is one element in good legislation, that without it you never can secure an adequate body of legislation that fits in with itself. In other States the legislative center is a boss. He makes Legislatures go. He represents the will of the people, because he is the man who is able to make the necessary combination.

It is clear that if there must be a man, — and experience both of the National government and of the State governments looks in that direction, — if a man is needed to concentrate legislation, then the obvious man in every State is the Governor. Why was Mr. Hughes nominated for the Presidency of the United States? Because he had been a Governor of that kind in New York. Why was Governor Roosevelt of New York nominated? Why was Governor Wilson of New Jersey nominated? Why did they come forward? Why were they known throughout the Union, not simply throughout their own States? Because they had made the reputation of great legislative Governors, they were men who could make those necessary legislative combinations. Therefore I shall vote for this proposition, not by any means as a perfect or complete measure, but in the direction of recognizing, — not creating, but recognizing, — a state of things forced upon the American people by their own political conditions.

Mr. WASHBURN of Middleborough: When the Constitution conferred upon the Governor of the Commonwealth the power of veto it made him the strongest single power in our legislative system. There cannot be any doubt about that. And the sole question presented by this section 6 is how far we still further are to merge the legislative and the executive power. That is the only question. As I listened to the gentleman from Brookline in this division (Mr. Walker) I got the impression that this section was intended to confer upon the Governor the right to come before the Legislature and speak upon executive bills. That is not the situation. Such a privilege is conferred by another amendment. It is not the executive bill at all, it is "any pending bill." That is the situation. And so, too, this morning the gentleman from Boston in the second division in charge of the measure (Mr. Quincy) presented the analogy growing out of the adoption by this Convention the other day of the State budget system, but there again the only object of that amendment was to enable the Governor to come in here and speak with respect to the budget. If we are to have a budget, and I hope we are to have one, that is eminently proper, and if we are to adopt the system of executive initiative it is highly proper that he should come in here and speak as to such measures. But, as I say, this goes much further. He may come in here if we adopt this section 6 and speak upon any pending bill whatever, day in and day out. I oppose any such merger of the executive and legislative powers as that, and therefore I shall vote against this particular amendment.

Mr. QUINCY: I will try at this late hour in the afternoon not to take all of the time, although more points have been brought up in this debate than any one possibly could deal with in ten minutes. Let me say, in the first place, that in spite of the desire of some gentlemen to discuss all of the remaining nine amendments together, they are coming before this body separately and *seriatim*; and they are going to be discussed, and that is the right of the committee, separately and *seriatim*, and we are going to try to put before you under No. 6 the arguments for No. 6. We cannot prevent other gentlemen from discussing other proposals not now before this body, although included in the report. I believe that the majority of this Convention, however it may vote upon this particular proposition, will be willing to deal with each of these propositions upon its merits, — to try to deal with the arguments in favor of and against each of these propositions, and not to brush them all aside as open to certain general objections. If we are wrong on each and every one of them we expect the Convention to vote us down. If we are right on five and wrong on five, from the standpoint of this Convention, we would like to get the five which commend themselves to the Convention and let the others go. But I want to emphasize again that each and every one of these amendments is independent of any other amendment.

The gentleman from Worcester (Mr. Washburn) quoted from Mr. Bryce, and happening to have before me an extract from that distinguished writer I merely should like to read one sentence, which is this from page 555 of Bryce's American Commonwealth:

> The Legislature might indeed, and probably would, work better if the Governor or some high official acting with and for him could sit in and exercise an influence on its deliberations.

I should not have brought that forward as a reason for adopting this measure, but as Mr. Bryce has been quoted I will bring it in to offset the quotation on the other side.

Let me read you one other utterance from a very high political authority. In his Treatise on the State President Wilson said:

> A perfect understanding between the executive and the Legislature is indispensable, and no such understanding can exist in the absence of relations of full confidence and intimacy between the two branches.

Now, we believe that the pending amendment will promote better relations of full confidence and intimacy between the two branches. Of course in the absence of experience any one is at liberty to conjecture how such a provision as this would work in practice.

Mr. WASHBURN of Worcester: I should like to ask the gentleman from Boston (Mr. Quincy) if he would like to have the Governor of Massachusetts exercise the same domination over the Massachusetts Legislature that Mr. Wilson exercises over Congress.

Mr. QUINCY: I have two observations to make upon that question: First, that President Wilson exercises his domination over Congress, if he does dominate it, independent of having any right to go on to the floor and debate anything. The President, and this is within his constitutional authority, has delivered in person written messages instead of sending them in, which doubtless gives them a certain additional weight and influence, but that is very different from the proposition contained here, that the Governor should go upon the floor and have the right to participate in a debate. Secondly, it seems to me that there is one great fallacy underlying a great deal of this discussion, and that is this: That the Legislature necessarily is going to do what the Governor urges it to do. We all of us as practical men know that any such idea is unfounded. There is jealousy of an executive recommendation, even when sent in in writing. It generally is exceedingly difficult for an executive to get his recommendations through. Now, do you mean to say that because the Governor comes in in person the Legislature is going to abrogate its functions, surrender its individual judgments, and bow to the will of the Governor? I do not think it is going to work that way at all. I do not believe it is going to increase the influence of the Governor, except so far as the power to state a case, to support it with cogent arguments, with facts, helps to promote the success of a measure which is advocated before any deliberative assembly.

Mr. GEORGE: I should like to ask the delegate to say whether or no the Governor now does not have the right to go before any legislative committee which is hearing matters which he recommended to urge their adoption. I want to remind him also that in 1883 we had a Governor who appeared before legislative investigations, and if he had that right then and has that right now, why is it necessary to pass this measure?

Mr. QUINCY: Of course I am quite aware of the fact that the Governor does have the right to go before committees, and I have said in my opening statement that there is a great difference between going before a committee and going before the whole body. I want to say frankly and fairly that the committee on the Executive has been successful at least in this: It has brought before this Convention an interesting debatable proposition. I frankly concede that there

are two sides to it. In the absence of experience no one can say, — it is a matter of individual estimate, — just exactly how this will work. I have no fault to find with gentlemen who on public grounds do not agree with the committee, do not believe in this provision. I am glad to hear some of them say that they find other provisions in our report which they do agree to. Therefore, whatever action we take upon this amendment, I trust it will be without prejudice to the amendments which follow, and that the Convention will listen fairly to the arguments for each individual amendment, taking them one by one.

I might say much more. I might point out some of the irrelevant arguments which have been used. I might point out the contradiction between the position taken, for instance, by the gentleman from Boston in the second division (Mr. William S. Kinney), belonging to one party, and the gentleman from Boston of another party in the third division (Mr. Lomasney), one of them arguing against this proposition because it will impair party government, and the other arguing against it because it will introduce party government. Those two arguments cannot both be true. One or the other may be true, but as they stand they are destructive of each other.

There is so much to be said upon other branches of this report that I will not further trespass upon the time of the Convention now, but will ask merely for an expression of its judgment.

Mr. ANDERSON of Newton: I should like to ask the gentleman from Boston whether this section according to his interpretation allows the General Court to request the presence of the Governor personally.

Mr. QUINCY: Amendment No. 6 as it stands does not allow the General Court to require the presence of the Governor. That is entirely his privilege. It simply gives him the right. There is much to be said, as the gentleman from Brookline (Mr. Walker) has suggested, against giving the Legislature a compulsory power to drag in the Governor. But that part of this measure is one-sided; the Governor may come, but the Legislature has no power to compel him to come. Therefore it is not open to the particular objection which has been suggested upon the assumption that any Governor could be hauled in before the Legislature and subjected to hostile cross-examination. The Governor's obligation under the second clause of this section 6 is only to furnish in writing, whenever called upon, any information which the General Court may require.

Proposal No. 6 was rejected Tuesday, July 16, by a vote of 37 to 124.

Proposal No. 7 was considered Wednesday, July 17, as follows:

7. The Governor shall have the right to return any bill within five days after it shall have been laid before him to the branch of the General Court in which it originated with a recommendation that any amendment or amendments specified by him be made therein; such bill shall thereupon be before the General Court and subject to amendment and reënactment, but no amendment so recommended by the Governor shall be rejected in either branch except by vote taken by yeas and nays. If such bill is reënacted in any form it shall again be laid before the Governor for his action, but he shall have no right to return the same a second time with a recommendation to amend.

The Governor shall have the right before acting upon any such reënacted bill to disapprove and to strike out in the same any portion thereof which he may deem properly separable from the remainder, provided that within five days of the time when such bill was laid before him he shall return to the branch of the General

Court in which it originated a true copy of the portion so disapproved, together with his objections thereto in writing; such portion shall thereupon be subject to reconsideration and repassage in the same manner and subject to the same requirements as a bill disapproved by the Governor, and if so repassed such portion shall be deemed to be reinstated in such bill and shall have the force of law as a part thereof.

Mr. QUINCY: In beginning what I have to say in regard to this particular amendment, I desire to emphasize once more the fact that each of these amendments is independent of every other. The amendment under consideration at this moment will not occupy as much time by any means, I am sure, as the amendment which was under consideration yesterday.

I may state, in the first place, in partial rebuttal of the suggestion which was made yesterday that the chairman of the committee on the Executive had taken too large a part in the drafting or originating or reporting of these various matters, that the amendment now under consideration, No. 7, was drafted directly in line with an order introduced by the gentleman from Waltham (Mr. Luce), who, out of his long legislative experience, had seen the defective workings of the present system in respect to the veto of bills by the Governor and the subsequent action of the Legislature thereon. I am going to leave to that gentleman, as the originator of the proposition which is put here in a shape which commended itself to him and to the committee on the Executive, to make the main argument in support of the need of some action of this nature. I merely am going to call attention, in a preliminary way, to the fact that, unlike the proposition which was before the Convention yesterday, this proposal is not without precedent in the Constitutions of other States.

Frankly, there was no precedent for the proposal which was presented to the Convention yesterday in the Constitution of any State, unless it be in connection with the recent adoption in a number of States of the so-called budget system. But outside of that, the proposal to allow the executive to come on to the floor and take part in legislative deliberations was a novel proposition.

Now, this proposition has good precedents and is not an untried or novel proposition. Let me state, in the first place, the difficulty which it is proposed to remedy by this provision. The difficulty is, under our Constitution, that the Governor is confined to either signing a bill as a whole, waiving his objections to various provisions which may be in it which he does not believe in, or vetoing the bill as a whole, although he would be glad perhaps to sign three-quarters of it.

Now, in order to meet the situation, if the Governor vetoes a bill three-quarters of which he approves, a bill which he would be glad to sign with certain amendments, which happens under the present procedure, the Legislature has no right, without a suspension of the rules, and originating a new bill, to send a vetoed bill back to the Governor with such amendments as would remove his objections. In other words, the Governor in his message may point out clearly that he is in favor of nine-tenths of a bill, and the General Court may be perfectly willing to change the other tenth so as to meet his objections, and yet no constitutional procedure exists whereby the Legislature and the Governor can get together without suspending the twelfth joint rule, which requires a four-fifths vote.

Suppose the bill which has gone to the Governor commands the support of a considerable majority of both branches of the General Court, and suppose that that considerable majority would be glad to meet the Governor's objections, it is powerless to do this unless it can command the vote which is necessary to suspend the twelfth joint rule, so as to reintroduce what is, in the parliamentary sense, a new measure.

I think experienced legislators will recognize that as an undesirable condition of things; that there should be some simpler method of proceeding by which the General Court and the Governor can get together, to put the bill in a form which is agreeable to both, without suspending the twelfth joint rule and having to start all over again with a new measure. It seems to me that that is plainly a proposition of good business and of common sense.

In order to avoid that difficulty what happens now? The Governor in the first place, in many cases, lets his views be known while a measure is in committee; and the committee, knowing that the Governor has the last word, and that the whole proposition will be jeopardized if he does not sign the bill, very often backs down to the Governor's views. That is an absolutely irresponsible exercise of the executive power. Every one can see that. There is no record of the Governor's position. Members of the committee are deputed to see him. He tells them privately in his office what his objections are, or are likely to be, to a certain matter of pending legislation. There is no record of his position at all. The Legislature cannot hold him responsible for it; no man can hold him responsible for it. The committee goes back and makes such changes as it thinks will commend the bill to the Governor, and the bill finally is sent up to him. He is responsible for certain changes in that bill, and yet with absolutely no record of that responsibility.

Is that a desirable condition of things compared to the open and responsible method which is provided for by this amendment No. 7? It seems to me clearly it is not.

Another method of getting round this real constitutional difficulty is also frequently resorted to; it is a practice that has prevailed for many years, and it generally is resorted to several times during each legislative session, — an absolutely extra-constitutional, and therefore undesirable, procedure. The Senate, as the last body to enact a bill, has the power to request the Governor that the bill may be returned by him to the Senate. That is done over and over again.

Why is it done? We all know why. Because the proponents of the measure, the committee in charge or others in favor of the measure, find out that, in the form in which it has reached the Governor's table, he is not willing to sign it. He may be intending to veto it. This is an extra-constitutional means of preventing a veto in advance. The bill is called back. The only record is that the Senate requests the Governor, — it cannot require him, — to return a bill which is in his hands. The Governor returns the bill. The Senate then proceeds, without any record as to what the Governor recommends, to make amendments in the bill which it is informed privately will remove the Governor's objection. The Senate amends the bill. It goes back to the Governor, his objections having been removed in advance, and he signs it.

Is not that certainly an extra-constitutional, — I do not say unconstitutional, — procedure, not contemplated by the Constitution, resorted to solely to get round this difficulty created by the Constitution, whereby the Governor is put in a straight-jacket, and must either sign a bill as a whole or veto it as a whole? Some States have got round that difficulty by the adoption of a constitutional provision which is very simple and very efficacious in operation. Two of those States are Alabama and Virginia, each of which revised its Constitution in the year 1901 to provide for meeting this difficulty. The Alabama provision is this:

> If the Governor's message proposes amendment, which would remove his objections, the House to which it is sent may so amend the bill and send it with the Governor's message to the other House, which may adopt but cannot amend, said amendment; and both Houses concurring in the amendment, the bill shall again be sent to the Governor and acted on by him as other bills. If the House to which the bill is returned refuses to make such amendment, it shall proceed to reconsider; and if a majority of the whole number elected to that House shall vote for the passage of the bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that House it shall become a law. If the House to which the bill is returned makes the amendment and the other House declines to pass the same, that House shall proceed to reconsider, as though the bill had originated therein, and such proceedings shall be taken thereon as above provided. In every such case the vote of both Houses shall be determined by yeas and nays.

Now, is not that a perfectly plain, practical and business-like method of procedure? The Governor does not object to the whole of a bill, he thinks it ought to be amended in certain respects; under this Alabama provision he goes on record, fairly and fully, saying by message what amendments he thinks should be adopted. The Legislature adopts those amendments if it sees fit; it is not obliged to adopt one of them. But the Legislature has a chance, without starting the legislation all over again, to adopt such amendments as will meet the Governor's objection.

Without wearying the Convention with the detail of constitutional provisions, I merely will state that, in addition to the States of Alabama and Virginia, the States of Washington and South Carolina contain in their Constitutions either a provision exactly similar to the one I have read in part, or provisions whereby the Governor can approve parts of bills and reject or veto parts. It is exactly analogous to the provision we voted the other day, giving the Governor the power to veto items in an appropriation bill. It merely enables the Governor to make his exact opinion manifest, and to put it on record where he can be held responsible for it, — to put the question up to the Legislature in a perfectly straightforward way.

I merely want to urge, in conclusion, that this to my mind is not intended merely to extend the power of the Governor. It is rather a proposal to make the operation of both the executive and the legislative branches of the government, in respect to the passage of legislation, more systematic, more responsible, more business-like. I claim that it is exactly as much for the interest of the Legislature to enable the Governor to say in a veto message in what respects he believes a measure ought to be amended, and then to act upon these suggestions and to send the bill back to him, as it is in the interest of the executive. It is in the interest of straightforward, business-like, public, responsible legislative action, in which both the executive

and the Legislature participate. I do not believe that anybody can find in this provision any attempt unduly to aggrandize the executive branch of the government at the expense of the legislative, or to give any powers which are not equally for the interest of the Legislature and of the executive, in order to promote responsible, public action upon measures of legislation.

Mr. RICHARDSON of Newton: I should like to ask the gentleman who has just taken his seat a question with reference to this provision. Does the Governor, under the provision of this proposed amendment, have the right, when a bill first comes to him from the Legislature, to veto certain items in it?

Mr. QUINCY: The Governor does not have that right. In that respect this provision is not as comprehensive, not as sweeping in character, as the provisions in force in some of the States to which I have referred. This amendment intentionally is made more conservative. The committee was a little fearful of opposition to the broad proposal to give the Governor, on any and every bill, the right to disapprove certain portions and to approve other portions. Therefore the provisions of the second paragraph are limited expressly to bills which the Governor has returned with his recommendations for amendment, and which then have been amended, or not amended, as the Legislature may see fit, and which then are returned to the Governor.

Mr. PARKMAN of Boston: I should like to ask the gentleman a question. In the second portion of his amendment, beginning with line 127, he says: "The Governor shall have the right before acting upon any such reënacted bill to disapprove." Therefore he has not signed the bill, it has not become law, and he sends back a portion of it for enactment or for consideration by the Legislature. Now, the Legislature passes on that question. If they repass it you say it has the force of law. But, as I understand it, the Governor has not signed the original bill. I may be wrong in my understanding.

Mr. QUINCY: The procedure which is intended under the second paragraph, and I think it is perfectly clear, is that the Governor signs, when it comes back to him from the General Court, such portions of the bill as he approves, and that those portions become law; that he sends back to the General Court only such portions as he disapproves. Those portions do not become law unless passed over his veto.

If the committee on Form and Phraseology, when this matter reaches it, thinks that there is need of elaborating the provision, to make it perfectly clear that the Governor can sign such portions as he approves, there is no objection. That is the intention. And that follows the procedure, elaborated in more words, in the State Constitutions to which I have referred, which set forth more at length and more specifically provisions covering the signing by the Governor of portions of a bill which he approves, and the returning of portions which he disapproves.

Mr. Hobbs of Worcester moved that proposal No. 7 be amended by striking out, in lines 120 to 122, inclusive, the words "but no amendment so recommended by the Governor shall be rejected in either branch except by vote taken by yeas and nays;" and by striking out, in lines 127 to 140, inclusive, the words "The Governor shall have the right before acting upon any reënacted bill to disapprove and to strike out in the same any portion thereof which he may deem properly

separable from the remainder, providing that within five days of the time when such bill was laid before him he shall return to the branch of the General Court in which it originated a true copy of the portion so disapproved, together with his objections thereto in writing; such portion shall thereafter be subject to reconsideration and repassage in the same manner and subject to the same requirements as a bill disapproved by the Governor, and if so repassed such portion shall be deemed to be reinstated in such bill and shall have the force of law as a part thereof."

Mr. HOBBS: There is one proposition involved in this measure on which there is a very reasonable argument, that is to say, the providing of a simple method whereby the Governor can get before the General Court his objections to a bill which he disapproves only in part. The present procedure, as the gentleman from Boston has said, is, in theory at least, a somewhat awkward method. The only means whereby a bill before the Governor can get back into the Legislature for amendment is by the Senate requesting the Governor to return it. That takes a majority vote only. But after it gets back to the Senate it ordinarily becomes necessary to ask unanimous consent, the time for moving a reconsideration of the vote whereby it was passed to be enacted having expired. Twenty-four hours is allowed by the rules of both branches to move a reconsideration. After that time reconsideration can be had only by unanimous consent. Therefore in theory one man can block any reconsideration of the bill. After that it becomes necessary to suspend a rule, also a rule of both branches, which forbids the amendment of any bill in the enactment stage. To suspend that rule takes a two-thirds vote. Therefore there are several steps to be taken in both branches, one of which at least requires unanimous consent in each branch, before a bill can be changed in any respect.

Mr. GEORGE of Haverhill: May I ask the gentleman who is now speaking if there is anything in the present Constitution that prevents the Legislature making rules that will provide for reconsideration of a bill returned by the Governor, under those conditions, by a majority vote?

Mr. HOBBS: I think that is practically true, but I am speaking of things as they are and not of things as they might be. In practice the difficulty is much less apparent. Every Governor requests in one way or another, in private of course, to have a bill recalled, and in nine cases out of ten, at least, no objection ever is made to recalling it, and very seldom is an objection made to a reconsideration and amendment. Only in one case during the last year, I think, was any difficulty made about recalling a bill from the Governor, and in that case the bill already had been once recalled. I think that other Legislatures have shown an equal consideration of the Governor's wishes. Therefore the difficulty which is aimed at by this amendment is one that exists in possibility rather than in actuality. I may say, also, that so far as the unanimous consent proposition goes, the number of cases when that has been refused is very very small. I can recall off-hand only one or two cases. If you wish to imagine a case where the Governor is violently in controversy with the Legislature, then there may be some use for this provision. And I am disposed to say off-hand that such a condition might arise, and the Governor possibly might be in the right, and then perhaps it might

be desirable to liberalize the Constitution to that extent, so that at least he can get his view before the Legislature without having it blocked by a single objection.

There are other features of the amendment, however, that I am not able to bring myself to approve, and therefore I moved the amendments which have just been read.

Mr. Luce of Waltham: These are two quite independent propositions. I would ask the gentleman from Worcester if he would accept my assurance that I will ask the question to be divided, and thus secure a somewhat fairer treatment for each proposition than by submitting his second amendment.

Mr. Hobbs: Even on the assumption that the question is to be divided, I do not see any reason why the two amendments cannot be considered now.

Mr. Luce: The gentleman has been in the Legislature, and I have been in the Legislature, and we have observed the fact that psychology plays some part in the proceedings of any legislative body. I have submitted a proposition here, the first of these two propositions, which seems to me of a great deal of importance, and in fairness I would ask him not to prejudice the thing by requiring the votes to be taken in this manner.

Mr. Hobbs: If I conceived that the case of the gentleman was prejudiced unduly by the proceeding that I have undertaken, that would be an important consideration, but I cannot conceive that it is. I take it what he says does not apply to this amendment under consideration, but to another one of the eight propositions which we have before us.

Mr. Luce: It applies distinctly to this particular clause. Here are two independent matters that have been tied together, probably by accident. I should think that they might be considered with complete independence, each for its own sake.

Mr. Hobbs: I have no objection to dividing my amendments and considering them separately, but I must insist that both of those amendments be considered. I desire to finish what I have to say on these amendments and I would desire to speak on the second one first, that is to say, the power of the Governor to veto separate items in a reënacted bill.

The gentleman from Boston (Mr. Quincy) states that this is more conservative than the proposition allowing him to veto separate items. The only way in which it is more conservative is that it requires him first to send the matter to the General Court with his request for an amendment. Whether the General Court adopts the amendment or whether it rejects the amendment, thereafter he can veto, not that particular item to which his message referred, but any item that he considers properly separable from the rest.

Now, what is the effect of that going to be? It simply means that a Governor who has back of him fourteen Senators, or one-third of the House of Representatives, — either one of them, — can prune any measure that he sees fit by striking out anything that he wants stricken out of it. That is to say, the Legislature sends to him a proposition creating an office, with the requirement that it be under civil service, and if the Governor desires to make that appointment himself, without the intervention of the Civil Service Commission, he

can veto that part of it and sign the rest; and thereafter, if he can get the very small proportion of the Senate that I have referred to, — and there are very few Governors who cannot do that, — he can get what he wants and reject what the Legislature may have considered was the essence. That is government by the Governor and a minority of one branch of the Legislature, a one-third minority, if you please, and it does not seem to me that this is right. It puts the Governor in the position of being able absolutely to block the desires of a large part of the General Court. It seems to me that the effect is to lodge an extraordinary power in his hands, and that this Convention ought not to consider for a moment giving him such a power unless they wish to do, as some of the other propositions in this eight-chaptered proposition would do, — make the Governor responsible for the entire government, with an appeal to the people, and the Legislature mainly a body which can say "No" at times, with the condition that that "No" may be overruled by the Governor going to the people. In other words, the Legislature, instead of being a body equal with the Governor, is transformed into one decidedly inferior. It seems to me that at least that second amendment that I propose ought to be adopted.

Mr. George: I should like to ask the gentleman who is speaking if it is not a fact that the Governor at any time during the session of the Legislature may send in a special message, recommending any amendment to any bill, or recommending any legislation, and that those recommendations are referred to and heard by a committee, and acted upon by a majority of the Legislature as new matter.

Mr. Hobbs: I think I can answer that question safely in the affirmative.

Mr. Richardson of Newton: I am inclined to sympathize with what the gentleman is saying with reference to this second paragraph of the proposed amendment, but I should like to ask the gentleman if he really thinks that the provisions contained in that amendment increase the power which the Governor now has under the veto power.

Mr. Hobbs: I certainly do. We have many propositions which the Legislature passes on and surrounds with what it conceives in its wisdom to be safeguards, and without which it would not pass those measures. If you give the Governor the right to strike out what the Legislature considers of the essence and approve only what he considers of the essence, it seems to me you are lodging a distinctly larger power in the Governor than if you give him the right to veto the whole measure. The veto power under present usage is a power that seldom is used, because the Governors who have sent in a large number of veto messages have found themselves in such antagonism to the General Court, even when they were backed up in that court by a good deal more than one-third of their own party, that their veto messages were overridden with great regularity. Therefore, as a rule, the veto power is used seldom and temperately. This new power, which is not exactly a veto power, but which can be used so conveniently and expeditiously, which saves the substance of the proposed law, thereby avoiding the trouble that a Governor inevitably incurs by disposing out and out of a proposition over which much time and perhaps much interest has been spent, is a matter of so much less consequence than the veto of the whole that the prospect

of its being used freely is very great, and it seems to me therefore that the power which the amendment lodges in the Governor is decidedly greater in practice than the present veto power.

Now as to the other proposition, the first amendment that I have moved, relative to striking out the clause which requires a call of the yeas and nays on all suggested amendments by the Governor. That is not a very important matter, but it seems to me that we should not needlessly multiply roll-calls in the General Court. A roll-call can be obtained in either branch by a very small margin, thirty in the House and one-fifth of those present in the Senate, — not less than five nor more than eight, in other words. That margin is so small that a roll-call cannot be avoided in either branch unless the sentiment is overwhelmingly the other way, and it does not seem to me that it is advisable or desirable to inflict upon the General Court the necessity of having a roll-call on every proposition that the Governor chooses to put up to it.

Mr. Quincy: To save time may I say now, interrupting the gentleman from Worcester (Mr. Hobbs), that there is no objection on the part of the committee to the amendment which he suggests. It is purely a matter of procedure. Opinions may differ. The point which he makes is a very fair one, and the committee will have no objection to his amendment being adopted.

Mr. Hobbs: With that statement I have no objection to passing that amendment without further remark. I agree with the gentleman that it is a matter of very little importance compared to the major proposition involved, and upon the major proposition I wish to reiterate again what I said to begin with, that it is conceivable and perhaps desirable that greater power be lodged in the Governor to submit his views to the General Court without the necessity of sending in a special message to amend the law enacted during his administration. It may be desirable to put a check upon the power that the rules of both branches now give to one single member of either branch to block the consideration even of any change that the Governor desires made in an existing law. It may be desirable to give the Governor power to get his views before the Legislature in spite of the opposition of the upper branch of the General Court. With those considerations in view the proposition contained in the first paragraph is a distinctly possible proposition.

With regard to the second I desire to reiterate again my opposition to that proposition which would enable a Governor, backed up by a minority in one branch of the General Court, to prune every bill that comes before his consideration, striking out any part he pleases and signing only the residue.

Mr. Luce of Waltham: As I already have brought to the attention of the Convention, the first of these two proposals results from a resolution laid before this body by myself quite independently of any other resolution.

Mr. Adams of Quincy: Will Mr. Luce kindly state the proposition?

Mr. Luce: The first proposition is that the Governor may secure a reconsideration by the legislative body of any feature he questions, without, as at present, subjecting himself to having the whole measure lost by the opposition of a single Senator. The second proposition receives new vitality every day. While I am not sponsor for it I

may call attention to the fact that a volume of arguments in its behalf could be extracted from the records of Congress, for the proposal is aimed at the "rider", an evil that in Congress has grown through nearly a century, and of late has been particularly conspicuous. I need not enumerate the number of times that the rider has been used to embarrass the President and injure the work of Congress. Thank heaven the device never has been a dangerous part of our own legislative procedure, but it is wise to lock the stable door before the horse is stolen, and in this instance it may be wise to make it impossible for a legislative body in this Commonwealth to perpetrate that deplorable feature of parliamentary practice.

But, sir, it is to the first proposition that I will especially address myself, and if it should prove that I give it more attention than gentlemen here think it may merit, have patience with me until I have attempted to prove a paradox, a delightful task, and to show you that in this simple little proposition is involved the most important phase of governmental change in Massachusetts in recent years, a phase that bids fair to subvert the whole theory of our fathers and to introduce here a system of autocratic rule against which I would raise my protest. And if I do that, and if my blows, as strong as I hope to make them, fall alike upon members of my own party and those of the opposing party, it will be because of no wish to make personal criticism, but because men high in authority in this Commonwealth within the last few weeks have carried to an extreme what seems to me an obnoxious principle, almost without the knowledge of the people, under circumstances that have passed without the slightest comment. In order to explain this, sir, I must give it some historical background, that you may understand what the veto is and what it means, and how it has been perverted.

The veto, it is commonplace to say, came from Rome, and it is again commonplace to say that the word means "I forbid." It dates from the days when the Roman people seceded, went out to what ever since has been known as the Sacred Mount, and would not return until they were assured that they might elect tribunes with the power to control the action of the magistrates, a control extended presently to the action of the Senate itself. The word "veto" came to be used for the power of the tribune to prevent action. It is the wrong word to apply to the modern procedure. That it ever was adopted here is most unfortunate, because it has no relation to anything that now exists in the United States. Even in England it never was accurately used. Parliament at the outset was but a place where the representatives of the Commons with the other Estates traded, made bargains with the king. Presently they gave to him their petitions and he granted them or he denied them. He still nominally grants; he no longer denies. The last time when denial was exercised was in the reign of Queen Anne. Never since then has an English monarch denied a petition that has come to him through Parliament.

Nearly all of the Colonies in this country were established while the old idea that the monarch could deny still had vitality. In most of them the crown always exercised that right, but the Governors of Rhode Island and Connecticut never had power of denial, and those of Massachusetts did not receive it until it appeared in the charter of 1691. The Governor from that time on was able in Massachusetts

to prevent legislation. Here and in other Colonies the Crown and the Governor so abused the power that one of the grievances against the King laid before a candid world by Thomas Jefferson was that "he has refused his Assent to Laws, the most wholesome and necessary for the public good." And so when our Constitutions were written, the people of the Colonies, familiar as they were with this invasion of their rights, would have nothing more of executive interference. It was said that when William Hooper went home from the North Carolina Convention and was asked how much power they had given the Governor, he answered: "Just enough to sign the receipt for his salary". That was all the power they meant to give the Governor. They meant he should have no part in legislation, and, sir, I have sympathized with that view.

I frankly say it was my regret that yesterday this debate centered upon what seems to me the weakest link in the chain. It centered upon a proposal that the executive should share in the debates of the legislative. And let me interject one anecdote that in my judgment might of itself have met the whole argument. John Quincy Adams says in his diary it was told in a Cabinet meeting that when George Washington was President of the United States he attended Congress, and after going there two or three times came away one day in great wrath, and with the language that our first President was accustomed to use when he lost his temper, said he'd be damned if he would ever go there again. If a President thus received the heckling of a critical Congress, what Governor would be so audacious as to enter a legislative body and risk the same danger? So yesterday I sympathized with the opposition to that proposal.

The gentleman from Lynn in the third division (Mr. Lummus) hit the nail on the head when he said it was our duty, or he hoped it would be the result of our labors, to strengthen the executive within the scope of its functions, and to strengthen the legislative, but not to inject the executive into the legislative. I am old-fashioned enough, sir, to believe still in the doctrine of the separation of powers and all that it implies. Our fathers made one great exception to that doctrine. They created a bond between the two departments in the shape of the veto. The first Convention, that of New Hampshire, took no action on the subject. The skeleton Constitution of South Carolina gave the Governor the absolute veto, but that lasted but for two years. The new States immediately following made no mention of the matter, until Pennsylvania recognized the danger of having a legislative body act without restraint on impulse and passion, as all legislative bodies sometimes will act, and so that State, groping for a remedy, said public laws should not be enacted for final passage until the next session. Then came New York with a new idea. Its Constitution was drafted by John Jay, one of the great patriots and statesmen, and he provided in it that bills should be passed upon by a council of revision, which should consist of the Governor, the Chancellor and some of the judges. That council lasted for forty-four years, and modern commentators believe that it was a very useful thing. It fell through political hostility. Martin VanBuren killed it. Chancellor Kent and the judges, Federalists, in 1814 had opposed a bill about privateering. The Democrats, led by Martin

VanBuren, vented their spite in the matter of this one bill by securing in 1821 the destruction of the council.

In its place was put the Massachusetts idea. It was John Adams, to whom we have so much occasion to be grateful, who devised what was adopted by the Nation and now has been adopted by all the American States with a single exception, North Carolina. John Adams said in 1780 that instead of having a council of revision we of Massachusetts would let the Governor do this thing alone. The Federal Convention copied Massachusetts. Possibly the interest of the reminiscence may warrant my taking a moment to tell you that by the narrowest of margins the Massachusetts plan was adopted and not that of New York. The vote on the amendment that would have substituted the New York plan stood three States to three, and therefore the amendment was lost. The New Jersey representation was absent; that of New Hampshire had not arrived. Hamilton was handicapped by the defection of his associates. Two States were divided. So the Massachusetts idea went into the Federal Constitution and since has prevailed.

This exception to the general rule of the separation of powers has furnished to the executives of the Nation and the States one of their chief instruments for interfering with legislation.

Here let me try to overcome some of the misunderstandings of yesterday's debate by recalling very summarily what has happened. When our Constitutions were formed there was the greatest fear of the executive. Only a few years passed before the fear came to be of the legislative. In the Massachusetts Convention of 1820, Daniel Webster said: "We see, all around us, a tendency to extend the legislative power over the sphere of other departments." A dozen years later the pendulum had swung to the other extreme. Andrew Jackson had again put the executive on the pedestal, just as Thomas Jefferson had done. Jefferson, Jackson, and now Wilson! It is noticeable that the party of which these men have been the champions, always has preferred autocratic power. After Jackson the pendulum swung the other way. The Whigs all opposed the idea of executive supremacy. They backed up Henry Clay in the great fight against the veto. One of them, Abraham Lincoln, explaining in 1848 the position of General Taylor, put himself upon record as hostile to the Jacksonian theory. However, as President under war conditions Lincoln was compelled to desert his own position. Then after the war the executive was feared once more. Writers of the period, with the example of Johnson before them, said the executive power was endangering the welfare of the country. But the pendulum swung back, and by the time of Grover Cleveland once more the executive had become subordinate and the legislative supreme. In 1891 or thereabouts, when Harrison was President, John Ordronaux, of the Columbia Law School, was able to say: "It is from usurpation of legislative power, more than from any other source of public authority, that we now have cause for apprehension." Another generation has nearly passed, and to-day we see once more the other extreme reached and the executive predominant.

Therefore, sir, knowing the pendulum has swung back and forth for nearly a century and a half, and believing it will continue to

swing to and fro, I do not think that the full program urged upon us yesterday by some of the speakers would be accepted by the people. We are nearing the point where once again there will be a revolt against autocracy, and once again the people, acting through their Legislatures and Congress, will resume their old powers. Meanwhile we see in our own State certain acceptances, certain adoptions of the theory for the moment prevailing, that strike me as eminently dangerous.

I remember in my own time in this chamber certain aspects of the question involved that I beg your indulgence to lay before this body. I remember one day in June in the year 1904, when came a message from the executive chamber, a message, sir, that you may recall because in it were wrapped up your political fortunes. We saw fit to sustain the Governor (John L. Bates, the President of the Convention) in his action, and the result was that for the moment it seemed as if the chief executive of this Commonwealth for his use of the veto power had been rebuked by being denied the reëlection he so eminently deserved. Why was it he had occasion to veto that bill? Because he conceived the Constitution to mean what it said, that the executive and the legislative should be forever separate and neither should exercise the powers of the other, and he refused to use the means of shaping the action of the Legislature which Governors before him and Governors since him have been so free to use. Sir, I want to take this occasion to say that in the fourteen years that have passed the reputation of that Governor has been wholly freed from any discredit cast upon it by his unmerited defeat, and that never in all the life of that Governor did he stand so high in the esteem and love of the people of this Commonwealth as he stands to-day. [Prolonged applause, every one rising.]

Let me indulge in another reminiscence concerning a certain bill that came to the executive chamber in the last hours of a session. I was told more pressure had been brought to bear for the veto of that bill than in the case of any other coming into the chamber in that year. His Excellency the Governor, after consulting the chairmen of the committee that had the matter in charge, said he would approve the bill if a slight change were made. We told him it had bitter enemies in the Senate, that it would be impossible to overcome their opposition, but he undertook to overcome that opposition, and he did. The present system, your present Constitution, compelled your Governor, without public knowledge, quietly, almost secretly, to confer with members of the Senate and secure from them, if he could, withdrawal of their opposition to the change he desired, and that is a thing to which I object. I was thankful enough at the time that the result followed, but the practice then seemed to me unfortunate, and it has seemed to me unfortunate ever since.

I promised that I would relate this argument to recent conditions. Permit me to lay before you what now happens in the Commonwealth of Massachusetts under the requirement of a Constitution, perhaps the most solemn in all that document, Article XXX. of the Bill of Rights.

> In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Let me read to you from an editorial in the Boston Transcript of April 17 last, that I may show you how far we have departed from the theory of the fathers and how we are creating an unwritten Constitution which is directly opposed to what they pronounced wise after a century and a half of experience with executive control. The editorial begins by declaring to be right the Representative who had said the General Court should receive at once a definite knowledge of the Governor's views on the bill for the Boston Elevated Railway reorganization. It goes on to aver:

> The State can desire no repetition of last year's fiasco, when the stand of the Governor, made known in the eleventh hour, overturned the whole course of the legislation then pending.

After explaining the situation the editorial concludes, speaking of the Governor:

> He is the more called upon now to state his views of the reported bill and so to avoid any chance of a futile deadlock in the closing days of the session, because the actual proposals which he made in his message fell very short either of the adequacy or the directness of the measure at present before the House. There is reason to assume that in the interim Mr. McCall has had time to clarify and extend his views of the case. In any event he should make known his acceptance, or his specific points of objection, without hesitation.

Here is one of our most serious newspapers taking the ground that it is the normal and natural thing for the representatives of the people, before they act, to find out what the Governor thinks.

It may be urged that since the Governor, with constitutional warrant, had broached the topic to the Legislature, it was not improper to expect him to elaborate his views if the occasion required, and there can be no question but that with complete propriety, as far as the Constitution goes, he might have sent in a supplementary message. What actually took place, however, may be gathered from the Boston Herald news columns of May 3:

> The members of the legislative committees on Street Railways and Metropolitan Affairs, who in joint session framed the bill for the relief of the Boston Elevated Company, yesterday practically agreed to support an amendment that would overcome Governor McCall's chief objection to the measure; namely, the contractual section.

It appears that the Governor had sent to a member of the Ways and Means Committee a communication denouncing the section in question. Brief extracts were given in the press, but there was neither the complete publicity nor the official formality that the Constitution contemplates in relations between the executive and the legislative branches. The story goes on to tell in what particulars the members of the committees had decided to accept or reject the suggestions of the Governor. It all has the air of negotiation, much as in the days when the Commons negotiated with the King, although of course without the element of barter.

Parliament freed itself from this sort of thing and when our fathers wrote our Constitutions they meant to make it impossible.

We had a great Senator from this State in the Senate of the United States in the person of George Frisbie Hoar. Once he had occasion to rise on the floor of that body and protest because another Senator had ventured there even to intimate what the President of the United States desired. It always has been held wrong for any member of Parliament to say on the floor what the Crown wanted. Not for one

instant would that be allowed. In our own parliamentary law, until apparently ignored and forgotten, it has been the rule that the opinions of the executive, save as expressed in his messages, shall not be voiced upon the floor of this chamber. How far have we departed from the spirit of this when a legislative committee, seemingly with the assent and approval of the Legislature itself, humbly says: "Pray, sir, what is your pleasure in this matter? We will act when we know what you desire." Was that the spirit of the men who founded this republic? Should that be the spirit to-day?

How has this come about? In part through an unfortunate provision of the Constitution that directly encourages and stimulates what seems to me an invasion of constitutional rights and duties that it is our duty to prevent. This Constitution was framed in days when laws were simple and short, when there was no question of putting a mass of details in a bill. This Constitution never contemplated, I doubt if John Adams ever dreamed of the possibility, that there would come before a legislative body such a long, intricate measure as that relating to the Boston Elevated Railway Company. And so our fathers accidentally, because they could not foresee conditions, made it necessary for the Governor to sign or reject a bill as a whole. The basic purpose of the veto, erroneously so called, is that the Governor shall have the same privilege that any member of the Legislature has to move a reconsideration. Almost every day here somebody rises and moves a reconsideration. The Governor has the right to move a reconsideration, and he has the advantage that his motion prevails by his will alone, but both he and the Legislature suffer under the disadvantage that in the course of the next stage neither he nor any member can move to amend. Even though a slight modification might meet his objections, that is impossible if the constitutional requirements are observed. The result is that he is driven to evade the Constitution, and if he would accomplish an object that a majority of the Senate approve, he must do it quietly, almost secretly, without any sanction from the Constitution, by sending for some Senator to ask him that the measure be recalled. Worse yet, there is every incentive for him, by anticipatory conference with members, to make sure that measures come to him in acceptable form, and from this it is but an easy step to trying to keep from coming to him at all measures that for one reason or another he does not care to face. Thus has been encouraged and stimulated the practice of executive interference with legislation, and a share by the Governor in the making of laws to a degree the men who wrote our Constitution never intended, probably never even contemplated. For this reason the simple proposal before us has a gravity and far-reaching importance that does not appear on the surface.

The remedy proposed is not absolutely novel. I claim no credit for being an inventor in this or any other regard, but, sir, opportunity has come to me to give some study to what other men have tried to do in remedying some of these evils. It fell under my notice that Alabama in 1901 devised an expedient which Governor O'Neal of that State says has worked admirably. He told the Governors' conference ten years later, in 1911, that on many occasions, from his greater and broader experience he had been able to perfect bills in this manner, to remove objections of constitutionality, to point out hardships, and

as a result in no case in his own time, and he thought in no case in that of his predecessors, had the Legislature refused to accept the suggestions. Virginia has copied the device, and I believe, sir, that presently the admirable example set by Alabama and Virginia will be followed by all the other States of the land.

And now as to the practical working of the second proviso, — that the Governor may veto parts of a bill. It was put into the Constitution of the State of Washington in 1889. Then it was copied by South Carolina. Ohio adopted it in 1903 and kept it for nine years, when with very little debate and for no tangible reason that appears in the report of the debates of the Convention, it was dropped. But, sir, it so palpably and evidently and clearly meets the danger of riders, meets the danger that has so embarrassed President Wilson and may at any time so embarrass our Governors, that I trust it too may have consideration on its own merits.

Personally my chief concern has been with the first proposal, not because it will strengthen the power of the Governor, — God forbid! That is not my idea, that the Governor should have any power given to him which will increase his already alarming control over legislation. What I ask by this resolution, simple on its face, apparently of short limit in the extent of its influence, and yet in fact far-reaching in its possibilities, is to make legitimate and open and above-board a practice that now has all the danger of secrecy; and by implication to demand of the Governor that he shall not convey to the Legislature his views of particulars until the Legislature has first spoken. That will carry out the purpose of the veto in its American application. Let the representatives of the people say what in their judgment the people want, and then, if you please, give your executive an opportunity to approve, or, to say either "I ask that you reconsider some of these particulars" or "I ask that you reconsider the whole proposition." Thus will you add to this framework of government in harmony with the beautiful proportions given to it by those who wrote into it the doctrine that the people should exercise the predominant power through their representatives chosen for the purpose, and not through the man chosen to execute their laws. [Applause.]

Mr. Bennett of Saugus: It does not seem to me that any man can study the trend of events in the United States at the present time and in this State without seeing clearly that every line there is in this proposition is going to be adopted into the fundamental law of this Commonwealth, not only what stands before us now but what was rejected yesterday. I do not think there can be any question about it.

I have been very much amused at the use of the term "autocrat" here. It used to be said a little while ago that the day of personal journalism had gone by, and that the picturesque figures of Horace Greeley, and Samuel Bowles, and James Gordon Bennett, and Henry J. Raymond, and all of those, had gone by, never to be replaced by others of their kind. There never was a time in history when a newspaper would die without an autocrat so easily as it would to-day. There is not a successful newspaper within the length and breadth of the United States, — it may have a board of trustees, it may have a board of directors, it may have an advisory staff or what not, — unless it has one man who is the autocrat. The same is true of

every bank in the United States. They have a board of directors, they have an investment committee, they may have trustees, but some one man is the autocrat in that bank, and everybody who wants to get down to the bottom of things asks who that one man is. When the race was young, and when people were perplexed and confused by that problem of the existence of good and evil, which has not been solved yet, and by apparent confusion and cross purposes in nature, they believed in several gods, but the revelation of one God, the Ruler and Creator of the universe, grew out of the very nature of things, of the impossibility of governing a universe in any other way. This will be written into the fundamental law of this State.

Furthermore, I love the historical lore of my friend from Waltham, I love to hear him repeat it, but a government, — the government of the United States, any government, — must be indigenous to the soil, it must be based upon the heredity, the environment and the race of the people. Hence any references to North Carolina or to England are merely advisory or merely incidental. Our own government is different from any other in its dual system of State and Nation. Many of us, — or most of us, — think that the success of the Republic has been due to that dual system. The power of the executive at Washington is growing steadily and rightfully because accompanied by the possibility of change and accompanied by machinery for quick reference to the people, like the initiative and referendum that we are going to pursue further in this State. For purposes of administration you want this man who is called a dictator, and you have got to have him.

You refer to the parliamentary system of England. Why, the greatest reformer who ever lived in the world, St. Paul, who got hot under the collar when anybody attempted to tell him what to do, because his message was from God and not from man, he acknowledged he was a debtor both to the Greeks and the Hebrews. He took information where he could get it; then he proceeded upon his own basis. You take the parliamentary system of England; what does it teach us? They have no dual system of government. They have immediate representation, in which they seem to have confidence, and they have something built up upon the heredity and environment of centuries.

I do not know as I will take up the time to use a couple of agricultural similes, because I think my case is plain, but I will use one. Something was said the other day in regard to sheep husbandry. I knew Montana when it had not a single sheep, a single domestic sheep, within its limits. Now it is almost and perhaps wholly the greatest sheep State in the United States. The initial steps there were failures, but eventually they evolved a sheep suited to the soil and climate and other conditions in Montana, different from the sheep of Colorado, different from the sheep of Wyoming, different from the sheep of California, but suited to Montana. It is the same way with alfalfa, for instance, that we see a great deal about in the newspapers. The term is generic, and the alfalfa which will grow in Massachusetts has a different seed from that which will grow in Colorado or in Spain. And so it is with fruits, with men and, without any question, with systems of government. The system of government must be in-

digenous to the soil where it is planted. We have worked it out all right up to this time; we are going to continue to work it out.

I was a little puzzled at first as to why, with the trend of events so specific and so certain, the party whips on both sides seemed to be cracked against this measure. Now I am going to tell you why I think it is. It is because the hand-writing on the wall shows that Colonel Gaston is going to be the next Governor of this Commonwealth. [Laughter and applause.] I am considering this seriously. We do not care for party government very much. There is not the demand for it or the need for it that there is in England, in my judgment. Why, what do the people say to you all about it? Do they say something about Republicanism and Democracy, outside of the machine politicians? No. No. They prayerfully and fearfully say: "Support the President." That is what they say: "Win the war." And they not only do not care much of anything about party government, but they are hostile, distinctly hostile, to a good deal of it. I saw the campaign in which Mr. Dawes was elected to the Senate the last time by a combination of Democrats and Republicans. I think I foresee a similar occurrence in this State this fall. And it is to guard against that that the party whips on both sides are trying to raise votes against this most just, this most progressive, this most reasonable and sensible measure. The work of administration is being concentrated in one hand, in one party, one person. The opportunity for the people to quickly register their views is being extended in another way, through the initiative and referendum and in similar ways, and I am perfectly glad of an opportunity to say that in my judgment inside of five years, if not inside of two, these amendments, every one of them, will be incorporated in the fundamental law of this State.

I want to say a word further. This may not go through, but having a judicial acquaintance, an observing acquaintance with the man who is in charge of this measure for a great many years, — I was in the Legislature with him in 1891, — the genius, the industry, the patience, and the high toleration with which he engages in constructive legislation and constructive work while so many of us like to sit on the fence like small boys and throw stones at everything, the manner in which he goes ahead with his constructive legislation is worthy of the greatest credit and is a matter of respect in this Commonwealth. [Applause.]

Mr. WALKER of Brookline: I cannot resist the temptation to re-echo the words that have just been uttered by the previous speaker. I believe that one of the keenest minds and one of the most useful members of this Convention is the gentleman whose name is attached to this measure. That has been my experience.

Now, I am so thoroughly in favor of the fundamental principle that underlies this measure, and of most of its provisions, that I am sure those in charge of it will not think that I am acting unwisely if I criticize it in some respects. I wish to say that I believe this Convention is going to adopt the first part of this amendment, the merits of which have been so eloquently urged by the gentleman in the first division. I cannot assent, however, and I do not believe that this Convention will assent, to the second part, the proposition to permit the Governor to veto a part of a measure. It has been pointed out very clearly just what that means. It means that the Governor

may take any measure that comes before him and pick out such parts as he wishes to become law, and may veto the balance. Now, what does that mean? It means this: The General Court may pass a measure with various provisions in it. The Governor strikes out some of those provisions. The Legislature is unable, by a two-thirds vote, to reënact the part that he has stricken out. Therefore there is written on our statute-books a law which never might have gotten to the Governor at all if it had not been for the part that he has stricken out. Laws may get onto our statute-books, therefore, which a majority of the General Court never has approved. It is necessary to point out that fact, it seems to me, to show that it is unwise and unsound to allow the Governor to veto a part of a measure.

I believe that the first part is enough, moreover. If a rider is put on a measure, that is, extraneous matter inserted into it that does not properly belong there, it to be sure may be carried through because of the necessity of getting the main legislation. If that thing occurs, under the power given in the first part of this amendment, the Governor may send the measure back to the General Court and call their attention to such rider, and ask them to strike out the part which does not belong in the measure. That is power enough. The Legislature will follow his advice in a case of that kind, and if they do not he has the power to veto the whole measure. Therefore it seems to me that the obvious thing to do is to pass the first part of this suggested amendment and to refuse to pass the second part.

Mr. Brown of Brockton: The gentleman in the second division, the chairman of my committee on Labor (Mr. Lowell) the other day spoke of a division of sovereignty. In my view there is no division. How can you divide sovereignty? Sovereignty is a unit. In the last analysis sovereignty is the right to exercise power. Power is a unit when it is exercised and there cannot be but one person exercising it. There is in the Constitution what may be called a subdivision so that no one branch to whom power is delegated may exercise the whole power. In other words, it is to dilute power through this subdivision of sovereignty, which, because of these certain checks and balances, will reflect the will of the people. It has a bearing here because the question immediately arises: Is the great power delegated which the gentleman in the first division fears? As he interprets the resolution, it does; as others have pointed out, it does not. The three branches must work together, otherwise we cannot have any government. "New occasions teach new duties." Under existing conditions it is the duty of the President of the United States, under the Constitution, to exercise the power that he is exercising. He is the executive head. The executive is to execute, and how can a man execute unless he is vested with the requisite power? It was intended that he should have that power. There is no check upon the power of the President of the United States. He swears that he will support the Constitution of the United States; there is no other limitation. Why? Because the forefathers recognized that there might come a time like the present when that President would need the very power that was delegated. It is a mighty wise government that was framed in those days. I have opposed the delegating of additional power in some cases. It did rejoice me much to find the gentleman in the first division (Mr. Luce) and the gentleman in the

second division (Mr. Bennett) repeating, much as I like to have it repeated: "Beware of delegating power so as to destroy the balance which should exist between the executive, the judicial and the legislative." I echo those warnings. It already is admitted here that a Governor can and does and should influence legislation. We have had some very able Governors in this Commonwealth but those who shine the brightest on the pages of our history were executives in every sense. They took up what the people wanted, called attention to what the people wanted, insisted that it should be passed by the Legislature. Preserve that much. But if this resolution gives him power that will enable him to pass a law in defiance of the Legislature, that I would oppose. But I do not see clearly how to vote for this matter as it is in its present form. It should be rewritten or amended. Power, so far as it may be exercised by the different branches, shifts as occasion develops. Because of the conditions of to-day more power temporarily has gone to the executive. Congressmen to-day surrender their own individual opinions as to what by strict construction might be constitutional. So do all citizens; because there has arisen a necessity that even sweeps principles to one side. But there will come a time, and it is coming speedily, when the legislative branch will assert its power to harmonize conflicting economic conditions which will arise. In strikes now pending in this State men are abandoning their own organizations and going out on their own hook regardless of their contract; breaking a contract and thereby dividing the labor movement, — because labor organizations stand for the inviolability of a contract. There is nothing to the labor movement if it does not stand by its contracts. I speak of it to show what is in the air, and indicating that the next branch of government to become prominent over other branches will be the legislative. I would favor any amendment to the Constitution that will enable the executive to aid the Legislature and the Legislature to aid the executive more than they can at the present time. Careful checks and balances, to save our system of government, will be essential in passing out of the vortex we are now in. All governments are in the flux at the present moment, not here alone, but elsewhere. Anything that will tend to bring the legislative and the executive into better harmony of action should be favored. I believe there is some merit in this resolution but I want to see it safeguarded.

Mr. George of Haverhill: I presume that this Convention is going to hesitate to adopt the second paragraph in this section, but I think that the first section is fully as dangerous. For instance, almost all important legislation represents various interests. Oftentimes a matter is before the Legislature that interests various sections of the State, and many times those interests are adverse, and the result of that legislation is a compromise. Now, then, of course there are certain members of the Legislature representing the interests of their State who would not vote for the proposition in itself unless it contained certain other references to their particular section. That is a part of the system of Massachusetts in our representative form of government. Essex, Berkshire, Hampshire, the Cape district, all are represented by people who reflect the sentiment and opinion of the people who live in their particular section of the State. Now, then, suppose that a matter is submitted to the Governor that has been considered four

or five months in the Legislature as a compromise, and the Governor sees an opportunity to exercise a little authority, and on the advice of a certain element in the Legislature he sends in an amendment. He could have sent in that amendment by special message, but he would have until the very last day of the session of the Legislature and after the matter has been thoroughly threshed out in the House and Senate, then he puts in his recommendation for amendment. That means that the Legislature will have to stay here two or three weeks longer than they sit now. It is not an efficient way of doing business. As I understand it, the Governor has a right now when any important matter is before the Legislature to send in a special message recommending a certain amendment, it is considered by a majority of the committee of each branch of the Legislature, and that is the place to consider it. If a Governor has some ideas about, for instance, the Elevated Railway bill, why should he wait until the Legislature passes that thing up to him in the final analysis, and then in the very last days of the session refer that back to the Legislature with a certain amendment? Why is it not his duty to send in his amendment while it is pending, so that his amendment can be considered, and not bring on these unnecessary controversies and cause unnecessary delays?

The Governor can do everything that this amendment proposes or permits him to do. And if there are any instances such as have been cited by the delegate from Worcester (Mr. Washburn), — which, by the way, were very instructive, — it is the rules of the Legislature that regulate the conduct of legislation; it is not the Constitution. If the Legislature desires to have rules that will recall bills from the Governor and have them considered by a majority vote, the Legislature can pass those rules, and if the Legislature fails to pass them the Governor, under the present Constitution, can send in a message at any time recommending any amendment to any bill that has been passed or to any bill that is then pending, and those recommendations are considered by a majority vote of the Legislature.

Mr. Quincy: I should like to ask the gentleman if he seriously contends that the Legislature has any constitutional power to withdraw a bill from the hands of the Governor after it reaches the Governor.

Mr. George: That is not my proposition. My proposition is that the Boston Elevated Railway bill, for instance, which now has passed the Legislature, was before the Legislature for three months. The Governor had an opportunity to know as much about that bill as any member in the Legislature. There is no need of passing this proposal to give him an opportunity to have that matter hung up until the very last days of the Legislature and then submit his amendment, because he can submit those amendments or recommend those amendments in a special message now without this proposed amendment.

Mr. Luce: In the year 1911 Governor Eugene N. Foss sent to the Legislature, if I remember right, a message in which he informed the Legislature that he understood it was passing a bill for biennial elections, which indeed had passed one branch by a large vote, and he informed the Legislature in effect that he would not sign that bill unless it contained a provision for the recall. That was, I think,

the first instance in the history of this Commonwealth, and possibly of any Commonwealth, where that thing was done. I ask the gentleman from Haverhill if he thinks that is a wise policy to engraft upon legislative procedure.

Mr. GEORGE: Do I understand the gentleman correctly that in 1911 there was a proposition before the Legislature to amend the Constitution so that we would have biennial elections? Is that what I understand him?

Mr. LUCE: As I recollect the terms of the message from His Excellency, yes.

Mr. GEORGE: I want to say this much, that if there was a constitutional provision before the Legislature in 1911 to submit to the people the proposition of biennial elections, and His Excellency the Governor, who has nothing to do with constitutional amendments, undertook to tell the Legislature what he was going to do, the Legislature was justified in telling him to mind his own business and let their affairs alone. In the first place, the Governor does not have anything to do with the approval of constitutional amendments. That is the great trouble with our recent Governors. We never used to have that trouble. It has been said here that we propose to make a real Governor by changing the Constitution. Why, no, Mr. President, the only way that you can have a real Governor is for the people to elect a man who is capable of being Governor, and a man who holds the position of Governor who attempts to sway the Legislature on the question of passing a constitutional amendment, with which he has nothing to do, why, he does not understand the first principles of government and the Legislature is justified in refusing to have anything to do with such advice.

Mr. BROWN of Brockton: It is only just to say that the matter pending which was referred to was not a bill; it was a resolve providing for biennial elections.

Mr. GEORGE: I do not know how you are going to change the date without changing the Constitution. I think the Constitution provides when the elections shall be held. However, the gentleman from Waltham told us it was a constitutional amendment.

Mr. QUINCY of Boston: I will try not to occupy the whole of the time, because the general grounds in support of this proposition have been covered very fully, as I knew that they would be, by the gentleman from Waltham. I should have stated in opening this question that the amendment under consideration contains two independent propositions. The second, giving the Governor power to veto portions of bills, is a different proposition from the first one. The second proposal is dependent upon the first one, at least, as drafted, but the first proposal, namely, giving the Governor power to suggest amendments, is entirely independent of the second part of this amendment.

Now the gentleman from Worcester who was a member of the Senate this year (Mr. Hobbs) and the gentleman from Brookline (Mr. Walker) have stated perfectly fairly the arguments against the passage of the second part of the pending proposal, and I am not going to weary the Convention by again reiterating the arguments in favor of it. I think the members understand what is to be said for, and what fairly is to be said against, the proposal to give the

Governor the right to veto portions of bills. It does somewhat enlarge, in the way pointed out, the Governor's power to influence legislation. There seems to be, however, a general agreement, with the exception of the gentleman from Haverhill (Mr. George), who I think is the only member who has raised his voice against it, that the first section of the amendment, providing for the right of the Governor to propose amendments to bills, is legitimate and proper and is called for. I trust, therefore, that those who favor the first section of the amendment but not the second will make their support of the first section effective by voting, if they do not desire the second section, for the amendment proposed by the gentleman from Worcester, — which merely anticipates my intention, as the member in charge of the bill, of asking for a division of the question upon these two sections. The effect of the motion of the gentleman from Worcester to strike out the second section relative to the power of the Governor to veto portions of bills simply is to take a vote first upon the second section of the amendment. In regard to his amendment cutting out the provision for a compulsory roll-call, as I already have said, that is a matter of minor detail, and I am perfectly content to have that amendment adopted.

Now I have only one other word, and that is to emphasize again, — because this is the central point of this whole discussion, — the importance of having the action which now in fact is taken by the Governor made open and responsible instead of secret. The gentleman from Waltham has given us a very pertinent illustration of the growing tendency of Governors, not originating with the present chief executive, to make their views felt privately in regard to legislation. I agree with him that that is not a legitimate function of the Governor, and yet it is inevitable under present methods of procedure. Take such a bill as he refers to, the Boston Elevated Railway bill, with its immense importance both in dollars and cents and otherwise; it was inevitable that those who favored that bill should try to find out in advance what the Governor's views were, and yet that was not constitutionally proper. Why did they do it? Because otherwise they ran the great risk that the bill would be returned by the Governor with a veto because he could not approve all of its provisions. And then, as has been admitted on the floor, under the rules of the two branches it put it in the power of a small minority to prevent the reintroduction of the measure for the rest of the session, unless indeed the Governor saw fit to introduce it by a special message, which is a cumbrous way of getting at the matter.

This recall of bills from the Senate is entirely extra-constitutional. It is secret. The Senate has no official knowledge of what the Governor's views are. Some Senator may say on the floor: "The Governor objects to this provision, or that, and we have got to amend it so and so or His Excellency will veto it." But that does not hold the Governor to his proper responsibility; it does not put him on record.

I believe that the Governor's part in legislation, — and it inevitably must remain an important part, — should be confined to two things: First, a general recommendation for legislation, accompanied, if you like, by a bill; and, second, action upon the bill as the Legislature sees fit to enact it and send it to him. Between these two actions I do not believe that the Governor now has any legitimate function,

or any constitutional right, to take part in the framing of legislation. I think he is going entirely outside his proper province, invading the province of the legislative branch, if while a bill is pending he sends in a message giving his ideas of it, or saying what he would do if the bill should reach him.

We have had recently two conspicuous illustrations of the use of just that power, showing that the evil is a real one and not imaginary. At the end of the session of 1917, on May 25, Governor McCall sent in a message before the bill which he there referred to, which was "An Act Relative to the Property, Service and Capitalization of the Boston Elevated Railway Company," had reached him. He sent in a message saying:

> The act to which I have referred contains a provision which upon reflection I find that I should be wholly unable to approve of.

Now what business is it of the Governor to say what he should find himself able or unable to approve of until a bill is before him, on which he could exercise his constitutional authority?

Mr. GEORGE: That bill contained a provision by which the Governor was to appoint so many trustees and the mayor of Boston was to appoint so many. The Governor wanted to appoint all of them, so he sends in a message and tells them that he cannot approve the bill as it is drawn and he suggests that he should have the authority to name the trustees. Now what harm is there in having him tell the Legislature while that matter is pending so they can act on it without keeping them there for two or three weeks pending his suggestion?

Mr. QUINCY: The gentleman is mistaken as to his facts. I was referring to a message sent in last year, not to a message this year. There was no message this year making any such suggestion as the gentleman refers to, though that was understood perfectly to be one of the Governor's grounds of objection. I am referring to his message of last year. Now see what he says:

> If I should veto the bill when it came to me it is likely either that the session would be much prolonged or that there would be no legislation upon a subject which a commission of nineteen eminent gentlemen appointed a year ago considered of pressing importance. I have conferred with the President of the Senate and the Speaker of the House and as a result of that conference and with their approval I have decided to send this message to the Legislature so that if you shall see fit to do so you may amend the act in question and thus prevent the lengthening of the legislative session or the failure of legislative action during this year.

In other words the Governor, as a man well informed about our Constitution, was perfectly aware of the fact that he was doing something extra-constitutional in sending in a message interfering with the consideration by the Legislature of a pending measure, which was in the hands of the Legislature and not in his hands; and therefore he falls back upon the approval, based upon practical grounds, of the Speaker of the House and the President of the Senate. I dare say that other Governors have been just as much at fault in this respect as he has been.

Mr. LUCE: I read from the Blue Book of 1911:

> I note that the popular branch of the Legislature has advanced, by a large majority, a bill to establish biennial elections in this State. (Special message of Governor Foss, May 1, 1911, Blue Book, p. 1191.)

Mr. QUINCY: I cannot yield for a moment until I have cleared up this point, and then I will if I have any time left. I am glad the gentleman from Waltham has referred to that message, because it takes this question out of any reference to any particular Governor. There is no party or personal question to it at all. I am just as much opposed to it if a Democratic Governor does it as if a Republican Governor does it. But the present Governor again, this year, in his message sent in May 31, has stated as follows:

It has just come to my attention that a measure is likely to receive your approval —

it had not been passed, it had not come to him —

which would give to the soldiers and sailors absent from their regular voting places the privilege of participating in the election of certain State and Federal officers, etc.

Now it is not a question of the merits of the Governor's suggestions at all; it is a question of the proper time to make them. The proper time to make them is to give him the right to send in formal amendments, then he is on record. The Governor is responsible for what he recommends; it is then a legitimate exercise of executive power, and the Legislature can reject or approve any amendment it wants to without jeopardizing the success of the bill and making it necessary to start all over again.

The amendment moved by Mr. Hobbs of Worcester striking out, in lines 120, 121 and 122, the words "but no amendment so recommended by the Governor shall be rejected in either branch except by vote taken by yeas and nays", — was adopted.

The question was put on the second amendment moved by Mr. Hobbs of Worcester, — striking out lines 127 to 140 inclusive, as follows:

The Governor shall have the right before acting upon any such reënacted bill to disapprove and to strike out in the same any portion thereof which he may deem properly separable from the remainder, provided that within five days of the time when such bill was laid before him he shall return to the branch of the General Court in which it originated a true copy of the portion so disapproved, together with his objections thereto in writing; such portion shall thereupon be subject to reconsideration and repassage in the same manner and subject to the same requirements as a bill disapproved by the Governor, and if so repassed such portion shall be deemed to be reinstated in such bill and shall have the force of law as a part thereof.

Mr. WASHBURN of Middleborough: A parliamentary inquiry suggested by the request of the gentleman from Waltham for a division of this section. The question is this: If the amendment of the gentleman from Worcester fails to carry, will the question then recur upon the entire section? In other words, will those who are willing to accept the first clause and oppose the second have any alternative except to vote against the entire section?

The PRESIDENT: That will be the only alternative.

Mr. QUINCY: A parliamentary inquiry. Would it not be in order if the amendment of the gentleman from Worcester is voted down, and therefore if the amendment stands as reported, to ask for a division of the question between the first and second paragraphs, they being independent of each other?

The PRESIDENT: The Chair would rule that it would be in order to ask for a division, although the paragraphs are so written that the second paragraph does not make sense unless it is connected with the first. The second paragraph refers to "such reënacted bill."

Mr. QUINCY: Do I understand the Chair to rule that nevertheless it would be in order to ask for such division?

The PRESIDENT: There is no parliamentary objection to it.

Mr. QUINCY: I will ask for such division in response to the request of the gentleman from Middleborough if the amendment of the gentleman from Worcester is not adopted.

Mr. GEORGE: I ask unanimous consent that I may quote three lines of the present Constitution. This bears upon the question whether a resolve can be passed by the Legislature, a legislative enactment to change our election. This amendment to the Constitution was adopted in 1855:

Article XV. The meeting for the choice of Governor, Lieutenant-Governor, Senators, and Representatives, shall be held on the Tuesday next after the first Monday in November, annually.

I do not understand that the Legislature can amend the Constitution except in the usual way, and it requires no approval from the Governor.

The amendment moved by Mr. Hobbs was adopted.

Proposal No. 7, as amended, was ordered to a third reading Wednesday, July 17, by a vote of 99 to 32.

The Convention then considered proposal No. 1 as follows:

1. The executive department of the government of the Commonwealth shall include all executive and administrative functions and offices and all offices not coming under the judicial or the legislative department. All State officers and employees included in the executive department, excepting officers whose election by the people is provided for by the Constitution, shall be under the authority and control of the Governor, and all such officers and employees without exception shall furnish him with any official report, information or opinion which he may require.

Mr. QUINCY: I am sorry to have to enter upon the discussion of this matter before adjournment, because the subject is of such a comprehensive nature that it hardly can be disposed of in ten minutes, and the opening argument will then be interrupted; but we do not want to waste ten minutes of the time of this Convention, and so I will proceed to outline the arguments, so far as I can in that time, in favor of the first article of amendment.

We have been dealing, and the other amendments still undisposed of deal with legislative powers of the Governor, — his powers to influence legislative action in one way or another. We come in this amendment now before us to purely executive or administrative powers of the Governor, which have no reference whatever to his participation in the legislative power. Now the debate and the vote of yesterday indicate that a good many members of the Convention object, on principle let us say, to enlarging the legislative power or influence of the Governor. I think some of those who participated in the debate yesterday stated that within the proper sphere of the Governor, namely, the executive and administrative branch of the government, they would have no objection to an increase in his powers.

Now we come to-day to a matter which admittedly comes under the executive power, if it comes either under the executive, the judicial or the legislative power, into which our Constitution divides the powers of government.

We are confronted at the outset with this rather extraordinary condition, which has grown up through the increasing complexity of government, through the increase in the number of subjects with which government has to deal and through the creation from time to time of a large number of new departments of the State government, some under individual officials, some of them under boards or commissions. We all of us know that to-day the executive and administrative side of the government of the Commonwealth is a most elaborate, complicated and complex organization, that the powers of the executive and administrative are diffused among a very large number of boards, commissions and officials; and thus a condition has arisen in our State government which is not peculiar to this State but has been experienced, possibly to a lesser degree, in most States.

The practical condition which we have to confront is this: That we have a large number of organs or agencies of government which are absolutely independent of any authority or control whatsoever. They simply are created by law and proceed to exercise the powers vested in them by law. To be sure, they would be under the control of the courts if they stepped outside of the powers given them by the laws under which they are created; but until they step outside of their legal powers they are in no way under the control of the judiciary branch of the government. They are under the control of the legislative branch of the government only to this extent, that the Legislature can repeal or amend the law under which they are acting. The Legislature has no other power whatever of calling them to account except the power of repeal and the power of making annual appropriations so far as these are needed. Otherwise the Legislature cannot call them to account for maladministration, for inefficiency, for neglect.

Now where rests the power under our Constitution and laws to insure efficient, responsible, even honest commission government? It rests nowhere. You cannot find it anywhere under the Constitution or laws of this State. It is not in the Governor, because the Governor has no power of calling commissions to account.

Let me in this matter speak from personal experience. I have served for twelve years up to the first of last July upon a State commission, the Boston Transit Commission. It was created by law; its authority always has been derived from laws passed by the Legislature; it has had its life renewed from time to time by the Legislature; but otherwise it has been under no responsible control whatever, either by the mayor of Boston, who had the appointment of two of its members, or by the Governor of the Commonwealth.

Now that board during its life, which extends back much longer than twelve years, to 1894, has expended not inconsiderable sums, even in these times, — about thirty-five millions of dollars, — coming primarily out of the treasury of the city of Boston. I should be the last to deny, on the other hand I am the first to claim, that that expenditure has been made wisely, economically and efficiently. But is it right in principle that any State commission should have such large powers as this, without the power lodged anywhere, in any executive officer, to call it to account, or to supervise or direct its work? While it has worked well in that particular case, — according

to my claim, at least, — I think it is wrong in principle; and I would much rather see a change which, whether the Governor's interference or power of direction always would be exercised wisely or not, would safeguard our administration, taking matters by and large, by giving the Governor some power of controlling and directing all these multifarious boards.

Mr. PILLSBURY of Wellesley: May I ask my friend, before the recess, a question which I think may contain some food for thought which the recess may afford the opportunity to work out, if it will not interrupt him?

Mr. QUINCY: Certainly.

Mr. PILLSBURY: Paragraph 1, article 1, provides that —

> All administrative functions and offices should be within the executive department and shall be under the authority and control of the Governor.

What does that mean, as applied, for example, to such a board as the Public Service Commission or the Gas and Electric Light Commission?

Mr. QUINCY: The member from Wellesley has asked a question which I freely admit is very hard to answer. It is impossible to use in this amendment any but general terms. Ultimately the question of what "control and direction" means might in certain cases have to be interpreted by the courts. Practically, however, it operates in this way: If the Governor is given in terms the power of direction and control, and then is given the power of removal, he makes his power effective by saying to a member of a board who will not submit to his direction and control that he will exercise in his case the power of removal.

Mr. PILLSBURY: Does not my friend admit that to put the decisions of these boards or any other boards of similar judicial character, if there are any, within the control of the Governor would be out of question and not to be thought of for a moment; and if, admitting that, does he not admit that this phraseology calls for correction?

Mr. QUINCY: I do not believe that any Governor would remove a member of the Public Service Commission, for illustration, because he had rendered a quasi-judicial decision which was contrary to the Governor's own views as to how the particular case should have been decided. The gentleman from Wellesley, however, raises a very pertinent question for consideration. It is a difficulty which has occurred to me and which I supposed that he or some lawyer would point out on the floor. Perhaps that difficulty could be met in some way by an amendment which would exclude from this power of control and direction boards which are exercising quasi-judicial functions, and I would ask him to assist in the preparation of an amendment of the character which he suggests.

The debate was resumed after the recess.

Mr. QUINCY: I was about to read when we adjourned a general statement contained in one paragraph of a little pamphlet which is in the State Library, and which I wish might be called to the attention of every delegate to this Convention, because it is packed full of most interesting information, relating to every State in the Union, expressed in brief compass. The title of this pamphlet is "A Survey

of State Executive Organization and a Plan of Reorganization," being the thesis of a student in the University of Pennsylvania, published in 1916, — an example of the very excellent, practical and scholarly work which is being done in many of our universities, or under their supervision, in connection with fundamental governmental questions.

Under the heading, "The Governor's Power of Direction," on page 11 of this pamphlet, this statement is made, — and it is made not as to Massachusetts in particular but as to all of our States:

> The Governor has practically no power of direction over the State officers. The only legal basis for any control is the usual constitutional provision that the Governor may demand information in writing from these officers respecting their work, and that they must at stated periods make formal reports to him. The Governor transacts all necessary business with State officers rather as an equal than a superior. He cannot remove them; they are responsible not to him, but only to the law. Should the Governor attempt any direction or control of these officials, they can with impunity disregard his wishes. And as for other executive officers, the Governor's power to direct them is as negligible as his power to remove them.

That is a very accurate statement, to my mind, of conditions which prevail, not only in the Commonwealth of Massachusetts, but generally in our States.

Now, the question which we are to deal with is this: Has the time come in the development of our governmental system in this country, without any fundamental departure or radical change, to bring this varied aggregation of State departments, boards and commissions under some proper control by the chief executive? No one proposes to bring them under the courts. It is impracticable to bring them under the Legislature, because the functions of the Legislature, in the nature of the case, cannot be made executive. Therefore, if they are to be brought under any control or responsibility whatever, it must be under the general direction of the Governor.

This amendment No. 1 is drafted upon the theory that we really should put into effect the separation of powers which are generally defined in the last clause of the Bill of Rights of our Constitution, which says that the legislative branch of our government never shall exercise the judicial or the executive power, or either of them, etc. We have now an executive who is not really an executive but possesses only certain very limited executive powers, chiefly the power of appointment. Of course that is an important power, but it is not in itself a sufficient power to give any real and effective control.

This amendment, which is quite brief, and drawn in accordance with the theory of laying down only general constitutional principles, so far as possible, in the Constitution, remedies this present condition of irresponsibility and of undue diffusion of power. I hope that the members of the Convention have glanced at least at the statement contained in the Manual of this Convention, which was prepared for us last year, contained on pages 197 to 221. Twenty-four pages are there occupied with an elaborate and very careful cataloguing and analysis of the various authorities, officials, boards and commissions which now constitute the government of this Commonwealth. If anybody is curious to know what those authorities are, and to have a general idea of their functions and duties, he will find this information prepared in very compact form at that place in our manual. Delegates will find also in the Manual of the General Court, at page 309 and following pages, prepared in a different form and more briefly,

a list of the various boards, commissions and officials which make up the executive and administrative machinery of this Commonwealth.

But we all know how complex and how elaborate our present machinery is, how diffused it is, and how irresponsible it really is. That is not bringing an indictment against the Legislatures which created these boards or commissions. I think it was the only thing they could do. Certain new functions of government had to be intrusted to somebody, they had to be performed somehow, the public interests required that the authority of the government should be extended into new fields. They have intrusted these powers to boards. In the main we have reason not to be ashamed of the personnel, the public spirit, of the men who have made up our boards in this State, both paid and unpaid. But the result is that a system has developed gradually year by year which now has become so complex, so diffused, that it takes a guide for the average man, even for the average lawyer, to find out what the government of the Commonwealth of Massachusetts is and where its powers are vested.

I think that the time has come now, if it had not come before, in connection with the deliberations of this Convention, to assert the general doctrine that the Governor shall have some general power of direction and control over the executive and administrative officials, boards and commissions of this State.

Mr. AVERY of Holyoke: I should like to ask the gentleman from Boston (Mr. Quincy) a question. Take your boards here, take the Metropolitan Water and Sewerage Board. Assuming that the members are experienced, and assuming that you had a Governor who was elected just for one year and then went out of office, how much could the Governor know about the work of that commission during that year, as compared with the members of that board?

Mr. QUINCY: Unless he happened to be particularly informed he doubtless would know a great deal less about it than the members of that commission. Of course the powers of the Governor are liable to abuse. So are the powers of the courts, so are the powers of the Legislature. We elect a Governor not upon the theory that he is going to abuse his powers, or that he is going to use them unwisely, but upon the theory that he is going to benefit the Commonwealth by the positive exercise of his powers. Now, if we do not give the Governor any power he cannot make mistakes, but neither can he do the things which it is very much in the public interest that he should do.

There are two conceptions of the office of Governor. Our present conception is to elect a figure-head Governor, a man who has important ceremonial functions, some power of supervision, some minor duties, but who is not the administrative head of the State. That system undoubtedly prevents certain abuses which might arise if the wrong man, with larger powers, were elected to the office of Governor. The same thing is true in the municipal government of our cities; and yet in that field we have given up the old theory that because of the liability of mayors to make mistakes, or even to be responsible for abuses, it was not desirable to give them any power, and we have adopted the other theory, that upon the whole the public interest is best subserved by giving the mayors of cities real power, trusting them, upon the average, to exercise that power for the public benefit.

The question which the gentleman raises perhaps relates more to section 2, which is not yet before us, concerning the Governor's power of removal, than it does to this general doctrine contained in section 1, which constitutes merely a broad governmental definition.

Coming to the suggestion made just before adjournment by the gentleman from Wellesley (Mr. Pillsbury), the point which he has raised is undoubtedly a good point, in my mind, against the language as now framed. I expected that somebody would raise that point; otherwise perhaps I would have called attention to it myself. So far as I can speak for the committee, — and I certainly can speak for myself, — I have come to the conclusion since this amendment was drafted that it would be proper to exempt from this general declaration officers who exercise quasi-judicial functions and powers. The term "quasi-judicial" is a well-recognized one to lawyers. It has been construed by the courts and I think its meaning is quite clear. I freely admit that, for the same reason that judges should not be removable by the Governor except by way of address and impeachment, so these quasi-judicial officers, these boards, of which the Public Service Commission is the most conspicuous illustration, whose functions are really in the nature of judicial functions, who are supposed to hear the evidence and then decide impartially, and therefore are quasi-judicial bodies, at any rate exercise quasi-judicial powers, — I quite agree that these should not be subject to the general declaration that all State officers and employees shall be included in the executive department.

Mr. Brown of Brockton: On this matter do I understand the gentleman to say that if a man is appointed to a department in which he is called upon to exercise his own judgment, under authority given him by the Legislature, that the Governor should have the power to supersede and place his judgment over the judgment of that individual?

Mr. Quincy: That is not at all my position. I should disagree with the implication of the question, — that the Governor should not have the right to control the judgment of members of boards. I merely spoke of the particular sphere which is defined as quasi-judicial. Every administrative board exercises its judgment, exercises its discretion, necessarily. The fact that it is composed of more than one member means deliberation, it means debate, the exercise of discretion, of common judgment. But judgment and discretion are one thing, and the exercise of a quasi-judicial power is another thing. It is only the latter class of offices which I would except from the operation of this general declaration.

Mr. Brown: I still am trying to get the question in my mind. Whether it be a three-headed board or a one-headed board, judgment is preceded by deliberation, and the officer exercises deliberation. Having exercised that he arrives at a judgment as to what is his duty. Is it your contention that the executive has the right to tell that man to do it differently or get out?

Mr. Quincy: If I understand the gentleman's question, and excepting the exercise of these powers which are well understood under the name of quasi-judicial, such as the power of the Public Service Commission or the Gas Commission to fix rates, that is exactly my position; that the Governor, as the chief executive of the State, should

have ultimate control of the exercise of discretion of all officers who belong in the executive or administrative machinery of the State, to the extent of removing them if they do not, upon the whole, exercise their respective authority in such manner as the Governor, as head of the executive machinery of the State, is prepared to approve. That is precisely the question which is pertinent for debate at this time. I merely now make the exception that we should not include officers vested with quasi-judicial powers; and if the gentleman from Wellesley (Mr. Pillsbury) will move an amendment in a form which he has shown to me, which would be to insert in line 10 after the word "Constitution," the words "and officers exercising quasi-judicial functions or powers," I certainly should accept it. Now, perhaps I have covered the ground sufficiently for this opening statement.

Mr. WALCOTT of Cambridge: I should like to ask the gentleman in the second division (Mr. Quincy) whether there would not be some difficulty in determining what boards were considered quasi-judicial. I should like, for instance, to ask him whether he considers that the State Department of Health exercises quasi-judicial functions. For instance, certain proceedings for nuisances have to be brought before it on appeal from local boards of health, in which case I should suppose it might have to sit as a tribunal. Would it be excepted from the general rule? Again, would the Metropolitan Water and Sewerage Board be considered a quasi-judicial board? Every new town that comes into the metropolitan water system has to have an amount of money assessed against it by the board as a condition precedent to coming into the water system. Would that make it, or would it not, in the opinion of the gentleman, quasi-judicial, this word having a well-known judicial meaning?

I do not think the definition of the word "quasi-judicial" is going to be as simple as the gentleman in the second division appears to think it is.

Mr. QUINCY: We are trying to keep this amendment in comparatively brief compass. There are two courses which we could follow. We either could go through the existing boards and exempt by name the Public Service Commission, obviously, probably the State Department of Health, perhaps the Metropolitan Water and Sewerage Board, on the ground that we believe them to be quasi-judicial and therefore ought not to include them; this, however, would involve the enumeration of certain departments in this constitutional amendment, which seems a thing desirable to avoid if possible. Or we can try to lay down a general definition of functions, such as by the use of the word "quasi-judicial." There is one way of avoiding leaving it in the general form to which the gentleman from Cambridge (Mr. Walcott) raises some objection, and that would be to give authority to the Legislature to designate such boards and officers as it deems to be semi-judicial; and that would make the judgment of the Legislature as to what boards were quasi-judicial final, and would prevent the question ever getting into the courts in any way. I would have no objection to adding to the amendment of the gentleman from Wellesley (Mr. Pillsbury), if he sees fit, a provision which would authorize the Legislature to determine which boards exercised quasi-judicial powers and which did not.

Mr. BROWN of Brockton: I wanted to ask the gentleman, before

he took his seat, if there are not two distinct questions in this matter. For instance, as near as I can make it out, you want a business return from these departments. The Governor wants certain information. Now, I hold he is entitled to it, that there is not a department in the State that ought not to give him any information he wants. But I am trying to discover if you cannot draft that section so that it will not imperil the independence of the commissions. If you are obliged to make the Governor such a Pooh-Bah, or manager, or autocrat from the moment he is elected, every department has got to kow-tow to him to find out whether the opinion they gave last year is acceptable to the Governor of this year. That may be a little bit strong, but I am bringing it to attention, I think, so the gentleman understands me. I am in favor of something that will give the Governor control of their business methods, but I a little bit object to anybody overseeing the independence of an independent commission.

Mr. QUINCY: It undoubtedly would be possible, as suggested by the gentleman from Brockton (Mr. Brown), to divide the clause which seeks to give the Governor the right to call for official reports, information and opinion from any and all officers, even if elected by the people, from the rest of this amendment. As it stands it is not grammatically so divisible, but it undoubtedly could be done.

Mr. AVERY of Holyoke: I do not care to take much of the time of this Convention, but I do not think this first section ought to be amended, — I think it ought to be killed; cast bodily out of this Convention. I think it is one of the worst things introduced here. What we want is the development of Massachusetts. We have had a marvelous development under the boards and systems that we have had. Where could you have had a finer development than you have right here in the metropolitan park system, in the metropolitan water district, and in all the works of Massachusetts? Some boy down in the University of Pennsylvania can tabulate all these things, if he wants to, and he can add up a lot of things that are going along under commissions of trained men, with stable, experienced policies. He can say those things are not under the control of one man, who may be elected one year and defeated the next, but that does not amount to anything. What we want is a development of all the resources of this State, and we are getting that now. No matter if we do have a lot of commissions, we get stable, consistent policies, by continuing boards, and not under the control of a man who comes in here one year and goes out another.

What is a Governor expert in when he comes in? Parks, agriculture, medical science, — those things? No. All of these boards are. In many of the boards men have been there fifteen or twenty years, and are you going to put them under the control and under the abuse of a man who primarily wants to be reëlected?

I happen to live in a city where a mayor can remove absolutely any official, and the last three mayors have felt it their duty to reorganize every board in the city that they wanted to. What is the result? They have stopped the orderly development of the city, because no one would take a position, if he was worth anything, where he is simply a clerk and a slave under somebody else. And you will not get fine men in Massachusetts to go on these boards and commissions if some Governor can come in and treat them as

underlings and clerks. We may have a complex system, but it has developed Massachusetts, and this scheme will not develop Massachusetts.

Mr. Adams of Quincy: Ever since I have had the honor of having a seat in this assembly I have been impressed with the tendency of the Convention to assume that everything, in the best possible world, is for the best, and I am inclined to think that this is an error in judgment. My reason for thinking so is one which I have attempted several times to draw to your attention, but I do not think that my efforts have been crowned with any considerable success.

I think that the report which has been presented by Mr. Quincy brings my difficulties up very sharply; and if I be permitted, for about ten minutes, I should like to draw the attention of the Convention to certain theories which I have heard advanced in the last debate, of yesterday and to-day, which I conceive to be radically mistaken and on which the whole subject turns.

The subject which we are discussing involves not only the state of the whole world, but it involves our own community, because we are part of the world, and we are one of the weakest sections of the world, because we are situated in a way that leaves us peculiarly open to attack, all sorts of attacks, in the nature of competition.

I wish to draw your attention to the fact that civilization, all civilization, may be summed up in one word, or two words, — that civilization is simply an issue and effect of competition; that laws are nothing but the outcome of competition; and that all our system of law is nothing but an attempt, in one way or another, to limit, or put a limitation to, over-competition. And when you get to a point where there is over-competition, that moment we evolve a heat which generates war. That is a condition which is present now, and that war is going to destroy us unless we can put ourselves in a position where we can defend ourselves. That is my proposition. I want to call your attention to the urgency of these questions now arising before us, and none of the questions are more urgent than those which have been presented to us by Mr. Quincy.

What is our position now, — actually our position to-day? Unless we are willing to accept our position as it stands to-day, it is no use in our going any further with any of these matters. It is just as well for us to drop the whole affair, leave matters as they are, and trust our future to God, as it is to meddle with it and undertake to do something, we know not what, — we have not decided what, — but to do something which necessarily will be inefficient if we do not know what we are aiming at. In order to know what we are aiming at we have got to understand what it is that we have been trying to do as a people up until now, and what is the change which has taken place within a few years in our position. That is the substance of the whole matter.

I take it to be an axiom, something which is perfectly clear to any one who will look at the history of our country or of England for the last few centuries and observe what has happened to us, that we have been, on the whole, the greatest race that has existed in the world for the development of new lands, new countries, that is to say virgin countries which have not had a government. In that we have been supreme. But what has been the result of that long

experience? It has been the development of a race of people who have thought of nothing but of the waste of the countries that they got possession of; and we, as being on the whole the most remarkable of the outcome of the English system, have been the country which on the whole has distinguished itself most in that particular. You look back at us, and you will see we flaunt before the world our great resources all the time. That is our favorite topic. This war, it is said every day, if you only put money enough in it, you are going to win; that is all you need; pour in money and you are sure to win. The result has been that we have confused waste with civilization. Our theory has been that if you produce a man who can waste the country faster than another man, and thereby build up a fortune for himself, he is the greatest man you have. That is the idea, and it always has been our idea. That is the idea of our individualistic system. We have wasted all our resources, one after another. That has been our object. The thing which has been dinned into young men is that they were to go out and waste.

You take, for instance, our soil. We have wasted that. I suppose since the world began there never was a waste of such superb soil as there was in the south. Take the Commonwealth of Virginia, for example. The soil of Virginia was absolutely destroyed, simply by stupid waste. Take, for instance, the way in which we have wasted our forests. Nothing could have been more absolutely imbecile than the way in which we have wasted our forests. Why, our ancestors — we always are talking, you know, about the wisdom of our ancestors and all that sort of thing — our ancestors were perfectly wild on that question. I can speak from experience on that point. John Adams hated a tree. That was his idea. He hated a tree. He wanted to cut them all down. He had not any idea of the preservation of a forest as an economic asset. His idea of an economic asset was that you would cut all the trees down and then you would have a soil on which you could work.

Take it one step further. The idea was to crop this soil all you could, get all you could out of it as fast as possible. That was the idea, — of course it was the idea. Very well. We have arrived at this: That we have had a very rapid development in the last century, and a hundred years ago the world was large enough apparently for an indefinite expansion, and the United States was ample for any expansion we could conceive of, and our one idea was to push that expansion forward. We gloated over the number of miles a day which we could push forward our frontier. I have heard that talked ever since I was ten years old. And what has been the result? The result has been that the world has grown too small. That has been the result, and that is the cause of this war. It is because the Germans wanted, as the Emperor said, a place in the sun. We had a place in the sun, and the German Emperor wanted a place like ours, a place which he could pillage, as we pillaged our country.

Well, the world is not big enough. That is all there is to it. The world is not big enough for that system, and we are fighting about it now, as to who is to have the place in the sun. That is the substance of the whole matter. What has been the result of that? What has it come to? It has come to this, and this alone, that we have turned our civilization upside down, and to live in it we have

got to proceed in the reverse way from that which we have proceeded for the last hundred years, and all our theory, all our systems of government, all our notions of administration, have got to be reversed, and the reason is that we have got to economize; that waste is no longer possible, and that we have got to have an administrative system which can be carried on economically, not, as has been said in this chamber time and again, — I have heard it a dozen times the last day or two, — that our governments were made to spend money, that that was what they were organized for. I assure you that our governments are not made for that purpose. If they are to exist in the future, they are not to spend money; they are to make money. That is exactly the difference. Our governments are not spendthrift organizations. If they are to continue so they have got to die. In future they have got to become economists, and in order to be economists they must be well organized; and it is in order to attempt to reorganize them that Mr. Quincy has brought in these resolutions.

In order that they may be reorganized you have got to have three things. You have got to have an intelligent executive. You have got to have him armed with proper power. You have got to have a first-rate civil service, capable of administering your country as well as any private administrative system is administered, or better. And above all you have got to have an intelligent population. You have got to have an intelligent population from whom you can draw your civil service, and in order that you may have a civil service you have got to educate your civil service and you yourselves are responsible for it. Unless you do it you will not have a civil service that can manage your government in competition with your competitors. That is the exact question which is before us to-day, and until you have solved that question we shall not get out of this war. We are to be subject to this same competition, whether it actually gets to the ferocity that will blaze into war or whether it is to smoulder in a condition in which we shall be starved to death.

In order that our government may administer it has got to be free to think, and I suppose the greatest effort which human beings are capable of is collective thought. We all have thought. We all have thought individually. We all have been brought up to think individually. Now we are brought up, by nature inexorably brought up, to the fact that we have got to think collectively; and it is a gigantic effort. It is, I suppose, the greatest effort that the human mind is capable of. It is the effort which we have been wrestling with ever since our ancestors came out of their caves, and we have not solved the question yet as to how to get a satisfactory administrative thinking machine at the head.

We in Massachusetts have gone further than almost any other community, or any other civilized community, in saying that we will have none of it. We have a court which says: "You shall not think. I forbid you to think. It is unlawful to think. It is unconstitutional to think. It is treason to think." That is the position of our court, and that is why I have spent so much of this Convention's time in talking about the police power, because our court has held, has declared solemnly, that it is unconstitutional for our government to go into trade; that is to say, it is unconstitutional for

our government to think for the benefit of the whole people. All these problems which are before us now, such, for instance, as fuel, all are problems which I take it are of relative simplicity, which could be solved perfectly if we had the power to think.

There are three or four ways in which this fuel business could be settled. For instance, the best authorities we have, the men down at the technological school, are clear that all we have got to do is to utilize our peat. But you have to have a great organism to utilize your peat. It cannot be utilized by private effort, and unless you utilize it by private effort our courts say you shall not utilize it at all; it shall lie idle; it shall lie in the earth; you shall not dry out your peat, because if you dry out your peat and then sell your peat you are going into business, and God does not permit you to go into business. That is the decision of the Supreme Judicial Court.

I do not want to rehash this whole question of power again. I have been over it once. I have talked to the Convention to satiety about it. But it is necessary to speak of it in order to bring out the point which I want to make. That divides our classes, our society, into parts which are quite apart. There is my friend the former Attorney-General, who sits in the first division (Mr. Pillsbury). He is perfectly clear. I love to debate a question with the Attorney-General, because he is a man of absolutely logical mind and I can come to an issue with him. [Applause.] The issue which I come to with my friend is always a flat contradiction between us, but that does not in the least militate with my pleasure in talking with him, for he is a very intelligent man. [Applause.] Well, why is he intelligent? He is intelligent because he sees. He does not deny the truth. He does not in the least deny the truth of my postulates, not in the least. He accepts them. He says: "I agree. The world has turned a corner, governments have got to do things they never did before, but I don't like them to turn that corner. I don't like this government of ours to turn that corner." "Very well," says I, "Mr. Pillsbury, you admit this much. Then you admit that we have got to accept what comes." "Yes," says he, "I am ready, I am ready." "Well," says I, "you are ready to starve? You are ready to freeze?" "Oh, yes," says he, "I take the risk." [Laughter.] Well, that is the issue. That is the issue. Is this Convention ready to starve? Is it ready to freeze? If it is, all right, go ahead, I have nothing to say. I can stand it if the rest can. I can starve and I can freeze as well as anybody else. I am a pretty old man. I have not got long to live. It is much more important to people who come after me, it is much more important to you, gentlemen, to your children, than it is to me. But it is a question which you have got to decide. You have got to jump on one side or the other. You cannot stand tetering middle, because then you will arrive nowhere.

That is the size of this question, and it is a question of common sense with every one of you. You can stick to the present system, or you can do what is necessary to make yourselves or your community an effective administrative system, which can compete with its competitors who are all about it and who are all of them hungry and want to eat That is what competition means. That is all it means. It means that you are surrounded by enemies, all of whom want to

devour you; and are you going to defend yourselves or are you not? Or are you going to say that "John Adams did not like it, and that is enough for us"? Well, I do not care; if you are so fond of John Adams and his theories, that is all right. Personally, I do not hang to them so strongly. [Laughter and applause.] But that is a difference of opinion. It is a difference of opinion. You are the person who is going to be hungry, and you have got to make up your mind to it, and all these gentlemen. Our friends outside the State say: "Oh, the New England people are fat, they can stand it." Well, if you think they can that is all right, but you are going to be tested. You are going to be put to the test; you are indeed.

And if you say: "Oh, we won't have a Governor but for one year. We cannot, because our ancestors did not like it. We are not going to do this thing," and that thing and the other thing, "because it impeaches our constitutional privileges," what do you then say? What do you put up to us as a choice? What is the thing that you advance as a reason why we should not? You say we are going to lose our privileges. There are two arguments which I wish to advance in answer to that. One of them is that you have lost your constitutional guarantees already. You cannot lose them any more than you have lost. The government of the Grand Turk was not any more absolute than our government is to-day, not a bit; not a bit more absolute. The government of the Czar, the government of the Kaiser, are not more absolute than ours in Washington. There never was a government that was more absolute than ours. And what is the result? I ask you, I ask this Convention as sensible, practical men, I ask this Convention, are any of you hurt? Have any of you suffered? Why, of course you have not. All of you like it. You all like an absolute government. You are not a bit afraid. You are not frightened. You are not a bit afraid that any one is going to violate your rights, because nobody is. And why are they not going to violate your rights? And why are you not afraid that anybody is going to hurt you? And why are you perfectly content with things as they are? I will tell you why it is.

I am an old man, and I have been watching this thing ever since, — I was going to say, — I was born. I began with the civil war. You always are safe. It is not a scrap of paper that is going to make you safe. What does a scrap of paper mean, and who gives you the protection? Is it a bench of judges, who sit up in a lot of armchairs and go to sleep? Not a bit, you know. That is not what gives you safety. It is because your contemporaries do not want to have you injured. It is because public opinion will not permit that you shall be injured, and it does not make any difference whether you have got a lot of constitutional guarantees or not. You have confidence in your surroundings, and you know that the people you live with are not going to suffer you to be injured. That is the size of it, and that is the reason why you are not going to be injured. It is a practical reason, a purely practical reason. As long as you have that feeling about your contemporaries, about the society you live in, you will not be injured. You will trust to that society, and you will be safe.

We waste our time here in talking about this safeguard that we are going to lose, and that safeguard we are going to lose. We have

lost all our safeguards. We have not got any safeguards. The government in Washington walks over everything, absolutely against the law, absolutely against the decisions of the courts. There is not anything more utterly lawless than the whole attitude of the government and the whole progress of the movement of our society since the war, and there is not a community on God's earth that is safer than we are now, and there is not any population on the earth any happier than ours. And what are you afraid of? As sensible men, what are you afraid of? What can you be afraid of? You are afraid of your own shadow. That is what you are afraid of. What you really want is to go ahead and do your duty and do what sensible, practical men ought to do to save themselves from being pinched by their competitors. That is what you ought to do, there is not any question about it. There is no use arguing this legal point and that legal point as a lot of attorneys argue, because you are throwing away your time and you are throwing away your chance. You are letting your opportunity slip. You are leaving yourself open to a competition which will be vital if it comes.

Now, that is the whole substance of this dispute, and what you are not doing is to try and raise the intelligence of your population. That is the absolute subject, that is the great thing to do, raise your standard of education, raise the intelligence of your population. Do not talk about putting up a lot more of restraints and balances and all sorts of things to try to build up a government even more rigid than ours, — a government which was invented that none of its three departments should do anything alone, that no one of them can move without the assent of the other two. Could anything possibly be more illogical than that a government which you wanted to do business, that no executive and no administration that you ever have had, has been able to make it work logically? No one! They immediately have had to resort to the theory of the police power, which is nothing but a suspension of the Constitution. That is all it is when anything is to be done.

God bless my soul, the police power! The invention of the police power was just like the invention of the war power, and all those powers are simply excuses for suspending the Constitution. That is all, getting the old paper out of the way if you can. That is the only thing people need feel anxious about, and when they have done it they always have been happy. All you have got to do is to see how the judges have been put to it, how they have struggled with it. You read about the hole in which Webster stuck us by his Dartmouth College case, and see how Tawney and the bench of judges had to get out in the Warren Bridge case, in which they said it was impossible to imagine what a state of confusion we should have been in if the Dartmouth College decision had been sustained. It was not sustained. It could not be sustained. It was impossible, illogical, and the court had the sense to see it and they did not bring the matter to the test.

And this brings one last consideration, and then I have done. The great difficulty which we have had, the great practical difficulty which we have had, has been government by attorneys. Now, it is my profession, and I speak frankly about it since I speak about myself. We are all the same lot. What is government by attorneys?

Government by attorneys means that the attorneys are chosen to represent the people. Well, I want to speak frankly. Naturally I shall say, I suppose, very disagreeable things of my own profession, but remember that I make the same stricture on myself, so that after all I am frank. Think what the function of an attorney is and what it always has been everywhere, — in England and France and everywhere. The function of an attorney is to protect the interest he represents, that is to say, a private interest. Well, I take for an example of what I mean a man who probably has exercised a greater influence than any other single lawyer in American history, and that is Daniel Webster. What was Daniel Webster's idea? His idea was to get into Congress, and get into the Senate, in order that he might represent his clients, who were the cotton interests of Massachusetts. It all went very near well until Mr. Webster was brought to the test of whether he was going to move in the direction his clients wanted him to move in, or whether he was going to move in the direction which, — what shall I say, — which the public sentiment of this community demanded, as you too know. He elected to protect his clients, as lawyers always do. That is what they are brought up for. That is what they are trained for. It is their business to protect their clients. That is the way a lawyer makes his money. How could it be otherwise?

You see at once, the question arose in a very sharp fashion a year or two ago, when Mr. Brandeis was nominated for the Supreme Court and his nomination was contested with the utmost bitterness by the great special interests, because why? Because it was insisted that Mr. Brandeis would look to the public interest rather than to the interest of the people who had paid him big fees. Now, that is all the issue there was, and that is the issue which rises with every lawyer here and now. He has got to choose between the State and his clients. That is all there is, he has got to choose between the State and his clients. He has got to be true to one or the other. Now, that is one of our great difficulties, — that is one of our greatest difficulties, — and it is the very, very great trial that every lawyer has to submit to. He finds very soon after he has got into practice that that thing is brought home to him, — that he has got to choose. He is not hired to tell his client what the law is or what he shall do. Not at all; he is hired to tell his client how close his client can come to the State Prison without being put there. [Laughter and applause.]

We all know, — we all are lawyers; practically all of us are lawyers, — and we all have had that thing brought up to us, brought up to us in more or less brutal form, and we all have had to choose. That is one of the great questions which is before us to-day. It is the great question above all others. Are we going to vote and work for the special interest that employs us, or are we going to work and vote for the country? That is the question which is up before us all, every one of us here in this hall, — I speak to you all as being a body of lawyers, — and we have got to decide.

I do not believe there is a man who hears me to-day, not one man who hears me, who does not believe that in substance I am right on the great principles involved in this controversy. The great principle is, are we going to reverse our system which has been prevailing hitherto, and are we going to put our community in a condition of

self-defence, or are we going to abandon it to the special interests who are our chief enemies? It is only by putting the special interests under an administrative system which can control them that we can prevail.

We all have been in this great struggle. We all have been in this great struggle for years. I have watched this thing coming on for years and years. I have sat and watched this thing coming on and seen how, for decades, the breach between the railroads and the State was inevitable, — inevitable. You could sit and watch it. You could go into any hall where the great issue was being tried between the public and the railroads, and you would see in an instant that it could result only in one way, — result only in one way; that is to say, that sooner or later the public must seize those roads. That was all there was in it: sooner or later, with more or less bloodshed, more or less confusion, more or less suffering, that great revolution must be worked. It has been worked with bloodshed in Europe. We have escaped. The convulsion has come elsewhere. But that is the question before us, and it is a question which cannot be put down. [Applause.]

Mr. Gates of Westborough: As a member of the Executive Committee I believe that I should take up a little of your time, although I have inflicted my voice on you in the past year but a very little, to talk on this question. Being the clerk of this committee, and being specially interested in the question of commissions of this State, I want to give you a little of my experience.

In 1909 as a member of the Legislature I came here hoping that I would be able to reorganize or consolidate some of the commissions and boards in this State. We had heard for many years the candidates for Governor in their campaign speeches saying that they would reduce the number of boards in this State, or consolidate the boards, or have some of the boards go out of existence. Many of the Governors have been elected with this promise and expecting to accomplish it, but it was impossible for a Governor to do so. The Legislature has power enough to reduce a commission or abolish a commission, but it is absolutely impossible for them to do so. And why? We have 125 commissions or boards, or more than that number, and whenever a Legislature tries to consolidate or abolish a commission all the boards and commissioners and chairmen and secretaries that we have come before a public hearing and say that that particular board or any particular board that is mentioned cannot be done away with.

In the time in 1909 when I was trying to accomplish this I joined hands with Senator Treadway. He was in the Senate at that time. He introduced a bill to consolidate several boards. We had a public hearing. That public hearing was to meet in one of the ordinary rooms, but before the hour arrived for the public hearing the room was not large enough to hold the commissioners and members of the different boards and their friends, so we had to adjourn to one of the larger rooms in the State House, and that room really was not sufficient to hold the different ones who came there. And who were they? They were the chairmen and secretaries and friends of the chairmen and secretaries of these different boards, and all of them testified, universally, that any particular board that we mentioned

could not be done away with. Then, when we brought it into the Legislature, the same thing happened here.

These different boards and commissioners are scattered through the State, several hundred of them, and there is not a district, not a Representative district, where some one of these secretaries or some one of these chairmen does not live. In my own town there are three members of the boards in the State House, and two of them were secretaries at that time. They came to me and wanted to know if I wanted to put them out of a job. And that is the way it is all through the State. Every Representative is approached by some member of a board who lives in his town, and it is natural, it is human nature for each one of these members to say: "Well, Mr. Jones, [or Mr. Smith,] I won't do anything to hurt your board." And so every member has promised not to hurt someone's board, and when you come to take a vote you can do nothing.

Senator Treadway is an able man, as you readily can see. He was afterwards elected President of the Senate, and he is one of the ablest Congressmen we have at the present time. He told me in the lobby of this State House that nothing could be done in the Legislature toward consolidating the boards. And so I believe it comes up to this Constitutional Convention to do something of that kind, and we can do it if we choose to. We can regulate those boards, because we are not here to be reëlected. We are elected and when we go home we are not going out to campaign. Some of the voters cannot tell us we did away with their board and say: "We will do all we can to see that you are not returned."

Anyone who has looked into this subject knows that millions of dollars are wasted by these different boards and commissions. Now, I am not opposed to boards and commissions that have something to do, but I know by looking up this matter there are boards that draw from $5,000 to $10,000, occupy rooms in this State House, that if their work came all at one time do not have ten hours work in a year. A member of a board did live in my own town. His particular board drew $8,000 from the State, and he told me that if the work came all at one time they could do it inside of two weeks. I asked him; "Why do you keep your office open?" "Well", he said, "I have got to appear to be earning my salary." That is what it is, he has got to appear to be earning his salary. I believe that the boards are all right if there were a reasonable number, but there is no need of having 125 boards to do the work that less than 50 could do, and do better.

I believe this question should be solved here in the Convention, and not put up to the Legislature, where the members are seen and interviewed and asked by the friends and the boards themselves not to put their board out of existence or consolidate it. And then this measure gives the Governor more power than he has had to oversee and superintend these boards, which he should do at the present time. I have interviewed several ex-Governors and the present Governor, and the present Governor says he has no control over these different boards. He has the power to appoint them and they are independent boards. Now, do you believe that we should have 125 or more sub-Governors or one Governor? I have heard a great deal about giving the Governor power. I believe if we want administration that is efficient,

and we know where the responsibility rests, we shall give our Governor power.

I heard some of the arguments brought up here, and if I did not know the Governor and never had met any of the Governors and knew nothing about the Governors of this State I should think by the arguments brought out that it was universal that we had a crook for a Governor. Now, those Governors we know. We know their record. We know that Massachusetts never has elected a man but who was honest and meant to do his work conscientiously, and so we have not got to guard against a rogue in every bit of legislation or every amendment we bring into this Convention. I believe also the same with the Legislature. I have heard it stated here that the public had got to be protected against their Legislature. I believe this is not called for. And then in regard to the ability and the honesty and the efficiency of our Governors. It has been of the best, and we shall continue to elect that kind of Governors. That is the same, practically, in regard to the Representatives to the Legislature.

I believe if we want a faithful administration, an efficient administration, one on whom we know the responsibility rests, we should give our Governor some control of the boards and commissions of this State, and we should pass some resolution here, some amendment, so that the Legislature would be forced to consolidate those boards. Then we would get better administration and save millions of dollars. It was stated here by the chairman of one commission that he had served on the commission twelve years, and they spent, I think he said, nearly $100,000,000 a year and were accountable to no one. Now, is there a business man, is there a sensible man, is there any man with any judgment at all, who believes in having 125 boards, and not even having them accountable to the Governor? They are not accountable to the voters, and they are not accountable to the Legislature. I say, would any sensible man say they should have that power without supervision to see that they do their duty? They are willing to be accountable to someone, and should be accountable to someone. [Applause.]

Mr. QUINCY: Before the previous question is moved I merely want to be sure to get before the Convention the amendment which the gentleman from Wellesley (Mr. Pillsbury) intended to offer. Seeing that he is not in his seat, with the addition of the amendment which I suggested in answer to the question raised by the gentleman from Cambridge (Mr. Wolcott), which would leave the determination of the question of what officers were quasi-judicial in their nature or functions to the General Court, I move to amend paragraph numbered 1 by inserting after the word "Constitution", in line 10, the words: "and officers having quasi-judicial powers or functions, which officers may be designated by law".

Mr. CHANDLER of Somerville: I believe that the majority of the members here present feel capable of voting on this question. I therefore move the previous question.

Mr. QUINCY: I will try not to occupy the full ten minutes which are allowed me in closing. I want to emphasize one point, however, which the gentleman from Westborough (Mr. Gates) made.

A good deal of our discussion has been proceeding upon the theory that we are going to have undesirable Governors of Massachusetts, —

perhaps the word "undesirable" is too mild a term. Perhaps we have had in the past some Governors who did not measure up to the full requirements of the office, in all respects; but I trust that this Constitutional Convention is going to proceed upon the presumption, which I think a proper one, that the people of Massachusetts upon the average are competent to elect men of honesty, men of ability, men of integrity, to the office of Governor. I for one am enough of an optimist to believe that whatever lapses from proper standards we may have been guilty of in the past we are going to have good, able, reliable Governors of Massachusetts in the future, whichever party may elect them.

Without going into the detail of this matter, which I think is understood thoroughly by the Convention, I merely want to make this amendment perfectly clear. The gentleman from Wellesley (Mr. Pillsbury) suggested very properly that officers and boards having quasi-judicial powers ought not to be included under this general power of direction of the Governor. I agreed with him. The gentleman from Cambridge (Mr. Wolcott) suggested that it would be desirable in some way to provide for determining what officers and what boards do exercise quasi-judicial powers, and I agreed with him. The amendment as it stands has this effect: It leaves it to the Legislature to make a list of such officers, boards and commissions as it deems to be quasi-judicial in their nature, or to have any quasi-judicial powers, and to say as to those boards that this general authority of the Governor to control and direct shall not apply; and of course if this amendment is made in this section it should be made logically in the following section, which relates to the power of removal.

Just one other point. It is perfectly true that interference by the Governor under this power of control may work badly in some cases; but we want to look at it in a broad and general way. The business question is this: Upon the whole, and upon the average, is it not desirable to have some directing power, elected by the people of the State at large, over these boards which admittedly are irresponsible now, — using the term in no sense of reproach? At present there is no power over them to control their actions. Undoubtedly some of these boards are doing their work as well as it possibly could be done. Some others, perhaps, are not doing their duty so well. Some of them are spending more money than they ought to spend, or than it is necessary to spend. But is not this general gubernatorial power upon the whole proper and desirable?

Now let me give just one illustration of the way things stand now. The subject of peat has been brought up, and the deposits of peat available in Massachusetts have been referred to. I think it is not generally realized how great those deposits are. It is a scientific fact that every ton of good dried peat contains at least as many heat units as two-thirds of a ton of coal. That is a conservative statement, which can be backed up by scientific authority. It is a fact that we have not merely hundreds of thousands but probably millions of tons of this potential fuel located within the limits of this State; and yet nothing to speak of is being done about it. The Governor at the last session of the Legislature recommended that some action should be taken to see if it was not possible, owing to the difficulty of getting our fuel from abroad, to produce some fuel at home, to utilize this

great natural resource. He got a very small response from the Legislature, in the way of a $1500 appropriation, to make some more surveys, to gather some more preliminary information. Nothing whatever effective was done. But supposing that the Legislature had responded to the Governor and said: "Yes, we will create a board which shall have charge of providing the people of Massachusetts with fuel, of trying to develop domestic supplies of fuel." Supposing the Governor had appointed such a board, and some months after their appointment he had called them in and asked them what they were doing about producing fuel, and they had admitted that they were not doing anything. They could have said to the Governor: "That is none of your business. You initiated this legislation, and you appointed us, that is true; but now we are responsible only to the law, which means no responsibility at all; it is not your business as to what this board is doing, whether it is performing its duties, whether it is digging any peat, whether it is making any fuel or not." Now, that is exactly the way that the present system works, or fails to work.

While fully admitting that this power, like all governmental power, is liable to abuse, are we not willing to take the chance that a Governor on the whole will do more good than harm by the exercise of this very general and supervisory power of control? Any Governor who misuses an executive power of that sort I think is going to injure himself and the party to which he belongs. As the gentleman from Quincy (Mr. Adams) has well said, we depend in this State for our ultimate protection upon an educated public opinion. That is the best security that any citizen may have, — the power of publicity, the power of well directed, honest public thought. I do not believe that any Governor of this State is going to do rash or wrong or indefensible things without being held fully answerable before this tribunal of public opinion. We have a press which lets us know what all officials are doing; we throw the light into all dark places, and I believe that if any Governor abuses this power it is going to react upon him and upon the party to which he belongs. I believe that on the average such Governors as we will elect in the future will use this power to improve the government of this Commonwealth, — to promote efficiency, to further the development of our resources and the most effective utilization of such sources of power as we have within the limits of this Commonwealth.

The amendment moved by Mr. Quincy was adopted.

Proposal No. 1, as amended, was rejected Wednesday, July 17, by a call of the yeas and nays, by a vote of 59 to 115.

The following proposal, No. 2, was then considered:

2. The Governor may remove any officer subject to appointment by him and coming under the executive department for such specific cause as he may assign in writing, provided that he shall first give such officer an opportunity, with three days' notice, to be heard by him upon the question of such removal and to file any reasons against the same; the order of removal and any such reasons against the same shall be filed with the Secretary of the Commonwealth and shall be a public record.

Mr. Brown of Brockton: I shall not take much time because after what has taken place I imagine you are going to reject this resolution.

I will tell you why I think it ought to be rejected. The Governor has power enough now. Let us see what power he has. I know of a case where there was an official of this Commonwealth who was appointed for the term of three years. The duty of that official was something in the nature of a quasi-judicial duty that we have heard of. He was charged with the duty of fixing certain rates or prices. Early in the course of his administration he found that there was a large corporation which defied the office on the ground of its unconstitutionality. Every method was used by that corporation, even to the extent of causing an order to be introduced for the increase in salary of that official, and he was told by others that their lobby was powerful enough to carry it through if he would swerve in his decision. That official did not swerve and at once was confronted with a fight with one of the largest corporations in the State. Into that fight for the corporation came one who is now the Attorney-General of the State, having been at the time counsel for that big corporation, which included lobbyists who had held the Legislature in some of the previous years. It was the immediate cause of the passage of the act which preceded the one creating the office. That official so ordered matters because of correspondence within his hands that the time came when they were ready to join issue, go up on completed pleadings, as you call it, to the Supreme Judicial Court; and the case went up to the Supreme Judicial Court and was argued at length by some of the ablest attorneys in Boston, and the sitting Justice was the honorable gentleman in the second division (Mr. Justice Morton). Mr. Justice Morton sent down a rescript in the very first year of that official's duty, analyzing the constitutionality of the act, analyzing the powers of the official, deciding in every case for the official's administration, and that official took that rescript as his guide and carried himself in accordance with it throughout his term of office.

His term of office expired. He was not an official. We are coming to the power that a Governor may exercise, and may exercise by so-called consent of the people. That official was summoned before the Council. He was refused the opportunity to send to his office for books and papers to qualify his answers. He was asked for his authority for his acts. He pleaded the rescript of Judge Morton, holding it in his hand, and was told by the Governor of the Commonwealth: "I don't care for any decision of the Supreme Judicial Court." Lest there be some opinion here that I am drawing on my imagination, let me say that that was brought out in testimony before a committee of the Legislature headed by the President of the Senate, — the present Lieutenant-Governor, — and the Speaker of the House, and it was certified to by the then Lieutenant-Governor that that did take place. Now you see that a Governor of the Commonwealth can do that. He may go further. He may traduce and ruin the reputation of an individual, and the individual has no redress except in the kind of life he had led or may lead. That same Governor, not being content with the fact that the official's term had expired and that he no longer was legally in office, that he really was retired, insisted on upsetting this swill barrel as he was going down stairs. That Governor, thinking that he had the power, and undoubtedly exercising the power, went so far as to place a State police officer in that official's place. And such an incident was so far in-

volved in the administration of the State that a Lieutenant-Governor, either knowingly or unknowingly, felt that he was called upon to falsify (pausing). I have paused that the word might be taken. He went so far as to suggest or testify that a certain incident took place on a certain day, and then could not fix the day, but finally said there were four separate occasions on which that official who was charged, — mind you, I am showing you what the Governor can do with a charge, — that official was charged with receiving a hundred dollar check that had been cashed for him, and the Lieutenant-Governor, to hold it up, said there were four occasions, thus preventing the official from proving an alibi on the date first alleged. But the best detective in the State, the same police official referred to heretofore, testified before that same tribunal, — after he was obliged to testify, — that he went to that trust company and examined every check that was drawn, and there was not even one one hundred dollar check; and, said the Speaker of the then House: "When did you bring that to the attention of the Governor?" And the date was fixed. And, said the Speaker: "That was four days before the Governor charged an official with the crime, and threatened him with the district attorney;" and there it stood.

Now you tell me that you cannot have supposed-to-be respectable men elected to the Governorship who will abuse their power? It has been done. I have appeared in this Convention and will continue to appear in a broad brotherly spirit, as one who bears no animosity to anyone, and you may believe me, except in this one instance, and I hold the right to carry this animosity until the man, if he be big enough, will retract or attempt to prove.

Now I say it is possible that you can give a Governor power, — and he has got it now, — the power to ruin a reputation as the power stands at the present moment. It has been done, and why should you give any Governor any more power? I am sorry; it is not my fault that the gentleman of whom I am speaking is not in his seat. I would have been glad if he had been. Here was the opportunity either to defend himself as Governor or to be an honorable man and admit that somebody lied to him [applause], one of the two. He is not here and I am sorry for it, because here is the opportunity. I doubt if there is a man in this Convention who would not have taken this opportunity, walking around as he has, under this shadow, to at least plead his own cause because he has the chance. I am pleading it because I want the respect of you men and I think I have got it, but I am saying, lest you may think I have some shadow, I am stating my side of the case as I stand before the Commonwealth at the present time, saying it because the man referred to feels that he has got to go even further and aspire to the honorable office of Senator of the United States. Such a man ought not to aspire to the office of Senator of the United States until he can purge himself of the responsibility, either one way or the other, of such conditions as he created while he was Governor.

I am going to stop lest I go too far. I thank you, Mr. President and gentlemen of the Convention. I am opposed to the resolution. [Applause.]

Mr. QUINCY: None of us wants to waste any of the precious time of this Convention. The vote which has just been taken by roll-call

is entirely decisive as to the attitude of the Convention in regard to extending the executive and administrative powers of the Governor, to make him in fact the executive head of the machinery of the State. No. 2, which is under consideration at this time, hangs with No. 1, which we have rejected, to this extent, that the decision being against No. 1 would be equally against No. 2. Number 1 having been voted down by the decisive vote which disposed of it, there is no use taking up the time of the Convention by arguments which might be made under No. 2 with reference to the Governor's powers and responsibilities; therefore I would ask unanimous consent to withdraw No. 2.

Proposal No. 4 which was considered next was as follows:

4. At the beginning of each regular session and at such other times as he may deem proper the Governor shall give to the General Court information as to the state of the Commonwealth and recommend to its consideration such measures as he shall judge necessary or expedient. He may make such recommendations, either orally or by written message, to either branch of the General Court or to both branches convened in joint session; so far as practicable he shall accompany any specific recommendations so made with drafts of bills proposed by him. Every such bill shall be designated as an executive bill and shall be before the General Court for its action, subject to any amendment thereof which the Governor may make by message while the same is pending. If any such bill is referred to a committee of the General Court or of either branch thereof a report shall be made thereon within thirty days of the date upon which the same was recommended by the Governor; and after the expiration of five days from the time when it is made such report shall be given precedence in consideration in both branches over all other reports or bills. No such executive bill shall be rejected in either branch of the General Court except by a vote taken by yeas and nays.

Mr. QUINCY: I am sorry to have to begin the consideration of this important and somewhat novel proposition at this hour of the day, but we must occupy our time and I will proceed during the next fifteen minutes.

We come now to an amendment which deals again with the legislative powers of the Governor. We have disposed in the negative of the idea of extending or strengthening his executive or administrative powers. Now we come back to the question whether in the particular respect covered by the amendment No. 4 we are willing to give the Governor a larger opportunity to share in legislation.

Now this does not raise the question of the Governor's personal appearance before the Legislature or authority to engage in debate, which was finally disposed of yesterday. It only somewhat enlarges the Governor's powers, and I think his responsibilities also, in respect to making recommendations to the Legislature.

Let me say a word, in the first place, about the first clause, which reads:

At the beginning of each regular session and at such other times as he may deem proper the Governor shall give to the General Court information as to the state of the Commonwealth and recommend to its consideration such measures as he shall judge necessary or expedient.

Now it may be said, the Governor does that now. Perfectly true, and if that were the whole of the proposed amendment it would not be worth while to insert it in the Constitution. But if we are going to have the provisions which follow it seemed to me that they should

be introduced by the sentence just read, which merely puts into our Constitution something which now is lacking in it, which is exactly analogous to the provision contained in section 3 of article 2 of the Constitution of the United States, which says that the President —

> shall from time to time, give to the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient.

In other words, there is a specific recognition in the Federal Constitution not only of the power but of the duty of the President of the United States to give information and to recommend the consideration of measures which he judges to be necessary or expedient. Thus the Constitution of the United States expressly makes the President of the United States a leader of legislative thought and policy to the extent of giving him this power and imposing upon him this duty. It seems to me that it would be highly desirable to recognize the prevailing practice by inserting express language in our Constitution giving to the Governor of Massachusetts the same power and the same duty.

But following the text of the measure we come to other provisions which may arouse some opposition and which raise other questions. At present the Governor makes recommendations by written message. He is at liberty to accompany his written message with the draft of a bill if he sees fit to do so, but my recollection is that this rarely is done. Our Governors are apt to content themselves with glittering generalities, with general recommendations, — the same kind of generalities which they have put in their political programs or in their political speeches during the campaigns which resulted in their election.

Now I think, whatever difference of opinion there may be about this measure, that it will be agreed generally that it is desirable to encourage the Governor to put his recommendations, so far as possible, in the form of bills. The gentleman from Boston in the second division (Mr. William S. Kinney) gave a very good illustration yesterday of the difficulties which are created when a Governor makes a general recommendation but does not think the subject out far enough, or consider ways and means fully enough, to put his recommendation in the form of a bill. The present Governor, for instance, recommended in general language the adoption of a measure providing for old age pensions. Now that was comparatively easy for him to do, if he approved the principle of old age pensions. Under the procedure we propose it would not indeed be absolutely mandatory on the Governor to accompany his general recommendation with the draft of a particular and specific bill providing for old age pensions, and presumably showing how the money for old age pensions would be raised, but at least he would be put under the obligation of the mandate that, so far as practicable, he should "accompany any specific recommendations so made with drafts of bills proposed by him."

Now some subjects advanced by Governors and discussed in campaigns may not be ripe for legislation. But many such subjects are ripe for legislation, and my view is that those persons, — whether candidates for office or legislators, — who advance novel propositions of a sweeping character should be exposed to what may be called the acid test; that is, they should be encouraged, if not required, to put their propositions in the form of specific bills. It is a great deal

easier to talk generalities than to draft measures. It is a great deal easier for a Governor to suggest policies which the average citizen thinks are humanitarian and progressive, which look well, than it is for the average legislator, charged with the duty of framing legislation, to reduce these general proposals to the form of specific measures.

This measure starts with the presumption that if a Governor has thought out a particular feature of public policy, particularly a novel feature, he will be able to help the Legislature in its task by putting his ideas in the form of a specific bill. Is it not desirable, so far as this preliminary point goes, — and I agree it is only preliminary, — to encourage the Governor to apply the acid test to his own propositions, to try to embody them in bills, instead of leaving them up in the air, in the form of glittering and pious generalities, leaving the difficult, or perhaps even impossible, task to the Legislature of trying to reduce these broad ideas to bills, which somebody will stand behind as being practical and expedient? I do not think there will be very much difference of opinion as to the desirability of some measure of that sort, if it is deemed practicable.

Now we come to the really distinctive feature of this amendment, which is this: That the Governor shall have a special right to introduce legislation by designating any bill that he introduces as an executive bill, that bill then to be before the General Court for its action, precisely as if it were introduced by a member. In other words, the Governor by message may introduce a specific bill.

What happens after he has introduced the bill? He may make by message any amendment in that bill while it is pending. Now that is exactly analogous to the right of a legislator who introduces a measure, after he has heard the debate and after the measure has been more fully considered, to say: "I recognize that this measure needs amendment in a certain respect and I desire to stand upon the measure only with this amendment." It is a familiar practice, in other words, for the mover of a proposal, the originator of a measure, to modify his proposition after further reflection or debate by himself introducing an amendment. This merely gives the Governor the right by message to say: "While I introduced this bill drafted in a certain form, I now believe a certain amendment should be made in it." That is only fair to the Governor, if you are going to give him any such right. Then the bill will stand in the form in which the Governor finally puts it.

Mr. Richardson of Newton: I should like to ask the gentleman whether it is his opinion that under the language of his proposition, such a bill would be subject to any amendment in the General Court.

Mr. Quincy: I want to be sure to answer the question correctly. (Examining bill) I think the effect of the amendment is merely to provide that the Governor may make the amendment while the original draft is under consideration. I do not think that the language is intended to exclude the right of the Legislature, or of a committee, to propose other amendments.

Mr. Richardson: I am not quite sure that I understand the gentleman's answer. The purpose of my question was to inquire of him whether or not he intended to give the Legislature power to amend an executive bill or to withhold from the Legislature that power so

that the bill must stand or fall in the form propounded by the Governor.

Mr. QUINCY: I am sorry that my memory was at fault and that I gave a wrong answer to the question when the gentleman asked it. The intention of the measure is, as he justly suggests, to have the Governor responsible for the measure and to enable the Governor to get a vote upon the bill as he proposes it, otherwise his proposal would be ineffective. It is very similar to the case of a bill proposed under the initiative and referendum. We have discussed the question of amendment under that measure. We found, I think, that it would not be practicable to allow unlimited power of amendment to the General Court, because then the measure might have been amended beyond all recognition by those who proposed it. Therefore the power of amending an ordinary bill proposed by initiative and referendum was reserved not to the Legislature but to the petitioners for that bill. Now this case of the Governor is exactly analogous. It is intended to give the Governor a chance to get a vote upon his bill, not upon some other bill which may be substituted for his measure. In order to carry out the fundamental and underlying idea it seems to me essential that the Governor should have a right to get a vote upon his bill as he amends it, exactly as it is essential for the operation of the initiative and referendum to give the proponents of a measure the right to get a vote upon a bill as they propose it, and not as it may be amended by the Legislature. The objection which is suggested by the gentleman's question can be met in other ways. The Legislature can find ways and means to substitute its own form of a bill for the form which the Governor proposes. They can vote down the Governor's form and, through the usual channels of legislation, can adopt an alternative proposition in such form as they think proper. But it is an essential and fundamental idea in this proposal, as contained in the amendment now under consideration, that the Governor shall have the right to get a vote upon the bill which he proposes, in just the form in which he proposes it, after he has amended it in such manner as he sees fit.

The debate was continued Thursday, July 18.

Mr. QUINCY: At the hour of adjournment yesterday I was endeavoring to make a brief explanation of the purpose and effect of the amendment No. 4, which is the subject immediately under consideration. I recognize in the case of amendments Nos. 4 and 5 that the discussion is likely to cover both propositions, which although they are separable nevertheless are related. No. 5 would not have a basis if No. 4 were rejected, and to that extent one hangs upon the other; but a delegate might perfectly logically vote for No. 4, which covers only the presentation to the Legislature of an executive bill, as we call it, and yet vote against No. 5, which embodies the further step of giving the Governor the right to appeal on an executive bill to the people, thus giving to the executive the same right of initiative which under the so-called initiative and referendum amendment already adopted we have given to 25,000 voters. In the case of the popular initiative and referendum in the form in which this Convention has adopted it, which is unlike the initiative and referendum as it exists in the Constitutions of some States, every proposal has to go to the

Legislature; and while there is no requirement that it must be favored by the Legislature it at least has to be discussed there and in the case of a constitutional amendment it has to receive a certain minimum support in the Legislature before the 25,000 voters can take their proposed amendment directly to the people. Now this executive initiative of course should be subject to the same requirement. It is not proposed now to give the executive the power to go directly to the people upon any measure proposed by him; but it is proposed to give him a power very similar to the power now vested, if the work of the Convention is approved by the people, in 25,000 voters, namely, the power of proposing a bill; this power, which would be given to the Governor under these amendments, relates to bills and not to constitutional amendments, — the power to propose a bill, to put that bill in the first instance before the Legislature, where at least it can be discussed thoroughly, and then to provide machinery by which if the Legislature disapproves the measure there shall be a further right of appeal by the Governor to the people.

The question may be asked, in view of the adoption by this Convention of the popular initiative and referendum: Is there any legitimate place, any legitimate need, for the further step which is here proposed, to give to the Governor a like power of initiating legislation, and after it has been acted upon unfavorably by the Legislature taking his proposal to the people? I believe that there remains a legitimate place, and a very important place, for the executive initiative. As we all of us know, and as the advocates of the popular initiative and referendum fully recognize, the machinery provided under that amendment necessarily is somewhat cumbrous. The use of that procedure involves a very considerable effort on the part of those interested. The task of getting 25,000 signatures is no small one.

I resisted, when the popular initiative and referendum was under consideration, any suggestion that the executive initiative in any way would replace or serve as a full substitute for the popular initiative. I believe that if we had adopted the executive initiative before we acted upon the popular initiative there still would have been not only a legitimate place but an urgent need of the popular initiative. I do not want to weaken that in any respect. But that is largely, as I think was recognized in the debate, an emergency provision. It is not intended as a normal means of legislation; it is intended for emergency use. On the other hand, the normal process of legislation as practiced in this Commonwealth involves first the inaugural address of the Governor, in which he outlines such policies as he believes should be placed upon the statute-book. The executive policies now are placed before the Legislature at the opening of the session in the Governor's inaugural. From time to time during the session the Governor as he sees fit follows his inaugural address with other messages, outlining additional policies of legislation, or putting his policies as recommended in his inaugural in more definite and specific shape. So that we have this regular normal process of initiating legislation.

The further step that is proposed in these amendments Nos. 4 and 5 is, in the first place, to give the Governor formal power, to encourage the Governor, as I said yesterday, to introduce not merely general suggestions but bills. The test of the soundness of any measure which is ripe for legislative action is that of reducing it to a bill;

and I believe that it would be a very wholesome step to encourage the executive to reduce his suggestions, his recommendations, which often remain in a very general form and raise difficult questions for the Legislature, to the form of bills. That does not mean in the least that the Governor's bill necessarily will be better than the bill which the Legislature may pass, that his legislative wisdom necessarily is greater than that of the Legislature; it is simply a means of getting a concrete proposal, backed by the one officer who stands at the head of the government of the State, who is elected by the people of the State at large, before the legislative body. It does not mean that the Legislature should even give the Governor the presumption that his recommendation is wise and ought to be enacted into law. I do not believe that there would be any such presumption. The discretion of the Governor is one thing; the discretion of the Legislature is another thing. I do not suggest, and I want to emphasize this point, that the Legislature in any case should follow blindly the recommendation of the executive.

Mr. WASHBURN of Worcester: Will it disturb the gentleman if I ask him a question at this point?

Mr. QUINCY: Not at all.

Mr. WASHBURN: I have a good deal of sympathy with the first part of section 4. I should like to ask the gentleman from Boston (Mr. Quincy) if, under this section 4 as it is drafted, an executive bill would be referred as a matter of course to a legislative committee.

Mr. QUINCY: That would depend entirely upon the rules of the Legislature. That matter would be wholly under the control of the Legislature. In line 44 of section 4 this language is used: "If any such bill is referred to a committee of the General Court there shall be a report". There is no requirement that the bill shall be referred. There is no requirement that it shall not be referred. It is absolutely within the discretion of the Legislature.

Mr. WASHBURN: The purpose of my inquiry was to remove any doubt as to whether the executive bill would stand before the Legislature as a report of a committee would stand, or whether as a matter of course it would be referred to a committee, and I will put this further inquiry: Would the gentleman object to an amendment to section 4 which would prescribe that an executive bill after it was introduced should take the regular course of a legislative bill? If that would impair in his opinion the efficiency of the section.

Mr. QUINCY: In my judgment such a provision would in no way impair the objects in view in this section. The intention I think is clear now, that the control of such a bill would remain absolutely in the hands of the Legislature. The presumption was that an executive bill under the regular standing rules would be referred to a committee, exactly as all of the general recommendations of the Governor's inaugural are referred now to committees. If the gentleman thinks that a specific provision should be made that the rules of the Legislature should operate, or even that the Governor's bill in every case shall be referred first to a committee and reported upon, I have no objection to it.

Mr. WASHBURN: The doubt was raised in my mind by the use of the word "if" in line 44. That is the reason for my question.

Mr. QUINCY: I would be glad to meet the views of the gentleman

from Worcester (Mr. Washburn) in any way if he thinks an amendment providing for the reference of an executive bill to a committee before its consideration would be desirable. That has been the procedure that I have had in mind. It is the regular procedure of the Legislature. It is followed in regard to the recommendations of the executive, and there is no reason why it should not be followed as to an executive bill. In other words, there is no necessity of giving it any favored status.

Mr. WELLMAN of Topsfield: If all of the section beginning with line 44, "If any such bill", — the rest of the section, — was crossed out, would not that produce the result which has just been suggested?

Mr. QUINCY: It would produce that result, and it also would produce the further result of leaving the executive bill in a position where it might be pocketed indefinitely in a committee. Of course under our procedure all committees report at some stage during the session. The last part, from line 44 down, which the gentleman from Topsfield (Mr. Wellman) refers to, simply outlines a certain procedure. It is not an essential, integral portion of the proposition. The section as drawn does give a certain status to an executive measure in this respect, that if it is referred to a committee a report must be made within thirty days of the time when it is referred, and that a roll-call is required upon the rejection of any such bill. The provision for a report within thirty days, while I believe it to be a desirable one, I do not regard as at all essential. Sixty days would answer. Or I have no doubt that without any express provision requiring a report within a certain time any committee of the Legislature would act with reasonable expedition, and with reasonable respect, upon any executive bill. Therefore I do not regard that as essential, and if it is deemed by any delegates to be an objection to the section, I would not offer any strong objection to striking out the provisions from line 44 down.

Mr. WASHBURN of Middleborough: I rose primarily at this time to ask the gentleman from Boston (Mr. Quincy) a question, if he is willing to answer it. In my judgment, he very wisely has asked the Convention to consider section 4 and section 5 together. Under section 5 a provision is made that an executive bill negatived by the Legislature thereafter may be submitted to the people for their approval. Conversely, it is provided also that a legislative bill disapproved by the Governor, — that is at the top of page 5, — may be submitted to the people for their approval, *but* under the 42d Article of Amendment of the Constitution. My question is this: The gentleman of course is aware that the proposed initiative and referendum amendment annuls article 42 of Amendments to the Constitution, and accordingly some very radical change in language is here necessary. I ask him if he does not concur in this view.

Mr. QUINCY: I should be glad to occupy the extended time which has been voted me in answering questions. I could not have answered the gentleman from Middleborough (Mr. Washburn) the question which he has asked, because I did not have any time left in which to answer it; but now that I have additional time, which I want to devote largely to the purpose of answering questions, if any delegates desire to ask them, I recognize the difficulty raised by the gentleman from Middleborough (Mr. Washburn). This report was made before

the action of the Convention on the so-called I. and R. amendment, and we labored under the difficulty of not knowing what provisions the I. and R. amendment was going to contain, and we certainly did not know that it was going to contain an annulment of the 42d article of the Constitution. My suggestion to meet that situation would be this: That either any provisions which are inconsistent with the action already taken by the Convention in the I. and R. amendment should be stricken out, or preferably that the amendment, if it commands the support of a majority of the Convention, should go forward in its present form, and that at the next stage, or in the hands of the committee on Form and Phraseology, the difficulty should be straightened out; but this accounts for the conflict which the gentleman very properly calls attention to.

The only thing that I am going to add at this time is this: Of course this amendment brings up the question of the general attitude of this Convention toward executives, — present, past and future. I want to make one point. There seems to be left considerable of the prejudice which was justly entertained in the time of our forefathers against Colonial Governors and their powers, coming down even to our day against Governors elected by the people; and some gentlemen seem to assume that a Governor of Massachusetts is likely to be a demagogue, whose chief effort will be to put demagogic issues up to the people in order to secure his own retention in office. I have a higher conception of past, present and future Governors than that; and I want to remind the Convention of one fact. Would this Convention be in session now, performing its great task, which its members are taking so seriously, of amending the Constitution of Massachusetts, if it had not been for the initiative of certain Governors, for their belief in the idea of a Constitutional Convention, for their advocacy of it? The Governor is not charged expressly with the duty of recommending whether there shall be a Constitutional Convention, but Governor Walsh in 1914 in his inaugural address, and again in 1915 in his annual address, Governor McCall in 1916 in his annual address, made successive recommendations, — coming first from a Democratic Governor, then from a Republican Governor, — which in my judgment were the determining influences that brought about the holding of this Convention. So that when you think about Governors and about their influence over public policy, I hope that you will bear this fundamental fact, so far as this Convention is concerned, in your minds: That the recommendations of these two Governors probably account for the fact that we are here at all, considering these very important matters, of such deep interest to the people, which are before us.

I am not going to take up any more time now. There are other gentlemen who desire to speak upon this proposition. It is a novel proposal in American State government, and it is worthy of discussion whether it is a good and a sound proposal or not. I hope that it is going to be seriously discussed, however the Convention may finally vote upon it.

In closing I merely want to emphasize this fact: The theory of our American governments is a separation of the executive and the legislative powers. But the grant of the veto power to the Governor inevitably brings him into the legislative sphere; and the power to

recommend measures further brings him into the legislative sphere. Upon what kind of issues does a Governor go to the people? He goes to the people upon the same kind of issues upon which all executive heads of government go to the people everywhere, — issues of public policy. Upon what issues was Theodore Roosevelt elected President of the United States? Upon what issues was Woodrow Wilson elected President of the United States? Upon what issues have most candidates for President of the United States run? Not upon their executive records alone, or even chiefly, but upon their positions as to certain great questions of public policy which were before the American people.

What do Governors of Massachusetts talk about when they are candidates for reëlection? Or what does a candidate for Governor talk about when he is running for election? Does he talk primarily about his record as an administrator? No. In the first place, the Governor has very little power as an administrator in this State. He talks, and this is I think true of every campaign, about policies. The executive runs for office upon policies. It is policies which the people are interested in. Now, if you bring the executive into more direct and formal relation with policies you are not putting him in a field where he does not belong, you are not giving him powers which he does not now enjoy, you are not importing into campaigns issues which now do not belong in campaigns and do not get into campaigns; you simply are recognizing the patent fact that the people are interested in policies, that men who run for office throughout the State, particularly the Governor as the head of the State ticket, run on policies. This proposal is merely to give the Governor a better chance to put his policies in formal shape, to subject them to the acid test of putting them into a bill; then let him go out before the people and support his policies as embodied in measures instead of being able to confine himself to generalities.

Mr. Theller of New Bedford: I should like to move to amend, in line 51, after the word "bills", by adding the words: "except the general appropriation bill."

Mr. Washburn of Worcester: I desire to offer an amendment striking out all after the word "designated", in line 40, and inserting the words "shall be referred to the appropriate committee and thereafter take the regular course of a legislative bill."

I have a good deal of sympathy with the proposition contained in the first part of section 4. While, as the distinguished gentleman from Boston (Mr. Quincy) has said, it may be rather an innovation in State governments to have the executive submit draft bills, it is by no means an unusual occurrence in National legislation, and with certain limitations the executives of our States should have the same direct means of communication with the legislative body that are open to the President of the United States. I remember that when President Taft in 1910 made his recommendations touching the amendment of the Interstate Commerce Act, he sent in a bill drafted by Attorney-General Wickersham covering the whole subject-matter, which was known as the administration bill. Some of the Democratic brethren objected to that course on the part of the President, and stated that it was an unprecedented act for the chief executive to send a draft bill to the Congress, but an investigation proved, as it often has,

that that sweeping Democratic comment had no foundation in fact, and that our Presidents, from Lincoln down, at various times have sent to the Congress draft bills with their recommendations. It is perfectly true, as the gentleman from Boston (Mr. Quincy) has said, that in no other way can the executive bring so pointedly and clearly to the attention of the Legislature any policy which he recommends as to formulate it in a bill.

Mr. Cox of Boston: I should like to ask if the member does not understand that now the Governor may submit a form of a bill with his recommendations to the Legislature, and that that has been done, I think even this year, in one or two instances.

Mr. Washburn of Worcester: Such may be the fact, but if there is any doubt as to the propriety of his doing it I should like to see the doubt removed.

The objection that I had to this section as originally framed was that there seemed to be a doubt as to the status of this so-called executive bill before the Legislature. Indeed, I would dispense with that designation as perhaps creating an aristocracy among the bills which appear here, contrary to our general theory of government. I think also it would be extremely unwise to compel a committee to report within any designated time. The bill proposed by the Governor of course should be open to the same conditions that surround every other bill, and final action would be had upon it before the Legislature is prorogued. To say that it shall be reported upon within thirty days sometimes would be to demand the impossible, because of the reason that recommendations of the Governor, being usually of a fundamental character, may require considerable time in their investigation. If my amendment is adopted it will leave this section in the following form:

4. At the beginning of each regular session and at such other times as he may deem proper the Governor shall give to the General Court information as to the state of the Commonwealth and recommend to its consideration such measures as he shall judge necessary or expedient. He may make such recommendations, either orally or by written message, to either branch of the General Court or to both branches convened in joint session; so far as practicable he shall accompany any specific recommendations so made with drafts of bills proposed by him. Every such bill shall be referred to the appropriate committee and thereafter take the regular course of a legislative bill.

Mr. Underhill of Somerville: I might add something to this discussion if I bring to the attention of the delegates who were not members of the Legislature of last year two instances in which the Governor took action such as is contemplated by this bill. We had in the last days of the session a bill for absentee voting. It was drawn by the committee on Election Laws with the assistance of the Attorney-General, after a long and deep study of the situation and the conditions, and after consulting with the Federal authorities. It did not meet with the approval of His Excellency the Governor, and in no unmeasured terms he made the Legislature understand that that was the position he took. We were kept in session some two or three days while action took place between the House and the executive chamber. At last the chairman of the committee on Election Laws rose in his seat directly behind me, and stated that as the committee had failed and the Attorney-General had failed and all authorities had failed he was very glad indeed to have the bill re-

committed to the committee on Election Laws, and he notified the House that he would ask His Excellency to draw a bill which might meet with his approval. I have positive knowledge that that was done, and His Excellency after a day or two of delay recommended to the Legislature that they appoint a recess committee to study the question. He did not or could not draw the bill.

One other instance. It was when the ratification of the prohibition amendment was before the Legislature. Although your humble servant and several others interested in the ratification of that amendment had urged the executive of the Commonwealth to take some action in the matter in order that his influence might be felt in the Legislature, nothing was done, no move was made, no recommendation was made until the very last day the matter was to come up for a vote in the Senate, — and we had the votes, they all were tabulated and counted; then His Excellency came across with the proposition that this was a question that ought to be settled by the Legislature and not referred to the people.

Now, sir, there are two illustrations which apply to a Republican Governor. I should like to ask the gentleman from Boston (Mr. Quincy) who said that all candidates for Governor ran their campaigns on policies which they stated to the public, to please give to the Convention the policies which are being urged by Messrs. Long, Gaston and Mansfield, members of his own party who are now candidates for Governor. If they have any policies outside of the general policy of the success of the Democratic party he may know of them, being on the inside, but I have not as yet heard any policy enunciated by those gentlemen.

Mr. Whipple of Brookline: May I offer the suggestion that while this proposition is included in a measure which has to do with the powers and responsibilities of the Governor it has no particular reason for being there. It is in character quite separate and independent from the other provisions which are contained in this measure. This provision is not a plan to increase, extend, or to diminish the power of the Governor. Strictly speaking, and properly named, it is a measure to increase and extend the powers of the electorate, the powers of the people. It may be that it would add to the dignity and the influence of the governorship, but it does not in its last analysis add to its power.

Now let us see if that is so. To my mind the best way to analyze one of these measures is not so much to read over the technical words in which they are couched, but to consider how the thing will operate in practice. Let us see how this measure is intended to operate in practice.

Suppose a man to be nominated as candidate for the governorship. He wants a platform or an issue upon which he may stand and go before the people. Suppose he takes one, — for illustration, old age pensions, the eight-hour law, or prohibition, if you please. What does he say under the terms of this measure? He says to the people: "I stand for that principle" or "this principle", and "on this platform" or "that platform." "I stand in this campaign for", for illustration, "old age pensions, and I pledge to you that if I am elected I will recommend to the Legislature the enactment of a law which will put that principle or proposition into effect." You say he may

do that very thing now. Indeed he may, but what of it? What does it amount to? When he gets before the Legislature he can recommend and recommend, and urge as much as he pleases, but he has no power beyond recommendation, personal influence or argument, which is the same power that any member of the electorate may have. But now what is it suggested that he be able to do? It is suggested that when he is elected and brings the mandate of the people upon that particular measure he may frame it and submit it to the Legislature, — as perhaps he may do now. Now he is powerless, beyond his recommendation, but under this provision he may go further. If the Legislature disputes that mandate, if the Legislature says: "You had a lot of other propositions which you advocated during your campaign and you have no mandate from the electorate on that particular proposition, and therefore we will not pass it", then the Governor may say: "You disagree with me, members of the Legislature, with regard to the popular mandate. We will submit our dispute to the people who elected me." Now, what is the harm of that? Does that give any power to the Governor that he ought not to have, — the power to invoke the people to say whether he is right in his interpretation of the popular will or whether the Legislature is right? Is not that rather an extension of the power of the people to express their will, a democratic measure, an extension of the democratic principle?

And so if the Legislature during the session passes a bill which the Governor vetoes because he says it is not for the public welfare, and the Legislature cannot pass it over his veto, the Legislature may say: "We believe that the popular will requires the passing of such a bill, and we will ask the people to stand between us and your Excellency as the arbiter to determine what is for the ultimate benefit of the Commonwealth." And why should not that be done? Is it not a perfectly simple, direct and effective way of expression of the popular will upon a principle regarding which His Excellency, who represents the whole State, and the Legislature, who represent districts covering the whole State, may disagree? What can be said against it? What valid argument can be advanced against it that does not destroy the principle of democracy and the right of the people ultimately to determine what is for the welfare of the Commonwealth?

I wonder if we realize how much we are behind even monarchical nations in this respect of furnishing no opportunity to the people at large to express their will with regard to legislation. What way have they now? We elect members of the Legislature and they, with that mandate, may do as they please, unchecked by the popular will, unchecked by the President. No matter how much they may desire certain legislation or try to prevent it, the people cannot get it under our present form of government. Compare ours with the English form of government, and see how there, under a monarchy, the popular will is made effective. If in their Parliament there is a difference of opinion, and the Prime Minister fails to put through a measure for which he stands committed there, Parliament is dissolved. For what purpose? "We will appeal to the people of Great Britain as between the Prime Minister and the majority in the legislative body". And upon the result of that election depends whether that measure shall be passed and that Prime Minister shall hold his office, — the most direct, effective, and perhaps the finest opportunity for the expression

of popular will that governmental machinery now exhibits. But here we have one as simple and as direct. I do not exaggerate when I say that in my opinion I think this is one of the most important measures which have been submitted for our consideration. It furnishes a method so simple, so easy and so direct, so free from complication, by which upon any important measure, upon the great humanitarian questions with regard to which we differ, we easily, directly, may take the popular will, — the popular will which in its ultimate form must control all our actions.

There is much more that can be said with regard to this measure in respect of this particular provision. I have spoken hurriedly upon the general principles that underlie it as they appeal to me. I understand there will be a further opportunity for debate and discussion, reflection and consideration, if the measure, this part of the measure which is especially interesting, passes this stage of the debate. Such debate and consideration it certainly ought to have before it is rejected. Its importance justifies it. I sincerely hope and urge that this measure, this part of it, paragraphs 4 and 5 I believe in the resolution, will be sustained and accepted, at least not rejected until further, maturer and more careful deliberation can be given to it.

Mr. Lomasney of Boston: It seems to me that this is an important matter. But I want to submit to the Convention how this amendment may work out in the hands of a demagogue. Let us assume that one was elected in the past. Such a Governor was then in a position to submit popular bills to the Legislature calling, we will say, for the expenditure of large sums of money for popular purposes. Under this amendment, if you adopt it, by constitutional right the Governor then would present such bills before the Legislature. What security would there be to the treasury of the State under such circumstances? I was one of the members of the Legislature a few years ago who opposed giving the judges the right to charge juries on the facts as to medical expert testimony, because I believed, sir, there was enough criticism against the judiciary at the time. But I contended further that if you permitted the judge to charge juries on questions of fact then we would have the judges held responsible for many of the jury verdicts, and you would have the hue and cry against the judges increased, whereas to-day when the juries render their verdicts and their thirty days' service as jurors expires they go back to the people, thereby preventing a sentiment being raised against the judges. Now, sir, I can conceive that this amendment may be intended to do good, but it will do a great deal more harm, in my opinion, than it will do good in the end. The 240 Representatives and 40 Senators who are elected annually come from all parts of the Commonwealth. What for? To the end that they may counsel one with the other and make laws, not for any particular section, not for any particular class, but for the well-being of the entire Commonwealth. Now, sir, I submit that a practical, sharp gentleman elected Governor of this State upon a popular platform, and with an amendment such as this written into the Constitution, you never could put out of office, no matter how much of a demagogue he might be, and I say that is the danger of this proposition.

Mr. Whipple: May I ask the honorable gentleman whether he thinks the machinery of government in this Commonwealth should be

adapted with the expectation that we would have demagogues as Governors, or in the expectation that we would have honorable, loyal and patriotic men, men elected by the majority of the people, and whether he does not think the suggestion that a majority of the people will elect a demagogue is an impeachment of democracy?

Mr. LOMASNEY: I regard it as no impeachment of democracy to state facts. Demagogues have been elected in the past and demagogues will be elected here when you and I are dead. [Laughter and applause.]

Mr. WHIPPLE: I sincerely hope it will be when we are dead.

Mr. LOMASNEY: I was just saying when discussing this matter how it would work out to the disadvantage of the State. We know what has happened in the past. I say that unintentionally, in my opinion, you are giving an opportunity to the Governor which he never had before. Why, I have seen measures come before the Legislature, and I have seen able men and able lawyers come before that body and put in their case, and I have seen many a plain country member demonstrate the unsoundness of their position by a simple, common-sense question. Now, sir, under this amendment it is provided that the Governor should have the right to submit measures to the Legislature and to come before the Legislature and debate them. To my mind there is great danger in making this change. Let the Legislature pass upon them, as it now does, and then let its members go back to the people. But if you pass this measure, I say, sir, a man may get into the office of Governor and you may not be able to put him out, because he will be in a position to advocate matters that he knows are impossible. Why, sir, everyone knows that if the wrong kind of a Governor gets into office, under this amendment he could do a great deal of damage to the interests of the entire State and first to the manufacturing interests of the State, because you cannot hurt one interest without affecting the other. For what purpose are the 240 Representatives elected but to discuss measures, go over them carefully and, if possible, agree on them? But suppose, sir, a Governor should advocate that no person should work more than five hours a day and that such person should receive not less than five dollars a day for his pay. If such a bill came before the Legislature, and if rejected by it and the bill afterwards should go before the people, would it be adopted? Why, of course it would, since a majority of the laboring men of the State would vote for it. I might vote for it and many of you might vote for it. But would that be justice? Of course it would not. You can select a great many other questions. If you tried to put something through this Convention which was intended to ruin the entire State you could not do it in a better way than by adopting this amendment. Now, I sympathize with labor, and I say, sir, it is impossible to treat labor unfairly without having it react on the State. It is impossible also to treat capital unfairly without having it react later on labor. But that is only one question. There are many other questions. I have no use for the Boston Elevated Railway Company. I believe that they have ruined many sections of our city, but they have investors who have rights, as the other railroads have. It is the same way with those who invested their money in the steam railroads, they have their rights, as all investors have. In my opinion both labor and capital would lose in

the end. Who would gain by the adoption of this amendment? Demagogues might take advantage of this proposed amendment by advocating some measure which might appear advantageous to them for the time being.

I submit, sir, that the fathers of this government understood these things, and they did not look at them selfishly in those days for the purpose of getting office. They made this Constitution to preserve our liberties, to secure property, and all the individual rights of the laborer. They protected all those matters. This in my opinion is a scheme which will operate against the best interests of the State, and I hope it will not pass. [Applause.]

Mr. Washburn of Middleborough: The chairman of the committee on Executive the other day was wholly right when he said in substance that no matter of greater moment could come before this Convention than a series of resolutions which have for their object the shifting of the existing system of checks and balances, in other words, a redivision of powers. Any such resolution, in my judgment, should be scrutinized most carefully before we accept it. It is commonplace to say that the original Constitutions for the most part, — we did not do that here in Massachusetts quite, — made the Legislatures practically supreme, subject only to the principle of judicial review, but otherwise practically supreme. The corollary of that, of course, was that the Governor to all intents and purposes was a mere figurehead. With the subsequent decline in legislative prestige came a reaction. I suppose it is fair to say that for the last fifty years our constitutional history has been mainly a history of attempts to expand the power of the Governor. Now, this effort, in the main, has taken two different forms: First on the administrative side, and secondly on the legislative side. We had an example yesterday of the former instance. We have had for too many years, in my judgment, what is technically known as the plural executive, a relic of a fettered Governor; that is to say, there have been a good many administrative officers absolutely independent of the chief executive, in no way responsible to him and in many respects directly antagonistic to him and defying him. If I had my way, if I had an opportunity I would vote for a short ballot. I would vote to transfer many of the administrative officers from the elective to the appointive class, just as was proposed to be done by the abortive New York Constitutional Convention in 1915. The result of that Convention's work was submitted *in toto*. It had many admirable provisions, many of which would have had quite another fate, if they had been submitted separately. But we have got something quite different here. We have got a proposal which looks wholly to enlarging the Governor's legislative power.

The gentleman from Waltham (Mr. Luce) is no alarmist. I sat here yesterday and heard him say, and his testimony is entitled to very great weight, that the Governor now has an alarming control, — those were his words, — over legislation. I for one am not disposed to give him any further control. I do not believe that a case has been made out in this Convention for changing the existing system of checks and balances so far as the relations of the Legislature and the Governor are concerned. We must keep in mind that this Convention has voted to submit an I. and R. amendment, and that amendment, if ratified by the people, is likely in a measure, at least, to dis-

place strictly legislative business. Are we going to displace still further strictly legislative business by permitting these executive bills, a flood of them, to come into this chamber and to upset the normal work of the Legislature, especially when the Governor has the power, as I think he has under the existing Constitution, of making his recommendations known to the law-making branch?

If by any chance this resolution should be adopted, — and I refer specially to the section numbered five, — I want to say now to the distinguished chairman of the committee that, if nobody else does it, I shall propose one or two amendments. In the first place, this measure provides that any bill recommended by the Governor which the Legislature rejects may be submitted to the people for their approval or disapproval, and that it may be ratified by a majority of those voting thereon. Why should we depart from the principle which we incorporated in the I. and R. amendment under which at least thirty per cent of those voting at an election must vote affirmatively for a proposition before it becomes law?

Mr. QUINCY: It may save the time of the gentleman if I state in advance that his point is perfectly well taken and that the action of the Convention in passing the I. and R. amendment subsequent to the date of this report, when we had not the benefit of those provisions before us, alters the situation. I should accept on behalf of the committee any amendment which placed the bills recommended by the Governor on exactly the same footing in respect to the required vote, etc., as bills originated by the people.

Mr. WASHBURN: In one other respect, in my judgment, this section should be amended. I take it from what the chairman says, he would have no objection also to amending the bill so as to provide that the form in which these questions go on the ballot should be approved by the Attorney-General rather than by the Governor. From his affirmative nod I assume that such a course is entirely agreeable. With that understanding, I will not take up the time of the Convention further. I propose, however, to vote against these amendments, both four and five, and I assume that if amendment 4 is rejected by this Convention, this *ipso facto* will carry with it the rejection of proposal No. 5. The first can stand without the second; certainly the second cannot stand without the first. I shall oppose these amendments because I believe they go too far in merging the powers of the Governor and the Legislature and because I believe they would disturb unwisely the existing balance between two entirely different departments of government.

Mr. W. H. SULLIVAN of Boston: As a plain friend of the plain people I rise to oppose this amendment and not merely because it reeks with distrust of the Legislature. I suggest that simply as a potent argument to those who are opposed to the initiative and referendum. But I do oppose it because I take the initiative and referendum so seriously that I do not think the ballot should be crowded with too many issues, and I think, to justify the submission of an issue to the people, it should be such an issue as would have behind it strong public sentiment. I had no expectation that this measure would have any serious or substantial support until the gentleman from Brookline (Mr. Whipple), a great friend of the people, spoke. However, I class him as a theorist, without the benefits of practical

experience. Now he has in mind the ideal Governor, the Governor with a halo, and we who have served in the Legislature and have come in constant contact with him, have in mind the very ordinary politician.

As a friend of the plain people I am concerned about their initiative and referendum. As I have said, I believe an issue submitted to them should have substantial popular support, and in the spirit of friendly criticism let me suggest that the friends of the judges should amend this section, because, reading this resolution even somewhat hurriedly, you must come to the conclusion nevertheless that under it some Governor who is a friend of the people, — I cannot conceive of such a man being elected for some years, — may send to the Legislature a message recommending the election of judges, and then is swept away in a moment the achievement of my friend from Fall River (Mr. Cummings), and the efforts of all the other friends of the judges in this Convention will have been in vain. Will they permit this resolution to pass without any qualifying or friendly amendment to protect the judges? That is an important question. If the resolution is not amended, of course the friends of the judges will oppose it, and that will defeat it.

I have in mind a Governor who may not be the representative of the people, but who may be very close to the Interests or to the self-appointed leaders of the people; and this group of leaders, instead of getting 20,000 or 40,000 signatures, — I cannot remember the number, — go to the Governor and suggest to him that a certain measure, by which they would benefit, would be a popular one; the Governor recommends the measure and thereby relieves said putative leaders from the necessity of getting the required number of signatures to place the measure properly before the people. It may be that the Governor would send in a message recommending certain hours of labor for women and children which would be a popular measure, but which would be opposed with some bitterness by our manufacturers, who would contend that they could not compete with the manufacturers of other States whose laws were not so friendly to the women and children. As has been pointed out by the gentleman in the third division (Mr. Lomasney), a practical statesman, we can conceive of a demagogue being elected who would do great damage to Massachusetts. But, it is contended, the Legislature cannot be trusted. What will be the effect upon the Legislature if this resolution is adopted? It will make our Representatives mere puppets. We now have some issues with which to defeat our Representative. He comes before the people for reëlection and we submit to them his record in the Legislature. If this resolution is adopted the Republican may say to his critics: "Why, the Governor, a Republican Governor, recommended that bill. Of course I didn't believe in it, I didn't think it was a good bill, but he was elected by popular vote and he represents the people, and so why should I oppose him and his bill?" Of course you cannot combat such reasoning successfully. How will a Democrat Representative who is playing the game the easiest way, playing with the Republicans, explain to his constituents? He would say: "Why, that bill was against the interest of my party and against the interests of my constituents. But the Governor is

elected by popular vote and it was his measure; why should not I indorse it?" There is no issue there with which to defeat a member of the Legislature. We have issues to-day. Representatives go before the people on their records; they cannot hide behind the Governor. They have to take some action here on their own individual initiative, and if they have a constituency to which one can appeal with argument there is always a chance of defeating an unworthy Representative. The personal responsibility of the Representative ought to remain. The only way we ever will get better representation in public life, — and that is the solution of our problems of government, of course, — is to have the people, the real people, the substantial and intelligent business men, take an active interest in politics, watch the records of their Representatives, have the issues by which they should judge and make them answer accordingly. [Applause.]

Mr. WALKER of Brookline: I offer an amendment to section 4 in the hands of the Secretary, and I give notice of an amendment of section 5 in the hands of the Secretary. I ask to have them both read at this time, because I believe that sections 4 and 5 have got to go together. Section 4 is unnecessary without section 5, and I should like to speak on them at the same time. All I shall do now, however, is to offer the amendment to section 4 and ask the Secretary with the consent of the Convention to read the resolution with this amendment and with the amendment which I propose to offer later to section 5.

Mr. Walker of Brookline moved to amend section 4 by striking out all after the word "action", in line 42.

He also gave notice that he should move to amend section 5 by striking out, in lines 56 and 57, the words "during the session at which", and inserting in place thereof the words "before the first day of July after"; by inserting in line 57, after the word "Governor", the words "if such bill has received the affirmative votes of one-third of the members of the House of Representatives present and voting thereon"; and also by striking out all of the paragraph after line 70.

Mr. WALKER: I have suggested that all in section 4 which relates to action on a measure when it once gets before the Legislature shall be stricken out. That leaves only section 4 down to the word "action", in line 42. It seems to me that even that is unnecessary unless section 5 is added. Those who intend to vote against section 5 might just as well vote against section 4. But if we are going to vote in favor of section 5, then we ought to vote for the first part of section 4. That is what I trust this Convention will do.

I understand the chairman of the committee approves of the simplification of the proposition which I suggest. We do not wish to have any matter referred to the people that does not get at least one-third of the votes in the House. If the Governor presents a proposition that cannot command at least a third of the votes in the House he should not be permitted to refer it to the people. By the adoption of my amendment you strike out a page of unnecessary matter.

Now we have submitted to the people the initiative and referendum. You know what was said in regard to the petition in that matter, — how it was criticized. I admit that it is a cumbersome piece of machinery; I say it will be used very seldom; I say it is awkward; I say also that it is necessary. But this proposition is much simpler

and, from the standpoint of the conservatives, much safer. The petitioner in this case is a responsible man, namely, the Governor of the Commonwealth, and he must have at his back one-third of the popular branch of the Legislature. Is not that a sufficient petition? The Governor and one-third of the popular branch of the Legislature? Of course it is. This measure gives the Governor an opportunity to submit to the Legislature an important bill which he believes to be in the public interest, and it gives him a chance to appeal from the decision of the Legislature to the people if the Legislature kills it. That is all there is to it.

It seems to me that that is a wise thing to do. Remember what all our reform Governors have been up against. Think of Governor Hughes in New York, — I cannot give a better illustration. He had an important measure to bring before the Legislature of New York and the Legislature pigeonholed it and would not consider it; turned it down. And then Governor Hughes said: "I will bring this matter before the people of New York," and he made a campaign up and down the whole length and breadth of New York stirring up the people, — with what plea? "Please write and talk to your representatives and get them to vote for this measure in the public interest." And to a large degree, he succeeded in bringing public opinion to bear upon the Legislature. But it is not a very dignified way to act. What he ought to have been permitted to say is this: "Your Legislature believed this was an unwise measure. I believe it is in the interest of the public. Therefore I appeal from the decision of the Legislature to the public as a whole." A conservative, wise proposition, — to the conservatives of this Convention it should appeal as much more conservative than the I. and R. The I. and R. will be used once in a while; it will be in disuse most of the time. I want to say, and I say it deliberately in view of the importance of this measure, that if I could have but one, either the initiative and referendum or the gubernatorial initiative, I should prefer the gubernatorial initiative. [Applause.] I think that year in and year out there would be more wise legislation brought to the attention of the people under this measure than under the other.

Mr. Herbert A. Kenny of Boston: I come from a Democratic ward. After the remarks of my distinguished friend, the gentleman from ward 5 (Mr. Lomasney) I thought I would not let them go unchallenged. To my mind this is the most important measure that has come before this Convention. I have great admiration for Mr. Quincy, the distinguished author of this measure and the chairman of the committee on the Executive, for the care and thought that has been put into it. Now if you gentlemen will remember, in the very height of the struggle over the I. and R. the distinguished gentleman from Fall River (Mr. Cummings) said that in the I. and R. the conservative forces of the Commonwealth would have a great stronghold against labor. Now my friend from ward 5 for whom I have great reverence and great admiration, a man who I think has been one of the greatest reformers in this country [laughter and applause], — and I say that, gentlemen, without any mental reservation [renewed laughter], — went down to the north end of the city and, considering the conditions that confronted him, he made statues out of mud. He had no marble to make them out of, but he made

them. But he is wrong on this proposition, and the reason why he is wrong is because it seems to me through his long years in the Legislature he has got what we call legislative fever. He speaks about the judges; he hammers at the judges a great deal, just as my other distinguished colleague raves once in a while about the judges.

The judges get court fever, it is said, once in a while, but the distinguished members of the Legislature here have got the legislative fever. They cannot get away from it. Their hands, like the hands of the dyer, are dyed in the business that they are concerned with. But as the gentleman from Fall River said, the labor forces, — and I say that in no disparaging sense of the labor element, — can center their fire on one member or another, just as the postmasters and letter-carriers of the United States centered their fire on Congressman Loud. Congressman Loud, as you will remember, was the watch-dog of the Treasury and consistently fought against increase of appropriations for the Post-Office Department. The letter-carriers of the country amassed a fund of $25,000 and they went into Congressman Loud's district and defeated him. But they could not buy up every man there, they could not have centered their fire on that single individual and could not have defeated the policy.

What do we find in this situation? President Wilson has called the initiative and referendum "a gun behind the door." My distinguished friend from Brookline (Mr. Walker) spoke very forcibly on those lines. Suppose, for instance, that the House and the Senate say that the minimum wage shall be, — as they do in Russia under the Bolsheviki, — say, $100 a week. Now the Legislature must vote for that; why? Because if one single member of the Legislature votes against that the labor element will center its fire on that man. They might not get him in one year but they can get him in two years or three years or perhaps ten years. He is a marked man. The same way with the Senate.

Now my distinguished brother from ward 5 (Mr. Lomasney) knows that there are purchasable elements in all wards and there is a purchasable element in his ward. He has fought them time and time again. A distinguished ex-mayor of Boston one day went down to get the purchasable element and tried to murder his own brother with a revolver. He knows that.

Mr. WATERMAN of Williamstown: As I look at this matter it appears to be more of a personal matter than it does a State wide issue. When the distinguished gentleman from Brookline (Mr. Walker) cites New York State as pigeonholing measures we all know that New York State has that procedure whereby measures introduced may be pigeonholed by a committee. In the Commonwealth of Massachusetts the procedure is such that every measure introduced with only one name attached to it has to have the consideration of the committee and both branches of the Legislature. This looks to me more like a camouflage for personal preferment. Since this government was formed and this system established of representatives of the people, with the guarantee that every citizen should have his opportunity to present his grievances to the General Court, the General Court always has been considered the court of the people, and not that these men who become so prominent because of their running for office or having become Governor of the Commonwealth would seem

to wear a halo so that people would push and follow their policies without proper study and regard as to the consequences. Now this forum of the people was for the purpose of educating the people and showing the condition. If it be allowed that the Governor can come in here with measures and have precedence and push them through and then send them to the people, crowding aside the time that was set apart especially for the people to be heard, — I say that is bringing in a camouflage that will destroy proper and orderly legislation. Each year we have two thousand or more bills introduced and with careful consideration and with all the expedition possible that the measures should be allowed they already are a great task for the body to assume. You all know very well that it is very hard for the people at large to keep track of all the policies and matters that come up, and here are more things to be introduced and the ordinary business of the State thrown aside so that these other issues may have precedence.

Look at the conflicts we have seen in the past, when certain ones pushed "my policies"; that "my policies" may be considered contrary to the general judgment of the people. But the result was disastrous to the people and I trust that this Convention to-day will not throw aside the well-tried methods, ones that have been satisfactory and that have given laws whereby the people live; and they can rest assured that the laws will protect them, and not that an issue that is popular at one moment shall be thrown upon them and they be shut out from their natural rights. So I trust that this whole matter will be rejected.

Mr. Creamer of Lynn: It seems to me that this amendment ought to be entitled "An amendment to discourage the candidacy of demagogues for the position of Governor of this Commonwealth." As I understand it, the whole purpose of this resolution is not only to increase the power of the Governor but to increase his responsibility. At present a candidate for Governor can make all sorts of promises to the people, and there is no way of compelling him to make those promises good. Here is a proposition to make that Governor put his promises into the form of a bill to be presented to the Legislature; not to use those promises as a species of camouflage for getting votes. Every member in this Convention who is conservative at all should vote for this amendment.

Mr. Murley of Boston: I would ask the gentleman from Lynn if he believes in a gubernatorial initiative instead of the initiative of the people, if he believes in giving the Governor of this Commonwealth more power than he would give to the people of the Commonwealth. For myself I would say at this time, notwithstanding the position taken by the distinguished gentleman from Brookline (Mr. Walker), I am still in favor of the initiative and referendum for the people and opposed to the gubernatorial initiative. I am opposed to this particular resolution because it will change our present system of checks and balances. It has been said here that the only bond between the legislative department and the executive department is the veto, and that should remain the only bond between them. [Applause.]

Mr. Creamer: That is rather a long question. [Laughter.] I will answer what I think he intended to ask me, — that I believe not only in a direct initiative and referendum on the part of the people, but

an indirect initiative and referendum through the Governor. I do not think the two things are opposite in any way.

I do not agree with those men who think that giving this power to the Governor will enable the enactment more easily of radical legislation. It seems to me, as I already have said, that it will tend to make our candidates for Governor more conservative. They will be more careful about making promises when they know that the people expect them to make good on those promises. At present they always can say: "I couldn't make good, because the Legislature wouldn't let me." I think for that reason you will have fewer demagogues running for Governor if this becomes a part of our Constitution.

There is one thing I should like to call to the attention of this Convention along these lines, and that is that Massachusetts as well as the United States is going to require during the next two or three generations a more efficient form of government than we now possess if we intend to hold our own in the world. The times demand efficiency, and you cannot have efficiency with a government composed entirely of checks and balances. You cannot govern a Commonwealth by a debating society. You must put power and responsibility somewhere, and where can you put it better than in the hands of the Governor, a man who is compelled to appeal to the people in order to be Governor, — who is compelled to appeal to the people in order to remain Governor? I cannot conceive of anything more democratic and more conservative at the same time, and I trust that this amendment will be adopted.

Mr. Bodfish of Barnstable: I simply want to suggest to the Convention the impropriety of putting a constitutional amendment upon the ballot which will determine simply the question of the propriety of the Governor's doing a thing which he now does and for which he has ample precedent. When we come to section 5 I shall state my reasons for opposing that.

Mr. Quincy: This matter has been discussed very thoroughly and I will not take the whole of the ten minutes. Let me say that I feel amply rewarded, as I think the committee on the Executive does, for our efforts in bringing forward this amendment under consideration by the intelligent discussion which it has received, intelligent discussion on both sides. It raises a question as to the proper function of the executive, as to proper methods of political leadership, which is of present interest and which is going to be of still more interest in the future; because we already have entered upon a time of great changes. If the war should end with victory for our arms, — and it cannot end in any other way, — within the next few months, we in this country, as in other countries, should be entering upon a period of great readjustment, involving great struggles. We should be confronted with revolutionary conditions in the social, the economic and the political field. Somehow leadership is going to be introduced into the politics of the future. I believe with those who support this amendment that that leadership should come in part from the man who is elected to be the chief executive of the State. A great many gentlemen, entirely honestly, are afraid of the effect of this amendment if we should elect demagogues as our Governors. I already have said that I start from the opposite standpoint. We have not

elected, and we are not going to elect, demagogues to the high office of Governor of Massachusetts.

Some gentlemen have suggested that this amendment No. 4 is not necessary because the Governor has at the present time all of the power covered by the first paragraph of the amendment, if we strike out the last part as moved by the gentleman from Worcester, which amendment I am ready to accept.

Mr. WALKER of Brookline: I should like to state that it has been called to my attention that the amendment to section 4 which I proposed is practically the same as the amendment offered by the gentleman from Worcester (Mr. Washburn). At the proper time I shall ask unanimous consent to withdraw my amendment in favor of his amendment.

Mr. QUINCY: In the portion of section 4 which will be left after adopting the amendment of the gentleman from Worcester, which under the circumstances I am going to accept on behalf of the committee, we simply give constitutional recognition, which I believe to be important and valuable, to a practice which, as stated by the gentleman from Somerville (Mr. Underhill) and others, has prevailed, to some extent, but without constitutional authority. I feel that at present it is perfectly proper for any member of the Legislature to state when the Governor sends in a bill, which he sometimes does, that the executive is invading the province of the Legislature in reducing his proposition to the form of a bill. But is it not desirable that the Governor should reduce his proposition to the form of a bill in every proper case? If it is desirable why not give constitutional recognition to that practice? The gentleman from Somerville referred to one or two instances which I think make against his own position. He referred not to the formal transmission of bills by the Governor, but to the fact that the Governor privately, and therefore secretly, — without putting himself upon official record anywhere, — had drafted, or had been asked to draft, a bill. Now that is just what seems to me to be objectionable.

Mr. GEORGE of Haverhill: May I ask the delegate who is now speaking if it is not a fact that every bill that is presented to the Legislature in its final analysis is considered and acted upon in the same secret manner in executive session of every committee, and what harm is there in it? It has been a practice, always has been the practice, always will be, so that the question of whether or no you get the opinion of the Governor secretly is no different from having the committee concoct some bill secretly without giving it any publicity.

Mr. QUINCY: It seems to me that the two things are very vitally different. One is secret and invisible government; the other is visible, responsible and open government. I object to secret action on the part of any official about a public matter. Legislation is a public matter. If the Governor is to recommend bills he should do so publicly. He should present his bills and be on record. The present Governor and other Governors doubtless often have presented bills privately and are not on record. No one can hold them to their bills. It is a case of invisible and secret government, although conducted by an elected officer of the State.

I believe absolutely in open, visible, responsible government conducted by elected officers of the people.

Mr. Bodfish of Barnstable: I should like to ask the delegate if he does not think that this proposal would result in directing the attention of the executive to matters of legislation rather than of administration?

Mr. Quincy: I do not think so. I think that the Governors of this Commonwealth are perfectly able to attend both to legislative policies and to such matters of administration as are intrusted to their charge, — which consist chiefly in making appointments, as we have declined to give the Governor any real power over the State administration generally. I think that the Governor has plenty of time, plenty of energy, to perform his administrative duties, limited as those are, and still to give time and attention to legislative policies and to recommendations to the Legislature.

One word in conclusion. The committee welcome any suggestions which will improve this proposition. We desire to reduce it to the simplest possible form, so that the Convention may have an opportunity to vote yes or no upon the underlying principle, without complications in respect to details. And with that end in view I am glad to accept for the committee the amendment moved by the gentleman from Worcester, which takes out all detail in this amendment No. 4 which is now under consideration and reduces it to perfectly simple form. Let me say again that the first sentence simply puts into the Constitution of Massachusetts a provision which is not there now, but which is precisely analogous to the provision of the Constitution of the United States in regard to the power and the duty of the President to give information as to the state of the Union and to make recommendations to the Congress.

Mr. Walker of Brookline withdrew the amendment moved by him.

The amendment moved by Mr. Theller of New Bedford was rejected.

The amendment moved by Mr. Washburn of Worcester was adopted, by a vote of 115 to 4.

Proposal No. 4, as amended, was rejected Thursday, July 18, by a vote of 66 to 108.

Proposal No. 5 was considered the same day.

Mr. Walker of Brookline moved that it be amended by striking out, in lines 56 and 57, the words "during the session at which", and inserting in place thereof the words "before the first day of July after"; by inserting after the word "Governor", in line 57, the words ", if such bill has received the affirmative vote of one-third of the members of the House of Representatives present and voting thereon"; and also by striking out all after line 70.

Mr. Quincy: I have no intention of occupying any further time of the Convention in regard to No. 5, now before the Convention, in view of the action taken on No. 4. I do not think, however, that it would be proper for me to withdraw amendment No. 5. But all I shall ask for is an opportunity to state that I desire to accept the amendments offered by the gentleman from Brookline (Mr. Walker), which certainly put the proposition in a very conservative form, by providing that the Governor cannot get his measure to the people unless a third of the members of the House of Representatives believe in it and vote for it. After we have voted upon those amendments

the question will then be upon the adoption of No. 5 as so amended, which reduces the principle which has been discussed here this morning to a method by which the Governor, subject to such check as the amendment would provide, may get his proposition to the people, just as 25,000 signers of an initiative petition can get their measure to the people. All I want is to get the verdict of the Convention upon that simple proposition.

Mr. Pillsbury of Wellesley: I see no objection to decorating the remains of the resolution with a few flowers before it is finally consigned to its long home [laughter], but I should like to ask my friend from Brookline upon what principle or theory he makes the test of merit in a bill which will justify its reference to the people, if I understood his amendment correctly, — possibly I did not, — a favorable vote of one-third of the House of Representatives, without any reference whatever to the other branch of the Legislature. My friend served with great distinction for many years in the House of Representatives. He has never had the advantage of service in the Senate, and it is possible that he has forgotten for the time being that there is such a coördinate branch of the Legislature. [Laughter.] I think it is the branch, — and I may as well go farther and say that I know it is the branch, — in which sound legislative judgment may be looked for with more hope of finding it than in the other. In view of these circumstances I would like from my friend from Brookline a word of explanation.

Mr. Walker of Brookline: I suppose the requirement that the Governor must have the backing of at least a third of the House of Representatives is a sop cast to Cerberus. I thought that it would meet the approval of some of the conservatives who would like to have a little check on the Governor. But the real reason why I made that suggestion was that it seemed to me unnecessary to incorporate in the resolution that part which is contained in lines 71 to 95. It was there provided, if the Governor should veto a measure and if it was passed over his veto in the House and Senate, he might appeal to the people. It was provided also that the Legislature might appeal to the people, if a veto by the Governor was sent in, and they could not command a two-thirds vote in the House and the Senate. It seemed to me more simple and quite sufficient to provide that the Governor may appeal to the people provided he can get one-third of the House of Representatives. I assure the gentleman that I was not at all unmindful of the Senate. I should not be willing to accept an amendment which included the Senate, with the action of which I have no doubt the gentleman from Wellesley is more often in accord than with the more progressive action of the House.

Mr. Bodfish of Barnstable: I rise to oppose this proposition as a friend of the popular initiative and referendum, and when I say that I mean it seriously. This proposition is a violation, as I take it, of the basic principles of popular government laid down by the framers of our Constitution and in which I believe.

Now all of us believe in democratic government. Some among us evidently believe that the English system without a Constitution is better than our system with a Constitution. I would suggest to those that there are incidents peculiar and proper to each system which are not suited to the other. It may well be that under the English

system it is good to have the executive department exercise a large measure of control over legislation. But that is contrary to our plan. Our plan contemplates the separation of the legislative and the executive departments. True, in the veto power we have given the Governor large control over legislative measures, but it seems to me that that control should not be extended. Here we have a proposition to give to the Governor greater legislative powers. I believe, and I believe that most of the members here believe, that the people have the right to control legislation. I believe that it is proper that the function of legislation should be delegated to the Legislature and that it is not the intent or purpose even of the popular initiative and referendum to displace the Legislature, but rather to supplement it and correct it when that is necessary, and I take it that it is the right of the people themselves to determine when it is necessary to correct or to supplement the action of the Legislature. And that is why we voted in the initiative and referendum amendment that we already have passed upon, to annul the forty-second article, which, as I recall it, gave to the Legislature the power to submit such measures to the people as they deemed fit. It seems to me that the Legislature should not be given power to submit to the people anything that the Legislature has been called upon by the people to pass upon itself unless the people request it by a popular petition. It seems to me equally fallacious that the Governor should be given power to take his private quarrel, perhaps, back to the people and make the people pass on it whether they will or no. It seems to me that this whole proposition of the initiative and referendum should be left to the people themselves to determine when they should exercise it. For these reasons, I am opposed to this proposition.

Mr. Harriman of New Bedford: I do not agree with the gentleman who has just taken his seat. A candidate for office, particularly a candidate for Governor, going throughout the length and breadth of this Commonwealth and appealing to the people for suffrage on any particular issue, is elected and he has given his pledge that so far as he is concerned he will see that this certain piece of legislation is enacted into law. He submits it to the Legislature, and they refuse. We must recognize, I think, that the final authority rests in the people, and under this condition I ask you, can anything be more fair and just to the Governor and to the Legislature and to the people themselves than to submit the measure to them for their decision and let them decide whether the Governor —

Mr. Bodfish: I should like to ask the delegate from New Bedford if, in case there is any such situation as that developed between the Governor and the Legislature, the people, through the popular initiative and referendum, provided that is adopted, cannot ask to have that same matter referred to them? Why should we have double machinery for accomplishing the same thing?

Mr. Harriman: The question can be answered in the way suggested by the member, and still the fact remains that it can be done more expeditiously and more quickly by the Governor. It simply is carrying out the principle of submitting to the people the question of whether they want to live under certain laws or not. As for me, I care not particularly where they come from if they only go to the people for them to decide.

I have heard something said about the demagogues and I know that the men who usually are stigmatized by the name of demagogues are the men who stand for social justice and for the new order of things in our political and industrial life; and the better and the quicker the machinery by which they can submit their ideas and their beliefs to the people and allow it to be decided whether or not they shall be considered as laws, the better it is for us and the better for our posterity. For that reason, sir, I am not afraid to give this power to the Governor, for it certainly can do no harm and it can do much good. I have sat here and listened to men and I have wondered sometimes if John C. Calhoun were again alive, whether he would have found that there were States' rights men here as in the south in '61. There are men here who do not trust the people, there are men here who do not want these questions submitted. And what are the questions they do not want submitted? Those questions that affect the social welfare of our people; those things that touch the vital principle, that give the people more of the enjoyment of life, and, secondly, reduce the profits of corporations and increase the earnings of individuals, or vice versa. And that is the issue and the only issue before this Convention, whether or not the people shall rule; and if the people shall rule in an orderly manner I submit to you that it makes no great difference how the question is put before them. So I say, while it may be futile for me to talk upon this question, that I believe, as I always have believed and beg you to believe, while this may be inconsistent with the I. and R. as we have passed it to be submitted to the people, I had rather be consistent with the great principle which allows the people to govern rather than to be consistent with the particular measure which is going before the people, which I trust will be adopted, but which I do not believe will do as much good as it would do had it been otherwise drawn and submitted to the people. [Applause.]

Mr. Brown of Brockton: Whenever in the course of human events it becomes necessary for people to change customs of long standing it is incumbent upon those who propose the change to prove beyond a question of doubt that the advantages to be gained by the change will overbalance the possibilities of any danger that may arise on account of that change. And because I cannot see that the advantages to be gained will overbalance the dangers that may be encountered, I am opposed to the resolution.

The amendments moved by Mr. Walker of Brookline were rejected, by a vote of 25 to 70.

Proposal No. 5 was rejected Thursday, July 18, by a vote of 25 to 99.

Proposal No. 3 was taken up for consideration the same day.

Mr. Gates of Westborough: This No. 3 is a matter that I introduced into the committee on the Executive. It has no connection in any way with the nine amendments proposed and reported by document No. 311. It is an independent matter. We have had biennial elections before the Convention and have given the amendment providing for them a reading. That amendment is ahead of this amend-

ment. If the amendment that we already have given a reading goes through the Convention this amendment is unnecessary and would be useless. Now, in order to save time I should like to ask the Convention to give this a reading on voice vote, or to put it at the end of the calendar, for this reason: We can debate this this afternoon, and waste the afternoon in debating it if we give it a reading and then the major, the more important matter, goes through. And so to save time it would be wise either to give this a voice vote or put it at the end of the calendar. You thereby will lose no rights. It can be debated on the next stage; it can be amended or rejected. I spoke with the member in the first division (Mr. Harriman), who has offered an amendment, and he says he will withhold that amendment until the next stage. As the originator of this particular amendment I feel that the Convention should give me the courtesy of putting it at the end of the calendar or giving it a reading on a voice vote. I speak as I do to save time, and I want to say that I have been trying to save time ever since the Convention met. I have been here every day, except one, since the Convention met more than a year ago, and you have not had to send out for me to make a quorum. I am here to do business, and I ask no favors. But I believe it is to the interest of every member that we save time in this Convention and take up matters that are important and will not be useless if some matter that already has been given a reading should go through.

Mr. Walker of Brookline: It seems to me unwise, if we can avoid it, to begin the practice of laying matters on the table. Of course it is a common parliamentary practice, but it seems to me it should be avoided. I think the gentleman has made a suggestion that we well might follow. I understand the question is on ordering the resolution to a third reading. Why cannot we give it a reading? Then it will go to the end of the calendar as a matter of course. If we give this a third reading we can kill it on the next stage, if we wish to do so. It seems to me we will expedite our business by refusing to lay the matter on the table.

Mr. Webster of Haverhill: I am opposed to the theory, but it seems to me that the suggestion that is made by the gentleman who has taken his seat (Mr. Walker) is a proper one for us to follow at this time. No member of the Convention, I am sure, whatever his attitude in regard to any proposition that is brought before us, desires to see it go by default or to embarrass it by complication with other matters touching the same subject-matter. So I hope, sir, that the Convention will see fit now, in the interest of fair play as well as the expedition of business, to give this matter a reading at the present time, that when it comes up again in connection with its kindred matter we may decide it upon its merits.

Mr. Brown of Brockton: I rise to ask, sir, if it would be entirely proper for this Convention as at present organized to decide this question, while a much larger number is trying to decide it out in the lobby. If we are going to do anything on this matter I do not want to raise any question of a quorum, but I am rather opposed to a few around here deciding an important matter like this. That is the way I feel about it. I hope, sir, that the matter will not be laid upon the table. It is a matter that is understood clearly. Why

do we give it a second reading? Why even say that we are in favor of it if we are not? I object to the idea of passing a matter along to a third reading and giving it a stage when we may be opposed to it. If we are in favor of it let us have it. If we are in favor of giving it a reading let us give it a reading. I cannot see why we are going to separate this from all the other matters, why this should stand and the other not if it is independent of it, even though it is mixed with it.

Mr. QUINCY: I should like to ask the gentleman from Brockton (Mr. Brown) if he is aware of the fact that document No. 126, which was passed the other day, — he voted against it, but it was passed by the Convention, — provides for the biennial election of all officers on the State ticket, including members of the Council and members of the Legislature. In other words, document No. 126 includes in its scope this very limited proposition now before the Convention, together with a great deal more. Now, does it raise any new question whatever to let this matter wait, by some appropriate action, till we see the ultimate action of the Convention upon document No. 126?

Mr. BROWN: I will say in answer to that question, and granting all that the learned member from Boston (Mr. Quincy) has said, that I should think that the proper course might be, then, for him to ask unanimous consent to have this matter withdrawn, because it already is covered in another matter.

Mr. QUINCY: If the gentleman will permit me to make a statement in his time I should like to say that it seems to me there are good reasons why this should not be withdrawn. The greater includes the less, but the lesser may stand by itself. Supposing that on the next stage the biennial election amendment, which is opposed by the gentleman from Brockton (Mr. Brown) and many other members of the Convention, fails of passage. If so, this very limited proposition for a two year term for the Governor and Lieutenant-Governor, which stands upon a somewhat different ground from the broad proposition, also fails, and there will be nothing before the Convention upon which it then could vote, if it sees fit to do so, to give the Governor and Lieutenant-Governor alone a two-year term. Now, whatever the attitude of the gentleman from Brockton (Mr. Brown) may be upon the larger proposition, or upon this narrow proposition, is it not fair to keep this limited proposal alive until the Convention has had a chance to act again upon the comprehensive measure which includes biennials for everybody?

Mr. BROWN: Admitting the strength of the member's argument, and with full confidence in his sincerity, I would ask him this: Will he be content with a motion to have this go to the end of the calendar?

Mr. QUINCY: Certainly.

Mr. BROWN: I move that, then, as a substitute motion.

Mr. GATES: I should like to answer the gentleman in the second division (Mr. Brown). This originated in the committee by myself, and this is an amendment that I have suggested. It is the only resolution or amendment that I have brought before the Convention, and I feel that it ought to receive due consideration. I feel that this resolution or amendment should pass if the amendment providing for biennial elections fails. If the amendment providing for biennial elections fails and you reject this to-day, I have no redress. But you

have redress, you are losing none of your rights if you give this a reading or put it at the end of the calendar. You preserve all your rights and also extend a courtesy to one of the members of this Convention who has not bothered you or taken your time in speaking on everything, but who has risen only when he had something to say. I believe that courtesy should be extended to me, so that my right can be preserved. If you want to put it at the end of the calendar, put it at the end of the calendar. If you want to give it a reading, give it a reading. You lose nothing by doing that, but you do extend a courtesy that I think is due to the member who introduced that resolution.

Mr. Brown: I am very glad to find the member is in full accord with me, and that he is perfectly willing to have it go to the end of the calendar. That is all that I care for. I move as a substitute motion to the motion to postpone that it be placed at the end of the calendar.

Mr. George of Haverhill: I am in favor of the proposition that we passed the other day, of permitting the people of Massachusetts to vote on the question of biennial elections. I should be opposed to having annual elections for members of the Legislature and biennial elections for Governor and Lieutenant-Governor. I can see no object in that. However, I think that we can do this: We can vote down the proposition to lay the matter on the table. I think that is a bad principle. Let this take its place at the end of the calendar, and it is perfectly safe and the gentleman's rights are safeguarded. I should vote to postpone it, but I should not vote to lay it on the table.

The motion that the proposal be laid on the table was defeated and the motion that it be placed at the end of the calendar prevailed.

It was considered again Tuesday, August 6.

Mr. Quincy of Boston: When this measure was reached before, on motion of the gentleman from Brockton (Mr. Brown) it was placed at the bottom of the calendar in order that the Convention might first have an opportunity to act upon document No. 126, which has just been voted upon. It seems to me that in view of the closeness of the vote on passing that amendment to a third reading, which presumably indicates another struggle on the next stage, that of ordering to be engrossed, with the outcome somewhat uncertain, it would be proper to ask to have the same action taken again as to No. 253 in the calendar. All that the committee desires is to have an opportunity to get a vote upon its separate proposition to give the Governor and Lieutenant-Governor a two year term in case they are not given a two year term in the more inclusive resolution. I submit to the Convention whether it would not be fair and proper under the circumstances, and in view of the closeness of the vote, again to place No. 253 at the bottom of the calendar. Particularly would I make that request in view of the fact that a division of the question was not allowed as between the two articles of amendment under document No. 126. Without disputing the correctness of the ruling of the presiding officer, it seems to me clear that these questions are in their nature divisible. Perhaps instead of merely asking for a division I should have moved that the two articles of amendment be separately voted upon. The point that I wish to emphasize is that a

member may very well believe, as I personally do, in a two year term for the Governor and Lieutenant-Governor, and, if you like, for the other State officers, without believing in biennials, either biennial elections or biennial sessions, as applied to members of the Legislature. What the committee would like to do would be to save its rights under document No. 311, under the one paragraph remaining, so that if the Convention at the next stage should fail to order No. 126 to be engrossed there still will be an opportunity for it to vote upon the separate, and, as I think, different, proposition of giving the Governor and Lieutenant-Governor a two year term. With these purposes in view, I move that No. 253 be placed at the bottom of the calendar.

Mr. ANDERSON of Newton: I think the proposition of the gentleman from Boston (Mr. Quincy) is entirely fair, and I trust the Convention will vote in favor of his resolution. I think that there may be some here who may favor the biennial election of Governor and Lieutenant-Governor who do not favor the election of the General Court once in two years. On account of that situation I hope that the rights of the committee will be preserved by passing the motion of the gentleman from Boston (Mr. Quincy).

The motion that proposal No. 3 be placed at the end of the calendar prevailed.

It was considered again Wednesday, August 14.

Mr. QUINCY of Boston: In view of the fact that the proposition covered by No. 253 is now, after a second vote of the Convention, included within the subject-matter which we have just voted upon, there certainly would be no reason why the portion of document No. 311 before us should be passed separately.

Proposal No. 3 was rejected Wednesday, August 14.

Proposal No. 8, as changed by the committee on Form and Phraseology, was passed to be engrossed Tuesday, August 6, as resolution No. 401. The Convention voted Tuesday, August 15, to submit it to the people.

The proposal was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 172,125 to 78,245.

Proposal No. 7, as amended and changed by the committee on Form and Phraseology, was passed to be engrossed Tuesday, August 6, as resolution No. 402. The Convention voted Tuesday, August 15, to submit it to the people.

The proposal was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 164,499 to 76,972.

XLIX.

REMOVAL OF CERTAIN OFFICIALS.

Mr. James E. Maguire of Boston presented the following resolution (No. 75):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The Governor, by and with the advise and consent of the Council, may remove for malfeasance in office any official elected by the people of the Commonwealth, or of a county, or of a city, or of a town, during the term for which he shall have been elected, after giving to such official a copy of the charges against him and an opportunity of being heard and of being represented by counsel in his own defence.

The committee on the Executive reported that the resolution ought NOT to be adopted.

The resolution was considered by the Convention, Friday, July 12, 1918; and it was rejected the same day.

THE DEBATE.

Mr. MAGUIRE of Boston: I should like to have the attention of the Convention, the radicals as well as the conservatives, the laymen as well as the professional men, to the pending resolution. I wish that many of our absent radical brethren were here, so that they might consider it.

This resolution speaks for itself. If I were talking to a crowd of college freshmen I might present a bill of particulars, I might say that a certain city had been governed in an unfair and illegal manner; that another city had been managed in the same way; that there was fault to find with some particular county, this county, that county or the other. You all have had a great deal of experience in public affairs. This resolution does not hurt, injure or hamper in any way the elected official who is conducting his office in the manner in which it should be conducted. If he is not conducting the affairs of his office in a proper way there ought to be some means whereby he could be removed promptly. The easiest method appears to be to present a complaint or charges against him to the Governor, and permit that officer, by and with the consent of the Council, to remove him in case the charges are proven. I fear very little that the Governor or the Council will act hastily, or act in a political manner, or act in an unfair manner, because the hearings will be in public, they will be conducted in this large metropolitan center, where the newspapers give the widest publicity. There will be no injustice done to the man complained of. He will have every opportunity to defend himself. The public, also, will be protected by having him removed if he is unfit or unworthy, or, as the resolution says, has committed some malfeasance in office. It seems to me that this resolution reaches the complaint of the gentleman in this division (Mr. Bartlett) who complained about

the conduct of some of the district attorneys' offices. The resolution puts a curb on the strong, wilful, vicious man in office. It protects the weak official from the importunity of those who want things they ought not to have. It helps him to say that he cannot do wrong because he fears that charges might be preferred against him to the Governor and that the publicity might result in his disgrace and removal.

There is little that I need to add to what I have said, because the resolution really is as simple as the Beatitudes. The Convention ought to help protect the people from officials guilty of malfeasance. There should be some provision in the organic law to permit removals for malfeasance. One case in a generation would be sufficient and would do more for good government than all the agitation by citizens' associations in the entire history of the Commonwealth. New York has a constitutional provision which permits removal of district attorneys and other county officials. I think perhaps some other States have like provisions. But where you all have had so much experience in public affairs, in the conduct and rule of cities and towns and counties, I feel that this resolution will appeal to you as something that ought to be adopted by the Convention.

The resolution was rejected, Friday, July 12, 1918.

At the next session, Tuesday, July 16, Mr. Maguire of Boston moved that the Convention reconsider the vote by which the resolution had been rejected.

Mr. Maguire: The reason I move the reconsideration of the resolution is that it came up Friday afternoon, at the end of a very busy week. The members were tired, perhaps, and it may be that I did not present the case as strongly as it might be presented. The Boston Traveler last evening was good enough to urge the reconsideration of the resolution as something vital, in the following editorial written, I believe, by Mr. Walter H. Holden, for many years a helpful supporter of every movement in behalf of good government:

Chloroformed.

Why did the Constitutional Convention give such scant attention last week to a resolution which was worthy of a great deal of attention? The resolution, offered by Mr. Maguire of East Boston, was as follows:

The Governor, by and with the advice and consent of the Council, may remove for malfeasance in office any official elected by the people of the Commonwealth, or of a county, or of a city, or of a town, during the term for which he shall have been elected, after giving to such official a copy of the charges against him and an opportunity of being heard and of being represented by counsel in his own defence.

Why isn't the proposition behind that a good one? What sound reason is there for not adopting its substance? What interests, local or broader, or deeper, are to suffer by the adoption of a salutary check on officials who otherwise are without check?

Let's have the real reason for chloroforming that resolution without even giving to it a decent consideration. Other States find that such a system works well. Under whose orders or impulse was the resolution beaten?

The purpose of the resolution is simply to secure good government. It is preventive medicine in that it will deter elected officials from misconduct, unless they are altogether vicious. One trial in a generation will be sufficient to stop malfeasance in office by elected officials. The resolution is not in any sense a violation of the principle of home rule, because no lover of home rule supports an official guilty of mis-

conduct. That I believe to be an elementary truth. It does not increase the power of the Governor as some fear; it is nearer the truth to say that it imposes a disagreeable duty upon him. There is not the slightest danger, in my opinion, that the Governor will abuse the power of his office in any given case. In any event he is checked, because he must act by and with the consent of the Council. The accused official is given fair play in that he must have a copy of the charges, must be represented by counsel, and tried in the open. Certainly in a large center of population like this, with so many daily newspapers, the accused official will have a fair trial. Publicity will insure it.

I urge that the matter be reconsidered, so that other members of the Convention whose philosophy of government, perhaps, is better than my own may have a chance to discuss it at length.

The motion to reconsider was negatived, by a vote of 25 to 61.

L.

PARDONS.

Messrs. Joseph J. Murley of Boston and Charles P. Howard of Reading presented resolutions numbered respectively 77 and 160. The committee on the Executive reported, July 16, 1917, the following new draft (No. 310):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

On and after the first day of July in the year nineteen hundred and eighteen, the power of pardoning offences shall be exercised in such manner as the General Court may provide by law, subject to the restrictions contained in Article VIII of Section I of Chapter II of the Constitution: *provided*, that the approval of the Governor shall be required before any pardon shall take effect.

The resolution was read a second time and ordered to a third reading, without debate, Wednesday, July 10, 1918, and was read a third time and passed to be engrossed, without debate, Thursday, August 1, changed by the committee on Form and Phraseology so as to read as follows (see No. 395):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

On and after the first day of July in the year nineteen hundred and nineteen the power of pardoning offences shall be exercised, subject to the restrictions contained in Article VIII of Section I of Chapter II of the Constitution, in such manner as the General Court may provide by law, but no pardon shall take effect until approved by the Governor.

The resolution was considered for submission to the people, Thursday, August 15.

Mr. Augustus P. Loring of Beverly moved that Rule 53 be suspended, that he might move that the resolution be amended by striking out the words ", subject to the restrictions contained in Article VIII of Section I of Chapter II of the Constitution". The Convention refused to suspend the rule and, on the same day, rejected the resolution.

THE DEBATE.

Mr. LORING of Beverly: I should like to move for a suspension of the rule to propose an amendment to this resolution. It is not that I have any particular preference as to whether the amendment is passed or not, but in its present form the amendment means nothing whatever. If you will turn to the document, you will see that the amendment is passed subject to Article VIII of Section I, Chapter II of the Constitution, and that article provides that the pardoning power shall be exercised by the Governor and Council. Now the object of this amendment, as I understand it, is to take away from the Council the concurrence in the pardoning power; and the amendment as passed, being subject to the previous provision of the Constitution, does not accomplish that result. In fact, it accomplishes

no result. So I think that the language of the proposed amendment should be so changed as to leave out the reference to the previous provision of the Constitution, or else it should not be put on the ballot at all, because it does not accomplish any useful purpose. Therefore, I move that the rules be suspended in order to introduce the amendment which I have proposed and which is printed in the calendar.

Mr. ANDERSON of Newton: Some explanation of this resolution may have been made during some of my very rare absences from the Convention but I at least never have heard one from those who are responsible. A number of communications have been sent to members of the Convention saying that the objection to this resolution is the transfer of the power of pardon to the General Court; and an editorial in a leading paper this morning says the same thing. Now in reading the resolution I had not supposed that. I had supposed it was urged for the purpose of taking away the pardoning power in part from the Governor and Council, giving it perhaps to a board of pardons. As I look at the resolution I hardly know what it does mean. I think we ought to have some explanation here from those who are in charge of this amendment.

Mr. SULLIVAN of Salem: The other day I created considerable amusement at my expense by rising and asking to have a resolution explained because it had not been debated. At that time I was somewhat mixed up, having found later that I was looking at an old calendar, but this is the resolution I had in mind. This has slid along through the calendar on the previous stages and the only reason I did not object to it before was because the Congressman from my district, my colleague in this Convention (Mr. Lufkin of Essex), in charge of the measure, was not here, and I understood he probably would be here at the time it was reached or its last stage. He was here yesterday. I told him it would be reached yesterday afternoon or to-day and that he ought to be here to discuss it and that I was going to object to its passage.

I have talked also with a number of the other members of the committee on the Executive. They do not seem to know what this resolution means or know much about it. I have not been able to catch the chairman of the committee on the Executive, the ex-mayor of Boston in the second division (Mr. Quincy), but I suspect that this is a scheme virtually to establish another commission or another board, and it takes away from the Governor the responsibility and power of initiating pardons and from the Council the power to approve them and puts it into the hands of the General Court to prescribe by law how pardons may be granted and simply gives the Governor the chance to veto the action of the General Court or the Pardon Board that may be created. In other words, as the resolution says (No. 395): "No pardon shall take effect until approved by the Governor"; and on page 43 of our little manual here, paragraph 74, it says:

VIII. The power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the Governor, by and with the advice of Council: But no charter of pardon, granted by the Governor, with advice of the Council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

I agree also with the gentleman from Beverly, the chairman of the committee on Form and Phraseology, that this particular resolution, like a lot of other resolutions that we have had from the committee on the Executive, is loosely drawn and ambiguous in its meaning or real intent. We hardly know what they mean and the best thing we can do when in doubt is to follow our previous record and reject such measures. I hope that the rules will not be suspended and that the resolution and the amendment of the gentleman from Beverly will be rejected.

Now with regard to the remarks of the gentleman from Newton (Mr. Anderson). The editorial he mentions as appearing in one of the leading Boston papers, was in the Boston Herald this morning under the title, "A Condemned Experiment." It says:

> To-day the Constitutional Convention will find in its calendar, ready for final vote on submission to the people, a proposal to amend the present article defining the power to pardon. The resolution in itself is awkwardly worded. It contains a cross-reference to another article which it does not repeal, yet appears to supersede. But if this resolution were amended as proposed by Mr. Loring, so that the pardoning power shall be exercised "in such manner as the General Court may provide by law," it would invite such confusions of legislative and judicial duties as Massachusetts would long regret.
>
> Under such a plan as the Loring amendment suggests, Vermont had such annoyance from pardon-hunting in her legislative halls, and even in her State elections, that she amended her Constitution expressly to keep distinct the business of her Legislature and the business of her courts. Who knows how soon we shall have another Tucker case?

Mr. Lowell of Newton: I have not heard anywhere, — certainly not in this Convention, — any suggestion that the pardoning power has been abused. It seems to me that this thing is entirely unnecessary. As it is drawn it is clumsy, but if the amendment offered by the gentleman from Beverly be put in, it will leave the matter under the Constitution, as I understand it, in this situation: It will give the Legislature power either to decide by their own committees or decide themselves on a pardon subject to the approval of the Governor, or else it will give them the power some time to appoint a commission. I think everybody here will agree that the whole Legislature is not the kind of body to go into the question of pardons. That is not a subject connected with the making of laws, but a subject connected with the execution of the laws. The other alternative is that they appoint some kind of commission. As I understand the situation now, there is a Parole Board which gives its opinions as to pardons to the Council; then there is a committee of the Council who look into the pardon and then the Governor with the consent of the Council has the power of pardoning. It seems to me that that is a very good situation; I have not heard any criticism of it and I hope it will remain as it is. It seems to me the best way to do is to refuse the amendment and kill the whole thing now.

Mr. Parker of Lancaster: My objections to the measure now awaiting the consideration of this Convention are based not alone upon the unfortunate phrase in which the resolution is presented to us, confused and ambiguous as it is, suggesting various further confusions that would be entailed if it were once put in operation. My objections are fundamental, earnest, sincere and positive. They are the reflections of a continued observation and experience. My experiences are

born of no argumentative ambitions and no desire to make any attempt to persuade or to lead the judgment of my fellows here.

It must be obvious to every delegate in this Convention that the measure falls in no wise short of transferring a quasi-judicial responsibility of the greatest importance from the executive department, where it should responsibly remain, — transferring it to all the hazards and passion and prejudice of political interests sure to arise in cases involving pardons where there have been intense popular agitations prejudicial to the deliberate exercise of this last and ultimate governmental power, and almost certainly leading to conclusions based either upon misinformation or fabricated information, whereby this great function of government might become the by-play of what is little short of lynch law. I speak in no disrespect of the Legislature when I say that the determination of the question of a pardon settled by the methods which at best the Legislature must resort to, would lead to determinations in no wise consistent with the elemental justice of the case, but leaving the issue of whether a human life shall be taken or shall be preserved to the hazard of all the agitations that come to be reflected in the Legislature, rather than deliberated upon by the Governor himself, the chief executive of the Commonwealth, exercising a power of supremest importance, ancillary to the powers of the court but necessary because in cases of pardons the court, after full deliberation, has passed its final sentence and its jurisdiction is exhausted. Leave this responsibility where it now rests, with the chief executive of the Commonwealth. Leave his judgment, for which he must solemnly answer to all the people of the State, still final, still supreme, where it now is. Let it neither be controlled nor influenced by the passion or prejudice of legislative deliberation, which is a deliberation only in form.

Mr. Quincy of Boston: In the absence of the gentleman from Essex (Mr. Lufkin) who has charge of this measure on behalf of the committee on the Executive, it may be my duty to say a few words as to what this resolution means, and more particularly what it does not mean, and as to the reasons of the committee for reporting it.

I can agree entirely with the gentleman from Lancaster (Mr. Parker) who has just spoken, that any transfer of the power of pardon from the executive to the legislative branch of our government would be most unfortunate. That is not either the intention or the meaning of the amendment now before us, which provides merely that instead of the power of pardon being exercised by the Governor and Council, it shall be exercised subject to the approval of the Governor in such manner as may be provided by law.

Now can anybody reasonably assume that if you allow the Legislature to provide by law as to the manner in which a pardon shall be recommended for the approval of the Governor, it is going to do such an absurd thing as to provide by law that pardons shall be acted upon either by the Legislature or by any committee of the Legislature? Of course the Legislature is not going to do anything of that sort. The object of using the words "as the Legislature may provide by law" was simply this, — to provide a better machinery than the present for getting the pardon up to the Governor. We all of us know the influence which has been exerted in cases of pardons before the committees of the Governor's Council. This amendment results from the

belief of a great many people who have been in close contact with the matter of pardons for years that it is undesirable to have the question of approving or disapproving a pardon made more or less of a political matter, which it sometimes is if left to committees of the Governor's Council. It was believed by the committee it would be better to authorize the Legislature to set up some other tribunal, which it cannot do now under the Constitution, such as the Parole Board, leaving the pardon still subject absolutely to approval by the Governor.

Now I submit this question: If you desire to remove political influences from any connection with pardons, which I certainly do, would it not be better to allow the Legislature to provide that the Board of Parole, or some similar non-political, administrative tribunal constituted for that purpose, acting upon general principles and general rules, familiar with the criminal law and the punishment of crime, should investigate quietly these applications for pardons and recommend to the Governor what action it is advisable for him to take, — leaving upon the Governor always the responsibility of saying yes or no to such recommendations, — rather than to continue the present system, whereby a pardon is thrown into a committee of the Governor's Council, whose members are pulled and hauled by influences for and against it?

Mr. Churchill of Amherst: I should like to ask the gentleman who is speaking whether it is not now true that the Board of Parole has a legal standing as an advisory board of pardons and is consulted at present by the Governor, — I am not sure whether by the Council but certainly by the Governor, — directly upon every case which is brought up for pardon.

Mr. Quincy: That perhaps may be the case, but the question then is whether we shall continue this advisory practice unauthorized, so far as the Constitution goes, and ask the members of the Council in the performance of the duties which the Constitution devolves upon them to be guided by this outside tribunal, not mentioned in the Constitution, or whether we shall make it possible for the Legislature to take out of the hands of the Governor's Council altogether, — not out of the hands of the Governor, but out of the hands of the Governor's Council, — this whole matter of pardons; which might result, and I think would result, in giving the present practice, which perhaps is a good one, the sanction of law passed by the Legislature and relieving the Governor's Council of this undesirable function, either by original jurisdiction or by passing upon the recommendations of the Board of Parole.

Mr. Parker of Lancaster: If it were permissible I would inquire of the delegate who has just taken his seat whether he does not realize that if the measure now pending before us were adopted by the people it would confer power on the Legislature, under which, if the Legislature saw fit to exercise it, it might by a statute, subject only to what is in effect now in the veto power of the Governor, either pardon or deny a pardon to any prisoner whose case has excited sufficient public interest or agitation to bring it to that tribunal for decision.

LI.

ABOLITION OF THE COUNCIL.

Messrs. Francis P. McKeon of Worcester, John L. Murphy of Chelsea and David I. Walsh of Fitchburg presented resolutions numbered respectively 162, 163 and 164.

The committees on State Administration and the Executive reported that the resolutions ought NOT to be adopted.

They were considered by the Convention Tuesday, August 6, 1918, and the only discussion was in connection with resolution No. 162:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The Council is hereby abolished.

This resolution, together with Nos. 163 and 164, was rejected Tuesday, August 6, 1918.

THE DEBATE.

Mr. QUINCY of Boston: While I imagine there will be no contest over the rejection of this resolution as recommended by the joint committee, perhaps a word of explanation should be placed upon record, particularly in view of the affirmative action recommended by the same joint committees in regard to increasing the powers of the Governor's Council in certain respects. I am speaking of resolutions numbered 162, 163 and 164, which, although expressed in slightly different language, all propose the abolition of the Governor's Council.

One of those resolutions was introduced by the gentleman from Fitchburg, ex-Governor Walsh. The committee on the Executive, to which these resolutions were first referred, gave this subject long and careful consideration. Starting with open minds at least on the part of many of these members, — and my own mind was entirely open, — we arrived unanimously at the conclusion, so far as the committee on the Executive was concerned, that it would not be wise or practicable in the large sense of the word to abolish the Governor's Council. The moment that question is examined seriously you are confronted with one insuperable difficulty. In this State, where we appoint judges for life, it is absolutely essential to have some important confirming power, and if the Governor's Council should be abolished I think it is agreed, scarcely with any dissent, that some alternative authority would have to be created to confirm the Governor's appointments of judges, named as they are for life. Now, the only alternative suggested in respect to the confirmation of judges, — and the same argument applies with less force to other administrative State officers, — is the transfer of the power of confir-

mation from the Executive Council to the Senate. I can say only that after a careful consideration of the arguments for and against the substitution of the Senate for the Governor's Council as the confirming body, the committee on the Executive unanimously arrived at the conclusion that this would not be wise and on the whole would not make for better government. And when the same subject was referred subsequently to the joint committees on the Executive and State Administration, we again arrived at the same conclusion on the part of both committees without dissent, — although some members, such as the gentleman from Fitchburg (Mr. Walsh), do not share in the conclusions arrived at by the committee and would prefer to see some action taken looking toward the abolition of the Governor's Council. I wanted merely to make that brief word of explanation, because we will come upon the calendar shortly to some proposals reported by the joint committees for enlarging the powers of the Governor's Council. That probably will be a more appropriate time for sketching the evolution of the Governor's Council into a body which has been intrusted by the voluntary action of the Legislature from year to year, not by constitutional requirement, with the performance of various important duties, such as the approval of rules and regulations having important scope and authority, passed by various State administrative boards, such as the Civil Service Commission, the Massachusetts Highway Commission and the State Department of Health.

I will reserve anything further in explanation of this natural process of evolution which has been going on, this natural enlargement of the powers of the Governor's Council, until we have before us one of the affirmative measures proposing to utilize further that body by giving it larger powers.

LII.

WOMEN AS NOTARIES PUBLIC.

The first paragraph of Article IV of the amendments of the Constitution is as follows:

ART. IV. Notaries public shall be appointed by the Governor in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the Governor, with the consent of the Council, upon the address of both Houses of the Legislature.

Messrs. John Q. A. Brackett of Arlington and John H. Craven of Boston presented resolutions numbered respectively 92 and 214.

The committee on the Judiciary reported, July 13, 1917, the following new draft (No. 315):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

Article IV of the articles of amendment of the Constitution of the Commonwealth is hereby amended by adding thereto the following words: — Women shall be eligible to appointment as notaries public.

The resolution was read a second time Thursday, July 18, 1918.

Mr. James M. Morton of Fall River moved that the resolution be amended by adding at the end of the article of amendment the words "; provided that change of name shall render the commission void, but shall not prevent reappointment under the new name".

This amendment was adopted and the resolution, as amended, was ordered to a third reading the same day.

It was passed to be engrossed Tuesday, August 6, and on Thursday, the 15th day of August, the Convention voted to submit it to the people.

The amendment was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 153,315 to 105,591.

THE DEBATE.

Mr. CREED of Boston: I should like to ask the delegate from Fall River (Mr. Morton) who has this resolution in charge if this is not the same amendment that the people overwhelmingly defeated in every county in the State in the election of 1913.

Mr. MORTON of Fall River: I desire to offer an amendment, — adding at the end of the article of amendment the following: "provided that change of name shall render the commission void, but shall not prevent reappointment under the new name."

I should like to say in answer to the gentleman who just put a question to me that it is true that a proposed amendment submitting the matter to the consideration of the people was defeated in 1913. The vote that year, the total vote, was 336,034. The vote against the resolution was 181,343, the vote for the amendment was 154,691,

so that the majority against it was 26,652. In 1915 the question of suffrage was submitted, and there the total vote was 458,431, — against it 295,939, and for it 162,492. The vote against suffrage was 133,447, — more than five times the majority on the question of suffrage that there was on the question of the appointment of women as notaries public. The committee thought that under those circumstances it might be proper to submit the question again to the people of the Commonwealth for their consideration. These are the facts in regard to the popular vote when the question was submitted before.

Now I should like to say just a word or two in regard to the merits of the matter. As the law stands now there is a provision for the appointment of women as special commissioners, as they are called in the statute, and as special commissioners they can administer oaths and take depositions and do a good many of the things which justices of the peace can do, although they cannot do them all. There were two petitions before the committee, one asking that there might be a constitutional amendment to the effect that women might be appointed justices of the peace, and this one, — that they might be appointed notaries public. The committee reported against the proposed amendment making them justices of the peace, for the reason, in brief, that the office seemed to be somewhat in the nature of a judicial office, and the committee did not feel as though they were prepared to recommend a resolution which might clothe a woman with some of the judicial functions. But with the matter of notary public it is entirely different. A notary public exercises no judicial functions whatever. The duties of a notary public are ministerial, and the advantage of being a notary public over being a justice of the peace is that the seal, — the notarial seal, to use the common phrase, — proves itself, not only in the jurisdiction where the notary resides, but in foreign countries in matters which customarily come before a notary public for action, like, for instance, the protest of notes and bills, and a ship's protest, when a captain comes before a notary public for the purpose of entering a protest in regard to some matter that has occurred during the voyage. Those are advantages. And there are advantages in some other things, too. The seal of a notary public is made of itself evidence of the fact that the document has been attested to by the notary public, or has been sworn to before the notary public. Those are the advantages of it, and those are advantages which, although a woman may be a special commissioner, she loses unless she can be appointed a notary public.

There are, I think I am within bounds when I say, — I will be corrected if I am not, — something like 150 women lawyers in the State, and they came before the committee and asked that an amendment might be made that would authorize their appointment as notaries. Under the present Constitution that cannot be done. The Supreme Judicial Court on a question which was put to them by one of the legislative branches, — I forget whether it was the Senate or the House put the question up to the Supreme Judicial Court, — whether women could be appointed notaries public under the present Constitution, answered that they could not, so that the only way that a woman lawyer can be appointed, possibly, a notary public, is by this amendment to the Constitution. It seemed to the committee that it was no more than fair and right that if a woman lawyer

wanted that privilege she should have it; and so we have reported this resolution in the form in which it is now before the Convention.

I hope that the Convention will give the women another chance. That is what it amounts to, and I myself can see no serious objection to it. It is not mixed up with the question of suffrage in any way, shape or fashion, that I can discover. It simply, as I say, is giving to the women lawyers of the Commonwealth, be they many or be they few, the privilege, if they desire to avail themselves of it, of being appointed notaries public.

I may add that the amendment which I have just offered, providing for a change of name, is in line with the provision in the present Revised Laws which provides that in case of a change of name, — of course it is meant to provide for a case of marriage, — the commission shall be void, but it shall not render her ineligible to reappointment under the new name. Inasmuch as the commission issues from the Governor and Council, it seemed as though the only way to meet that situation in regard to the matter of notary public was by incorporating it into the amendment to the Constitution if the Convention should see fit to adopt it, and hence it is put in here in that way.

LIII.

ADMINISTRATION OF STATE'S BUSINESS.

Messrs. Albert Bushnell Hart of Cambridge and Charles P. Howard of Reading presented resolutions numbered, respectively, 265, 266 and 267.

The committees on State Administration and the Executive, sitting jointly, reported, July 30, 1918, the following new draft (No. 407) (Messrs. Waterman of Williamstown and Mahoney of Boston, dissenting):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

1. The executive branch of the government of the Commonwealth shall include all executive and administrative functions, offices, boards and commissions. The appointment of executive or administrative officers shall be classed as an executive function. The executive and administrative work of the Commonwealth shall be organized in not less than seven nor more than fifteen executive departments as herein provided. Every executive and administrative office, board and commission now or hereafter established, excepting the Civil Service Commission and offices coming directly under the Governor or the Council, shall be placed in one of such departments.

2. The Governor shall recommend to the General Court for the year nineteen hundred and nineteen, a plan for organizing such departments in accordance herewith; such plan may include the abolition or consolidation of any such offices, boards or commissions, except constitutional offices, or any changes in the powers or duties thereof, and shall include the establishment of an office, board or commission as the head of each department, with such powers as the General Court may provide. Such head, unless his election is provided for by the Constitution, shall be appointed by the Governor with the consent of the Council, and shall be removable in such manner as may be provided by law. The General Court shall thereupon provide by law for organization of the executive departments in any manner consistent with the provisions hereof: *provided*, that if the General Court fails to pass such a law at its first session after the adoption of this amendment an organization in conformity herewith shall be established by an order passed by the Governor and Council, which shall have the effect of law. The organization of departments hereunder may from time to time be changed by law.

3. Heads of such executive departments shall upon request made to the Governor by either branch of the General Court attend such branch in person and furnish information on departmental matters as requested, unless the Governor shall state in writing that he deems it incompatible with the public interest that such information be given.

The resolution was read a second time Wednesday, August 7.

Mr. Brooks Adams of Quincy moved that the resolution be amended by striking out, in line 23, the words ", board or commission".

This amendment was rejected.

Mr. James P. Richardson of Newton moved that the resolution be amended by inserting after the word "appointed", in line 26, the words "and may be removed"; and by striking out, in lines 27 and 28, the words ", and shall be removable in such manner as may be provided by law".

These amendments were rejected.

Mr. Charles L. Underhill of Somerville moved that the resolution be amended by striking out, in lines 5, 6 and 7, the words "The appointment of executive or administrative officers shall be classed as an executive function."; and by striking out lines 38 to 44, inclusive.

These amendments were severally rejected.

Mr. H. Huestis Newton of Everett moved that the resolution be amended by striking out, in lines 31 to 36, inclusive, the words ": *provided*, that if the General Court fails to pass such a law at its first session after the adoption of this amendment an organization in conformity herewith shall be established by an order passed by the Governor and Council, which shall have the effect of law."

This amendment was rejected.

Mr. Joseph Walker of Brookline moved that the resolution be amended by striking out, in lines 27 and 28, the words "and shall be removable in such manner as may be provided by law", and inserting in place thereof the words "for such term as may be provided by law but shall be removable at any time by the Governor".

This amendment was rejected, by a vote of 27 to 128.

Mr. Sanford Bates of Boston moved that the resolution be amended by striking out lines 16 to 44, inclusive.

This amendment was rejected, by a vote of 83 to 88.

The resolution (No. 407) was rejected Thursday, August 8, 1918, by a call of the yeas and nays, by a vote of 96 to 109.

On the following day the Convention, by a vote of 90 to 87, taken by a call of the yeas and nays, reconsidered the vote by which the resolution had been rejected; and on the recurring question it was ordered to a third reading, by a call of the yeas and nays, by a vote of 106 to 87.

It was read a third time Wednesday, August 14.

Mr. Sanford Bates of Boston moved that the resolution be amended by striking out lines 3 to 44, inclusive, and inserting in place thereof the following:

On or before January first, nineteen hundred and twenty-one, the executive and administrative work of the Commonwealth shall be organized in not more than twenty departments, under such supervision and regulation as the General Court may from time to time make by law. Every executive and administrative office, board and commission now or hereafter established to do such work, excepting offices coming directly under the Governor or the Council, shall be placed in one of such departments.

This amendment was adopted.

Pending the question of passing the resolution, as amended (Doc. No. 424), to be engrossed, it was placed in the Orders of the Day for the next session, and was referred, under Rule 28, to the committee on Form and Phraseology.

That committee reported, Thursday, August 15, that the resolution ought to be adopted in the following form (No. 426):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

On or before January first, nineteen hundred twenty-one, the executive and administrative work of the Commonwealth shall be organized in not more than twenty departments, in one of which every executive and administrative office, board and commission, except those officers serving directly under the Governor or the Council, shall be placed. Such departments shall be under such supervision and regulation as the General Court may from time to time prescribe by law.

The new draft was passed to be engrossed Tuesday, August 20, and on the following day the Convention voted, 124 to 56, to submit it to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 158,394 to 81,586.

THE DEBATE.

Mr. Dutch of Winchester: I trust that the Convention is not too weary with the heat and the roll-calls of the day to welcome a change from the sort of matters which we have been discussing, namely, those involving large questions of public policy, matters where we talk about State socialism, individual initiative, and all that, and matters which have been debated several times in the Convention, to a matter of straight Constitution drafting to cover the machinery of government, and to a matter which has not been discussed and which therefore I hope may have some interest as a fresh proposition.

I take it it is the function of the Convention to consider in the light of the experience of the Commonwealth and of other Commonwealths since the previous Constitutional Convention just what declarations in our Constitution we desire to revise and change in the light of that experience, and secondly what new affairs have occurred which lead us to put new matter into that Constitution. The present proposal is a very striking illustration of the second type of work which faces us.

You will notice on examining the old Constitution, and its amendments for that matter, that there are provisions in it for very little real State administration. There are a few provisions for the Secretary of the Commonwealth, and the Auditor of the Commonwealth, and the Attorney-General, and the Treasurer and Receiver-General, and that is all on the civil side. There are elaborate provisions on the military side, — several pages with reference to the militia. The reason of course is obvious, and that is that in 1780 the State was engaged in practically no business except public defence. That had been the experience of the State to that time. Very shortly the situation changed, and it has changed with increasing rapidity ever since.

The first real board or commission established in this Commonwealth was in 1837, the Board of Education. That was along the line of developing the work of the State as such, and proved typical of one sort of board or commission. The next came in the following year, in 1838, with the establishment of the Bank Commissioner and his office. That is typical of the second sort of commissions and boards, the regulatory, restricting type of commissions, established to check, in the public interest, activities of individuals and corporations. From that time to the time of the Convention of 1853

there were very few added, so that the problem in 1853 was, to use a paradox, no problem at all, but following 1853 we come to a very rapid development. The number of commissions multiplied so that by 1875 there were approximately 25 or 30; in 1898, about 20 years ago, there were 57 varieties, and now we have about 100. So that the striking development, the striking phenomena really, since the establishment of our Constitution, had been the tremendous growth in the activities of the State, the tremendous growth in the number of different things that the State attempts to do or attempts to regulate, and the tremendous growth in the volume of business in each one of those particulars. This may be set forth not only by the increase in the number of the departments as I have given them to you, but also, for example, in the number of the employees. I shall not weary you with statistics; I simply will mention this: That the latest figures which I have from the Auditor give the increase in the number of the employees from 1914 to 1916, just two years of increase, and the increase in those two years was over 4600 employees in State departments, an increase of 22 per cent, — 22 per cent in two years, and recent years. That illustrates what I said, that the increase becomes more rapid right up to the minute.

And that is not all. Under such resolutions as you have just passed, and under modern conditions, there is not a man here who does not believe that the activities of the State ten years from now, and up to twenty years from now, perhaps, the time for another Convention, are going to increase further tremendously. In other words, this is not a condition which is to cease. We have not arrived at the end of this development. The future has in store not only for the towns and for the cities but for this Commonwealth tremendous increases in the pure business of the State. Inevitably, whether you adopt State socialism or whether you do not, the business of the State will increase tremendously.

What is the result, governmentally, as we find it to-day? It is, as I say, over 100 boards, commissioners and officers, all independent. The students of government call it a horizontal line of government, because if you chart it your one hundred boards and commissions are all on an equality. One is not subordinate to another. There is no grouping, no correlation, no coördination, no integration. It is too bad to have to use long words, but they express the idea. Every time, in other words, we have wanted to do something we have created a new commission. That has been the experience in our cities and towns; it is the experience in the Commonwealth. Somebody comes along who wants to take care of the forests. Create a Forestry Commission. If you want to take care of gypsy and brown-tail moths, set up an office there. If you want to take care of this, that and the other thing, set up an office. You want to regulate a lot of professions, and you finally set up about seven registration boards in the Commonwealth, dealing with everything from veterinary surgery to optometry and nursing, and you not only have all of these people set off on an equality, but inevitably, — inevitably, — you have a very considerable overlapping of their functions. They are all on an equality, all independent as administrative agencies, and yet they are overlapping in their functions. This has been very well set forth in print by the report of 1914 of the Commission on

Economy and Efficiency, the so-called Red Book on the functions, organization and administration of the State government. I shall not weary you with examples; most of you have had experience in State matters before the Convention and you know of that overlapping and the chance for friction and trouble in other ways. We can point to the tremendous expansion of this State House as a physical representation of the growth and conditions which I have set forth, your east wing and your west wing and so on, and yet not capacity enough to hold all of these boards and commissions, all of whom have got to have their reception halls, and their anterooms, and their inner chambers and all the rest. You have no room for them all.

Now, that is the condition. Of course it is reflected immediately in the cost of your government. It is reflected in that chart hanging on the wall [increase in State debt]. It is reflected in the statistics, a very few of which certainly will call to your mind that which you know, that you cannot run a hundred times as many things as you ran in 1780 without tremendously increasing your expenses. Let me bring to your attention these very few figures as a sample. The Auditors' office in 1850 was the Auditor, and the cost was his salary, — $1,500; in 1917 it cost over $46,000. The Secretary's office cost $1,600 in 1850, over $295,000 in 1917; and so on down the line. The general expenses of the separate commissions as distinguished from those State offices in 1850 were nearly $1,404,000; in 1875 they had gone up to over $7,000,000; in 1917, without including your metropolitan works, $31,790,000 and more; and your appropriations for 1918, which usually are exhausted, amount to over $37,000,000 for that work.

I take it it is on this account that the Rules Committee established for this Convention a committee on State Administration. There were put before us, as your calendar shows you, several remedies, several propositions to remedy this condition. There were proposals to abolish the Governor's Council, to abolish the election of these State officials: the Secretary, Auditor, Treasurer and Attorney-General; to substitute for them a cabinet system comparable to Washington, a centralized executive government, a real responsible executive, with cabinet officials in charge of various departments. We had proposals for Councils of Review, a sort of State Finance Commission, a glorified Boston finance commission for the State, and so on, — the endeavor everywhere of course being to get some head and tail into the government of the State, the endeavor being to get a business organization for a Commonwealth which is engaged in business, to try to get for the State the benefit of the experience of large organizations in other fields, to try to profit by the mistakes and the successes of private corporations or quasi corporations in large and successful enterprise. And that is the endeavor of the proposal which we are to discuss now. It is simply a business man's proposition, and we appeal particularly to the business men of this body to give it their sincere attention and see if we cannot organize in some simple way, get some framework here that will permit a business organization of this tremendous and evergrowing business of the Commonwealth.

It seems obvious that the first thing that must be done is to group

these departments. I will ask you to give some attention in detail to the draft of the resolution itself, and I think if I go over it, we may avoid some misunderstandings and questions and save time. If you will kindly turn to this document No. 407.

The first sentence of the document is apparently a didactic or academic statement, but it was found convenient by the committee, after long struggle with this matter since last fall, as the clearest and shortest means of expressing what the executive branch should include. We found that if we omitted a sentence like that we had to repeat the substance of it below and use more words. It is nothing new, it is a perfectly obvious statement, but as a matter of drafting and as a matter of clearness it seems properly to head the resolution.

The second sentence, "the appointment of executive or administrative officers shall be classed as an executive function", may strike you as didactic also. That sentence is put in there to crystallize what always has been the interpretation in this Commonwealth. It always has been considered that those appointments do belong to the executive. They do not belong to the Legislature. There have arisen at times questions as to that, but they always have been resolved as I have suggested. But it was suggested to us that this should be made clear, and therefore this sentence is put in to indicate that we want to keep out of the Legislature, if they should ever attempt to get it in, the possibility of the Legislature attempting to designate Smith, Brown and Jones as the particular people for a commission. Of course they may say that the State House Commission shall consist of the Sergeant-at-Arms and the Treasurer and Receiver-General, etc., designating by offices, — that is perfectly proper; but it is not conceived by anybody, as far as I know, to be proper for your Legislature to designate the absolute personnel, the individuals to hold an executive office or compose an executive board. Hence the second sentence.

The third sentence gets into the gist of the matter. We must get some grouping, of course. What is seriously needed, as Professor Holcombe has pointed out in his work on State government, is some integration. He has well set forth in a very few pages this tremendous growth of the administrative work of the States of this Union, because it is not peculiar to Massachusetts. He points out also that everywhere they have had a hit or miss growth. Now we have got to get together in departments.

We have had various suggestions as to that. At first we endeavored to name those departments, to say there shall be a Department of State, there shall be a Department of Finance, there shall be a Department of Corporations, and so on. We found that that was not wise. It did not seem to us that we should attempt to crystallize in the Constitution our views in 1918 as to the exact grouping of these departments, and particularly because people did not wholly agree. Their differences were not important, to be sure, but they did not agree, and we thought we ought not to decide it. The offices certainly can be grouped into fifteen departments. It would be unfortunate if more were used. There is no suggestion that I know of up to to-day which involves more than fifteen. That seems to be flexible enough. In the New York draft of Constitution which recently was rejected, they attempted to set up the exact departments and the exact

functions of each department and to name the head. That seemed to us an unfortunate attempt to stiffen and harden the Constitution. What seems large and important to-day may be comparatively unimportant twenty years from now; what is unimportant to-day may be extremely important even ten years from now. And so the number of departments within the limits of seven and fifteen, as you see here, is left with the Legislature. "The executive and administrative work of the Commonwealth shall be organized in not less than seven nor more than fifteen executive departments, as herein provided."

Then of course we have to have the purely mechanical sentence that comes next. We have to put all our commissions into those departments. So we provide that all existing boards and commissions and all future boards and commissions except two, the reason for which exception I will speak of in a moment, shall be placed in one of these departments. In other words, once we set up a system it must not be left possible for the Legislature to fall into the way of doing, through careless or hasty proposals, what they have been doing, and that is to set up a commission without any thought as to how it fits in with an existing commission or department. In other words, every time hereafter they create a board or commission they have got to stop and think how that fits in with the machinery of the State. They have got to give that thought, and it may make them hesitate to create it at all. They may find the functions are cared for sufficiently. But in any event you see the absolute necessity of that sentence in setting up any system here in the act.

One of the exceptions is the Civil Service Commission. That is an off-side, checking commission. It is not one of the operative, administrative commissions of the State, it does not do any of the work of the State, but it is merely an off-side commission controlling the appointments. It does not run any asylums, it does not check the railroads or do anything of that sort. We were advised by the experts and it seemed common sense that it should stand by itself. Of course the Governor and the Governor's Council should not be under these departments. They again are off in the executive, and on top of or beside, as you please to consider it, rather than in these departments.

Now, how are we going to get this started; if we do not put it into the Constitution, do not crystallize it, do not write a lot of details in here that you do not like and I do not like, how are we going to get it started? It seemed important, and it seemed wise, and it follows precedents elsewhere, to put that up to the Governor, and so we provide here that the Governor shall initiate this plan. "The Governor shall recommend to the General Court" the next year, 1919, if this is adopted, "a plan for organizing such departments in accordance herewith." Of course we want to make it clear what he could do. We were afraid if we stopped there it might not be clear. So we say the plan may include the abolition or consolidation of any of these present departments. You see that is essential, that is what we may want to accomplish, except, of course, with regard to your constitutional officers. He cannot abolish those, — for example, the Secretary of the Commonwealth or the Attorney-General, — nor take away their constitutional functions. That exception therefore has to go in.

Then, too, the plan must include some head to the department. That is absolutely necessary in any large organization. The whole thing is summed up in getting some head and tail into conducting the business of the State. Now, how select that head, and what should it be? Suggestions were made to us that we again should crystallize in the Constitution just exactly what the head of the department should be. That it should be an individual was most strongly urged upon us, or this or that form of organization. Again, it did not seem wise that we should impose on the future generations our ideas in 1918 as to the most efficient way of establishing State departments. If you read Professor Holcombe's book you will find very shortly stated the various forms of organization of State departments in the United States. There are many, and each of them has some virtue. Mr. Adams of Quincy, to use his name, is very strongly of the opinion that we ought to set up an individual head. He believes in the individual executive and administrative officer, concentration of the power in that individual. He thinks that is the only way it should be done, and he has an amendment here to strike out those two words, "boards and commissions", so that it will have to be a single head. Thus it will be left to your judgment as to whether it is wise so to limit the Legislature.

One very good form of organization, for example, in this State, and it is very favorably commented on, is that which you have in the Department of Health, taken over, I believe, somewhat from that which exists in the boiler inspection department, and it is an illustration of the plural headed organization. You have the expert administrator that Mr. Adams desires, but you have him checked by lay councillors. You have your Council of Health and you have your expert administrator. And so in the case of the boiler inspection you have your boiler inspector, who is the administrative officer, who sees to it that things are done, but you have your council, Board of Boiler Rules, that attends to the matters of administrative rules. As Mr. Holcombe points out, that very nicely puts into operation the old adage of many minds for counsel, one mind for action. It seemed to us that that might well be a precedent, that might well be the form which was desired, rather than the single departmental head, but it illustrates such diversity of opinion that we should not definitely close the question in the Constitution.

Then, the question arises, what shall be the powers of these heads of departments? We were urged to say that to get efficiency, to get centralized control, and to get responsible executives and a lot of other things, these heads of departments should have control of their departments, they should have supervision and control, they should be responsible for the efficiency of those departments, as the Cabinet officers in Washington really are responsible for the efficiency of their departments. Now, that is an excellent theory of government. It works in some places. Query, — whether we want to establish it here. I am very sure now, after the action this Convention has taken, that the delegates do not want to establish that system here in that broad way. Therefore I am particularly glad that we have handled it differently. I personally have voted all the way through against the proposals that have been offered here for making the Governor a super-legislator.

So we have provided here that the powers of the head of the department shall be such as the General Court shall provide. In other words, if they want to say that the head of a department shall be responsible for the finances, that he shall be responsible for the financial efficiency of the department, well and good. If they want to say he shall have general supervision, well and good. They may want to say one thing as to one department, where there are no quasi-judicial powers exercised; they may want to say another thing where there are quasi-judicial powers to be exercised. So it seems entirely wise, and of course entirely safe, because it is the present system, to leave the determination of the powers of those heads of departments to the General Court.

Now, how choose the head of the department? There it also seemed wise to follow the present system. The heads of departments are chosen by the Governor with the consent of the Council. We were urged strongly by those who want an independent executive to cut out the confirmation by the Council, but the committee felt finally that that should not be done; we should have the same check as now in the selection of these heads of departments. And so, too, as to removal. We were told it was essential in order properly to make the Governor responsible for the administration of the affairs of the State, as he is apt to be held responsible to-day although he has no power to amount to anything, that he should have power of removal without anything to be said. There were various suggestions as to removals without consent and with consent, without hearing and with a hearing, and it seemed wise again that we should not attempt to say now what will be the wise policy for as long as we hope the Constitution will stand before another general tinkering. So we have left that to be determined by the Legislature. It may vary; it may be one method with the Public Service Commission, it may be another with a purely supervisory administrative body without any judicial functions; it is entirely flexible and entirely safe.

As I say, it seems proper that the Governor should initiate this plan so far as reporting it to the Legislature is concerned. You adopt that method for your budget. It is the precedent as to this sort of thing. Of course what we expect, what everybody expects and has reason to expect, is that if this passes the Convention and is adopted by the people your present department of efficiency, your Supervisor of Administration, will get to work and draw up a proper plan to submit to the newly elected Governor, and in all probability your newly elected Governor will be thinking over this very important matter long before the time comes for him to be inducted into office, so that when the first of January comes undoubtedly there will be a well thought out plan for the Governor to submit to the Legislature. It is simply to get something in good shape for the Legislature. Of course members of the Legislature will be thinking it over too. We believe there will be no difficulty at all in initiating this in the following General Court. Then the matter rests just where it ought to rest, just where it belongs, and that is with the General Court, to set up the details of this plan. We knew this Convention did not want details of legislation in the Constitution if it could help it, so we leave the details here under the mandate of the Constitution to the Legislature to set up.

There was just one more possibility that we had to face, and that was the slight possibility that the Legislature would not take action. If by chance the Legislature should duck the proposition, to use colloquial language, of course we must have something to go into effect. We must not allow the amendment to be mere words in the Constitution; there must be some way of compelling this action. And so to cover that possibility we guard the escape by saying that if the Legislature does pass this up, then, not the Governor alone but this time you will notice the Governor and Council, shall issue an order which will put the thing into operation. Again, as I say, that is eminently safe. It is necessary to make the proposal rounded and complete. It is entirely safe because, in the first place, there is little likelihood it will be used, and secondly, if it is, as you will notice by the next line, the last lines of the second paragraph, the organization of departments from time to time may be changed by law. It is safe, therefore, because the General Court at any time may change what they have allowed the Governor and Council to put into operation, and they may change from time to time what they themselves have put into operation, provided their changes always are consistent with the framework which is here provided.

The third paragraph of this proposition is not essentially connected with the rest of it. Personally I am not very enthusiastic about it. The other two parts can live without it; you can cut off the third if you desire, but in fairness to my colleagues I will point this out to you: First, it is not a proposition for any super-Legislature. Let me say again that I have voted consistently against any proposition to make the Governor or his heads of departments super-Legislatures. Notice that this last paragraph does not give the Governor or any head of department the right to go into the Legislature. It simply provides that the Legislature may request the heads of departments to attend the Legislature. Now, it is felt that put in that form it may have a very salutary effect. The Legislature may see fit to give the heads of departments a considerable degree of authority because it knows that the Governor will hesitate to appoint as heads of departments men whom he knows cannot stand the racket before the Legislature, men whom he is not willing to be subject to the power in No. 3. And furthermore, the Legislature may give them that power, because the Legislature knows that it can summon them before the bar of that body and bring them to account if they misuse their power.

Now, this is not new. There is a precedent in the existing Constitution, which I must confess I discovered somewhat by accident yesterday, and I cannot find that anybody else has discovered it because in the other debates it has not been brought forward. But you will find in the provisions of the present Constitution as to the Secretary of the Commonwealth this provision, — it is part II, chapter II, section IV on page 156 of your Manual:

> II. The records of the Commonwealth shall be kept in the office of the Secretary, who may appoint his Deputies, for whose conduct he shall be accountable, and he [the Secretary] shall attend the Governor and Council, the Senate and House of Representatives, in person, or by his Deputies, as they shall respectively require.

This is the identical provision applied to the Secretary of the Commonwealth, the head of a department and an elected official at that;

a department not created by the Legislature, the head of which is not as the Legislature says it shall be, but as selected by the people, getting his mandates from the same source as the Legislature. Yet our present Constitution has the same provision that he may be summoned before the Legislature. And so it is considered that *a fortiori* it is proper to provide here that the Legislature may have access to heads of departments which are created by them and whose appointment and removal is designated by law. That is for your consideration, and as I say, the rest of the resolution is not dependent on it, and if you choose, it may be omitted without crippling the general proposition of getting a business organization for the State.

Now, in conclusion, what we expect and hope we may secure, is very shortly this: We desire to build up in this State real working, efficient departments; and what do we expect to get from them? We expect to avoid some of the difficulties that we have been wrestling with in this Convention. We want to get departments such that the Legislature will be glad to refer every departmental matter to the appropriate department for efficient investigation and efficient report before the Legislature acts upon it. We want to get efficient departments so that they can be given the powers to issue administrative orders, — not changes in statutes, but purely administrative orders, the sort of thing that the Board of Boiler Rules and your Public Health Council are doing to-day and doing efficiently. For example, you pass a statute that boilers shall be safe and you pretty nearly stop there; then your Board of Boiler Rules says what that means when applied to this type of boiler and that type of boiler in terms of pressure, etc., and then your boiler inspector carries out the rules. So in your Health Department, you say you shall be able to guard against contagious diseases. Do you try to say by your statute whether infantile paralysis is a contagious disease? Oh, no, your Department of Health through its council does that. Again we hope we can secure a system which will give us the modern means of efficiency. Those of us who have sought to have set up a Department of State Administration, a Department of Economy and Efficiency, ought to be satisfied that that will be taken care of under this plan, so that we can get the benefit of critical agencies, the sort of agencies that the experts tell us about.

I was reminded as I entered the capitol by the front steps of what President Lowell of Harvard said to our committee when we were hearing these questions. He said as he had entered the capitol by those steps he was impressed by the statue of Horace Mann on the one side and of Daniel Webster on the other, the two types that we must get into our government if it is to be economical and efficient and safe, — Horace Mann, the expert, on the one hand, and Daniel Webster, the trained public man, layman, the lay director, on the other. We must get the State organized in some fashion, not merely to handle that which it is trying to do to-day but that which it inevitably must do to-morrow and in the years to come. [Applause.]

Mr. Williams of Brookline: I should like to ask the last speaker a question which possibly he answered in his remarks, but I did not have the privilege of hearing all of his speech, namely: What is the need of a constitutional amendment to accomplish what evidently is intended by this resolution?

Mr. DUTCH: In endeavoring to shorten my remarks I omitted that item, and I am very glad the question was asked. The answer is very briefly this: In the first place, as a practical matter, though I never have served in the Legislature, I have been informed by all whom I have talked with who have served, that it is simply impossible to get through the Legislature any real consolidation and coördination of our State departments, and I believe there are those here who will testify to that as a practical proposition. I understand when it has been tackled, practically all the boards and commissions come up here in self-defence to prevent tampering with their respective boards and commissions. I have said what I have as a humble member of one of the smaller boards of the Commonwealth and a board in a department that I think would be affected by this provision. This is a practical consideration. But the second and real answer is this: That in 1918, with conditions as we find them and as they are yet to be, this resolution is fundamental statecraft; it concerns itself with the real organization of government. The doing of the business of the State is just as much a part of the framework of the government to-day as the militia or anything else was in 1780. In other words, fundamentally this is constitutional stuff; it belongs in the Constitution, because, in the first place, — an obvious thing, — it serves as a mandate to and a check on the Legislature, and you cannot put that anywhere except in the Constitution; and in the second place, it concerns itself with the real framework of the government. I think the test is this: Can you conceive if a State was set up to-day that you would not provide just this sort of thing in the Constitution for the handling of the business of that State?

Mr. ADAMS of Quincy: I have moved an amendment to the report of this committee of which I am a member, and I have listened with great pleasure and interest to the statement of my friend Mr. Dutch, who very ably, as it seems to me, has exposed the view of the committee. I, however, have had the misfortune to differ with the majority of the committee in one or two particulars and expect to take about ten minutes to explain precisely where I differ from the majority of the committee and why I was unable to sign their report, which in the main I consider to be admirable.

My notion of the administrative questions which we have got to face has been brought to a head by the vote to-day, which was a vote which precipitates upon our government what I consider to be a course which is going to be the course of the future; that is to say, it has got to be what generally is called State socialism and what I call State business. That business has got to be taken care of. We cannot talk about our fathers any longer; we are brought right up to the ring-bolt. We have got to dispose of that business, and we have got to dispose of it effectively and cheaply, and the question is, how are we going to do it?

I start from one single premise. It is very well to talk about the Legislature and the Legislature's having a policy, and all that. But legislative assemblies cannot have a policy. That is one of the things which I conceive to be impossible and fantastic to talk about. A legislative assembly can talk. That is what it is meant for. But if you are going to have an administration you have to have a system which lies in a single mind. That is the substance, that is the very

meat of the whole matter. That is the kernel of the whole matter. All of you gentlemen are familiar with corporations and corporate actions, and you know that there is not a corporation in Massachusetts or in this world which is not really practically managed by a single man. You may have as many boards of directors and advisory boards as you please, but from the Steel Corporation down you all have to have your work done by a single man and a single mind.

Now that is where I differ with the majority of the committee to which I have the honor to belong, and that is the occasion for the amendment which I want to submit to the Convention. It is that we have got to take that great limitation of the human mind into consideration if we are going to try to organize this State government, this new State government of ours, successfully. We have got to recognize that we must throw the responsibility on a single man and on a single mind. If we do not do so we never shall have government brought up to the proper standard which Governors must reach if we are going to administer the State successfully. In order to have successful Governors you have got to make them men who have to face considerable responsibility; otherwise we never can hope to secure the type of men that we need. That I take to be so. And throwing on him the responsibility, then he must name his advisors himself. He must name his advisors, and they must be single men, — single men who are responsible for the administration of their department. That is to say, they must be responsible so far as performance goes. I do not mean to say that they are to be responsible in the way in which the Governor is responsible, not at all, but they must be competent workmen. That is to say, they must be competent administrators. That is my proposition, and I need not argue to this assembly of lawyers that we cannot have the Legislature undertaking to be a debating society which shall establish a policy. That has been tested.

Mr. President, you know, being a member of the bar and having had great experiences, — you know as well as any member in this assembly knows that that system is the system of the law absolutely. You know as well as any member of this assembly knows that we may have cause to debate moral points which are abstract questions of law. Possibly they may be useful if we are arguing before the judges *in banc*, although personally I doubt it. Personally I do not believe that you get a better result from a bench of judges than you get from the single judge. I remember when I was a law student putting that very proposition to my own Professor Langdell and I said to him: "Mr. Langdell, do you seriously believe that you get better results from a bench of judges than you do from a single judge?" Said he: "Personally I do not. Personally I do not believe there has ever been a court in England that has stood higher than the Lord Chancellor's Court." And I do not believe so myself, and the experience of a lifetime has confirmed to my mind Langdell's view. But admitting that on the whole human beings have come to a different conclusion, we come to the great split there is in the law, — that is to say, between the court sitting *in banc* when it is debating moot questions of morals, which is what the law is called, and the court when it is undertaking to deal with facts; that is to say, a

court of equity which is dealing with a receivership or something of the kind, — the winding up of an estate. What does the court do? The court always sends the case off to a master or a receiver or some official of that kind. The court recognizes that questions of that kind can be dealt with only by a single mind, and that is the question we have to deal with here. The Governor is standing in exactly the same position as the court would stand under similar circumstances. The court would send the case off to a single mind to get the report; it would send the case to a master to get a report. Very well, the Governor is doing exactly what the court would do. He is sending these questions to a single mind to get a careful study of them; he is sending the case to a master. That is what I want to submit to this Convention of lawyers, that we are to concentrate responsibility as much as we can, and then we are to make the process by which the truth is sifted out as simple as possible. That is the substance of the whole thing and that is the way in which, as I understand it, every corporation in the United States from the Steel Corporation downward is organized, and that is the way in which our government is organized and I conceive that our colleague, Mr. Willett, has exposed that system admirably in his administration in the War Department. It is generally conceded, as I understand it, throughout the world that the administration of our War Department as it has been conducted in the last six months approximates the miraculous; that the conveyance of a million men from the United States to Europe with all the necessary supplies has been in the nature of a miracle of administration. And it is, as I understand it, simply because the War Department has been organized on a proper system. That is all there is in it, and as I understand it, Mr. Willett's proposition in organization is simply the proposition which I present. I do not claim any originality for it myself, not the least. I say that as far as I understand it I agree with Mr. Willett's theory. I believe that he is right. I believe that the system which is recommended by the committee, with that amendment, would be admirable, and therefore I move that amendment.

The amendment moved by Mr. Adams was to strike out, in line 23, the words ", board or commission", so as to read as follows:

The Governor shall recommend to the General Court for the year nineteen hundred and nineteen, a plan for organizing such departments in accordance herewith; such plan may include the abolition or consolidation of any such offices, boards or commissions, except constitutional offices, or any changes in the powers or duties thereof, and shall include the establishment of an office as the head of each department, with such powers as the General Court may provide.

Mr. WALSH of Fitchburg: Before addressing myself to this subject I should like to ask the gentleman in charge of the measure two questions in order that the record may contain an interpretation of the meaning of certain language used.

First, lines 11 to 15, inclusive:

Every executive and administrative office, board and commission now or hereafter established, excepting the Civil Service Commission and offices coming directly under the Governor or the Council, shall be placed in one of such departments.

Do I understand the words "excepting the Civil Service Commission and offices coming directly under the Governor or the Council" to mean the private secretary of the Governor, the Secretary of the

Council and the personal officers who are attached to the executive department?

Mr. DUTCH: I so understand.

Mr. WALSH: Turning to lines 25 to 28:

> Such head, unless his election is provided for by the Constitution, shall be appointed by the Governor with the consent of the Council, and shall be removable in such manner as may be provided by law.

Does that provision mean that each Governor shall have the power of appointing these seven to fifteen heads and that the term of office of each one of these heads shall expire with the term of each Governor?

Mr. DUTCH: I am very glad the member has brought out that point, because in attempting to save your time I did not cover it. The term of office of the head of a department is not set forth here, and therefore is left to the General Court, for the same reason that we have not determined whether it should be a plural or single head or how it should be removed. The Legislature may make it a single head and his term coextensive with that of the Governor if they choose. And again, I say, the wisdom of the future may lead on these points to one situation with one department and a different situation with another, dependent on the functions of the particular department.

Mr. WALSH: I naturally feel very much interest in a proposition of this kind, and I think I may discuss it fairly in an unselfish manner, because I do not hope ever again to be Governor of this Commonwealth and therefore to hold the power which we seek here to give Governors. I do hope I am able to bring to this Convention a knowledge of that office and some experience which may help to guide it in shaping a constitutional amendment which will be of benefit to the Commonwealth.

If there is any great defect in promoting and advancing efficient government in this State, it is the system that has grown up of delegating great power and the expenditure of money to boards and commissions in the management of State affairs. They do excellent work, many of them, but they are too numerous. They are a powerful force and factor in controlling legislation. It is impossible to wipe out, consolidate, restrict or abridge the powers of certain commissions, so powerful are they with the Legislatures of this Commonwealth. You will agree with me that men intrusted with this power and with large sums of money to expend ought to be responsible to some one. Now, to whom are they responsible? To no one. They are creatures of the Legislature responsible alone to it. How can 280 men guide, control and direct, supervise and correct, the management of affairs of these boards, especially where there are, as in this State, more than 100 boards? The Governor has absolutely no authority over a commission in this State. By condescension, by favor, he is permitted by the Legislature to name the members of boards and with certain restrictions to remove them. The Legislature next year or any year that it chooses may name every member of every commission in this State and take the power of appointment away from any Governor who may sit in the other corner of this building. The Governor has no constitutional authority to issue an order to a single board in this State. The Governor has no authority to limit or restrict the

number of employees. You have been giving this power to your mayors. There is not a mayor in this Commonwealth who has not this power or who has not greater power, in performing the duties of his executive office than your Governor. You restrict him to a one year term of office. You give him no power. You tie his hands. You check him at every turn by an Executive Council. Yet the people hold him responsible for the efficient management of the State's business affairs. Is it fair? Is it right? Is it just? Is it the proper way to get the best government in this Commonwealth?

Let us further consider this matter. The Legislature creates a board and defines its duties; the Governor names the board. The board reports to the Legislature. The Governor, I repeat, can make suggestions only through favor and courtesy. If he knew that in a department of this State there were more employees than were necessary, he could not remove them or issue an order that legally required obedience asking that those employees be dropped or that even a change be made in the management of its affairs.

What is the remedy? The remedy is to give if not the Governor some one person the power, to trust some one, — the Secretary of the Commonwealth, the Attorney-General, or an official named by the Legislature or anyone with definite authority to supervise, restrict, curtail and direct the business affairs of the Commonwealth that are intrusted to these different boards.

Do not give it to your Governor if his election by the people of this State after a campaign which has revealed his public policy and character is insufficient test for trusting this power to him; but give it to some one and have these boards answerable and responsible to some one.

We have taken a great step forward here. We have gone on for a hundred years or more holding our Governor responsible in every campaign for the tax rate of the Commonwealth, and every Governor who has held that office has been criticized when the tax rate increased, though he had virtually no authority except that of veto and no power to suggest how the money, when the money, and where the money, should be spent. And yet you have attacked your Governors and you have criticized them and have held them responsible, even though the Legislature primarily contributed to these conditions in the management of the affairs of your State government.

We have taken a step forward in establishing an Executive budget. We have said: "We will trust you, Governor; we will trust you whom the people have elected, and we ask you as your first act to plan and itemize the amount of money necessary to conduct the affairs of the State. How much do you think the Board of Education should have, how much the Health Department, how much the Treasury Department, how much each of these various activities? Submit that proposition to the Legislature and we will hold you responsible, either for efficient management or for negligent management of the public funds of the State." I say we have taken a step forward in giving this executive budget power to the Governor. And we have done well, too, in including in that proposition the matter of permitting the Legislature to increase or decrease the budget submitted by the Governor. But the Governor in the first instance must put himself on record: "For how much money will you run the

State? How will you spend it? What is your estimate and your judgment of the necessities of each department?" I say we have taken that step and now it is proposed that a further step shall be taken, namely, that we shall say to the Governor: "We want you in our absence, when we are not in session, and when we are busy with the 2,000 or more legislative propositions that come before us, to superintend and direct, and concern yourself with the expenditure of the public money by these boards, and we now propose to give you the power through the Constitution of naming seven or more who shall be heads of departments or boards, under whom will be grouped all of the hundred or more boards, and each official will be in intimate and close communication with the Governor and with the various heads of other departments."

What could be fairer and better than to have these officials placed in a position and relationship to the Governor where always there would be the eye of the Governor, watching, observing, planning and arranging for a better management of our boards and commissions if such were necessary?

I asked the gentleman in the first division (Mr. Dutch) a question which to me is of supreme importance. I want Governors, like mayors, to stand or fall on their own record. If they are good Governors, then the people have a right to know it; if they have failed, the people have a right to know that also. But I contend it is unfair to hold a Governor responsible for the management of State affairs when you fail to invest him with the authority and power to make an efficient, faithful and competent Governor. Therefore I asked the gentleman in the first division: "When should the term of office of these seven to fifteen heads of departments end?" This plan will be a failure unless the terms of office of these seven to fifteen men end with the Governor's term. You cannot manage, you cannot expect to have the intimate association, you cannot expect to have the relationship, you cannot expect to have the coöperation from men who have been named by previous Governors and who perhaps have bitterly opposed politically the Governor elected.

I do not understand that in this resolution it is proposed to change any of the existing boards or commissions. I do not think it should be done. It is not expected that the personnel of the old board should be changed, but that these departments that are to be created to represent and assist Governors in determining how to improve the public service shall be named by each Governor, whether Democrat or Republican, and he shall have the power to name these particular departmental officials, so that at the end of each year we can hold him responsible. Then he cannot answer us: "I could not improve the management of that board; I had a holdover in that office who directed and controlled it, and though I was elected on a platform to improve, — for illustration, — the management of the Board of Gas and Electric Light Commissioners, though I was elected on a platform to lower the rates on street railways, my hands were tied because I did not have the appointment or management of the persons who were interested with the conduct of that particular branch of the service."

Mr. CREED of Boston: I should like to ask the delegate if in his experience of two years in the office of Governor any board or com-

mission or any head of department refused to grant any request he made of them as Governor in the interests of the people?

Mr. WALSH: I cannot recall at this moment whether that happened or not, but I do know that I refused to make requests that I should like to have made because I expected and knew that the answer that would come to me would be that I had no authority in the premises.

Mr. CHURCHILL of Amherst: I should like to request the gentleman, purely for information, to state whether he thinks that men who are competent to do the work of these men can be obtained on a year's tenure of office.

Mr. WALSH: In answer to the gentleman in the third division I would say to him that in my opinion it would be very difficult, very difficult indeed. That is why I believe that the term of office of the State officials should be two years instead of one, and that the Legislature should convene and meet annually. I appreciate that there is great difficulty.

Mr. BRYANT of Milton: I understand the speaker to say that each of these heads of departments should retire with the Governor, which seems to me an entirely logical statement. Should not all members of all commissions also retire with the Governor? If they do not retire every year and if the Governor is elected every year, will not the power of heads of departments be practically nugatory?

Mr. WALSH: That question has been discussed very extensively by the Governors of the country at their various conferences. It has been a matter of universal complaint among Governors that they found themselves very much embarrassed in the conduct of public affairs when they entered office for a term of two years and found the head of an important department to be an official who held office for a term of five years. May I venture to suggest before I directly answer the question that the present Governor of the Commonwealth in his first year of office saw exceedingly few members of commissions whose terms of office did not expire during that year. They do not need to know or to see the Governor if their term of office does not expire during his term. It is sufficient for them to become intimate and acquainted and to give the Governor information about the value of their services at about the time that their term of office expires. But I will say, to answer directly the gentleman's question, in my opinion it is not necessary or essential for the terms of office of the members of the various boards and commissions to expire upon the election of each Governor. I think if our commissions were few in number and if the boards were few it would be proper and necessary to have this happen, just as in the city of Boston and in every other city; but where the situation is such as it is here, with over a hundred boards, the Governor now has the appointment each year of about 250 to 300 persons to public office, most of them unpaid, and if all of these boards became vacant on the election of each Governor a chaotic condition might arise. Many of these boards require expert knowledge and the men in the positions which they hold, by reason of their experience and services, are most valuable to the Commonwealth. But it is proposed in this measure that these seven to fifteen heads of departments shall be political in the sense that they shall frame and carry out the policies of the Governor.

Mr. Flynn of Malden: Referring first to lines 26, 27 and 28, I should like to ask the gentleman what he thinks of the phrase "shall be appointed by the Governor with the consent of the Council, and shall be removable in such manner as may be provided by law"; if, carrying his argument further, he would say that these officials should be appointed without the approval of the Council and should be removable by the Governor without the approval of the Council.

Mr. Walsh: Personally I favor very strongly the suggestion of the gentleman from Malden in the third division (Mr. Flynn). I was not present at the last meetings of the committee by reason of the condition of my health, therefore I am not in a position to criticize the language or the phrasing of this measure. I think I yielded somewhat to my associates lest I should be judged as in favor of absolute, autocratic power for the Governor.

Mr. Swig of Taunton: Does the gentleman mean that he believes that "to the victors belong the spoils"?

Mr. Walsh: I thought perhaps that the manner in which I answered the question of the gentleman in the third division (Mr. Flynn of Malden) would cover the question asked by the gentleman in the first division (Mr. Swig). I do not believe in the policy of removing men from public office who are not policy-making officials, simply on political grounds. I believe, however, that a Governor of any political party, — and I am arguing for this power for Republican as well as Democratic Governors, — should have authority to carry out the principles upon which he has made his campaign and upon which the people have rendered their verdict. I believe that the Governor should have the power to name and control those public servants who will execute and administer the affairs of the Commonwealth along the lines suggested and proposed by him. I think it is a serious mistake, a great mistake, to have a Governor absolutely powerless, — by reason of public officials surrounding him who do not agree with his policies, — to carry out his purposes. I plead with you to give our Governors some power, to make them something other than mere figureheads. Are Governors less worthy of confidence and trust than mayors of cities or selectmen of towns? Yet there is not a mayor of a city in this Commonwealth who has not more power and authority in the management of the affairs of his city than is given your Governor. And the time has come if we are to have a proper guiding and direction of the affairs of this Commonwealth, when our Governors should be given authority. I remember, — to be personal, — an appointment that I made, and I appointed the man for a particular purpose, to amend a particulular law, to stamp out a particular evil; and I found after the appointment had been made, though the man agreed with me, that he hesitated, and did not enter into the spirit of changing or amending the law to which I was opposed. Yet I could not suggest to him that I would take sharp measures if he did not act, because no Executive Council would agree to the removal of an official named by a Governor simply because that official refused to carry out a particular policy of a Governor.

Mr. George of Haverhill: Do I understand the gentleman to say that if the Governor comes into the executive office and finds a public office conducted according to law, it is his belief that the Governor should have a right to change that law or to demand that an official

whose duties are defined by law shall violate it and thereby repeal an act of the Legislature? In other words, does he think that the Governor should have a right to repeal the laws and carry on a campaign of non-enforcement simply because he personally does not believe in them?

Mr. WALSH: I believe the Governor should have no authority or power to make any law and that the law-making power should be absolutely in the Legislature without any interference by the Governor. But I do believe that in the matter of administering the business activity of the Commonwealth the Governor should have this authority without any interference from the Legislature, and that the administrative authority of this State should not be, as it has been, a legislative function. The boards and commissions of this State are legislative bodies and are not creatures of or amenable to the executive branch. Here is an opportunity to do what has been done in other progressive communities, in other States that are seeking to conduct their business along economic lines, — to place the entire administrative power in some central authority. I do not say give it to the Governor, but make the Legislature, if you will, appoint a commission of three or more to do it; have some one official or some small board of officials, superintending, directing, the large number of commissions now suspended in the air and answerable to no one, making reports to a Legislature crowded with business and unable to receive directions from any other branch of the government because they are legislative and not executive. Here is an opportunity for improving our business affairs.

Mr. FLAHERTY of Boston: Is it the gentleman's view that this is the only way in which the end that he seeks can be accomplished? Has not the Legislature full and sufficient authority as now constituted to centralize the power in one or two or more boards?

Mr. WALSH: I understand the Legislature has power to pass a law in any given year giving this authority to the Governor, and the next year, when there was a Governor they did not agree with, take it away. The Legislature may organize these departments in any way it sees fit. But what is proposed here is to put in the fundamental law of the Commonwealth this power in the hands of the executive. Just as we said a few days ago when we gave the Governor power to make a budget, we say: "It is not fair to the Governor to let each Legislature define his duties and powers; it is not fair for the Legislature to pass in the middle of the session different acts restricting and limiting his functions. Let us put the Governor's powers into the fundamental law, the Constitution. Let us hold him responsible to that fundamental law. Let us make him answerable to the people directly, and not let him be merely a Governor having certain indefinite powers that certain Legislatures may from time to time give to and take from him." In answer to the gentleman, let me say the Legislature can delegate to the Governor the powers conferred in this resolution, just as they could delegate to the Governor the power to make a budget. But it seems to me it is a matter of such importance that the fundamental law, the Constitution, should define the powers of the Governor for this particular work.

Mr. EDWIN U. CURTIS of Boston: I understood you to say that this

resolution as it is drawn provides that if the General Court does not organize these departments, then the Governor may. Is that so?

Mr. WALSH: Yes.

Mr. CURTIS: I understood you to say that there was no probability or no likelihood that the Legislature ever would consolidate the departments.

Mr. WALSH: No, I did not say that; he said it; I did not.

Mr. CURTIS: As I read this resolution, if the Legislature does not provide for this organization, then the Governor may. Now assume the Governor has done it this year. The clause says: "The organization of departments hereunder may from time to time be changed by law." Would it not be entirely possible for the next Legislature to change the entire organization that the Governor had made, — nullify it?

Mr. WALSH: Yes, sir, that is entirely possible for the Legislature to change with the consent of the Governor, who would have only the power of veto but could veto any change unless two-thirds of the Legislature overrode the veto. But the provision about this resolution that to me seems especially important to have in the Constitution is that State boards and commissions, as in every city in this Commonwealth, are executive officers and subject to the executive and not to the legislative departments. If we are not prepared to take that step let us stay as we are, drifting along with these boards responsible to no one; but I trust we are prepared now to say to a Governor: "We will give you a free hand in the management of affairs; we will give you a chance to do the things you promised; we will give you a chance to work out successfully administrative problems and to name the officials with which to do it."

I want to ask the pardon of the delegates for talking at such length upon the subject. I did not expect to speak but a few minutes. In fact I did not have an opportunity to attend the last session of these committees. I want to say again that I felt impelled to say what I have because of my experience as Governor of the Commonwealth. I know that the members of this body will appreciate that what I have said has been solely to give you my views after having retired from the office of Governor, based upon my experience in that office, and that I am pleading for future Governors that they may have authority and power over the expenditure and disbursement of the public funds and thereby give them a chance to manage the boards and commissions of the State with economy and efficiency. [Applause.]

Mr. Richardson of Newton moved that the resolution (No. 407) be amended by inserting after the word "appointed", in line 26, the words "and may be removed"; and by striking out, in lines 27 and 28, the words ", and shall be removable in such manner as may be provided by law", so as to read as follows, beginning with line 25:

Such head, unless his election is provided for by the Constitution, shall be appointed and may be removed by the Governor with the consent of the Council.

The discussion was continued Thursday, August 8.

Mr. WATERMAN of Williamstown: I regret that there are not more here this morning, but I dislike to raise the point of no quorum.

I am recorded here as a dissenter on the resolution No. 407. It is far from my thought to obstruct in any way progressive measures, so called, or to take the time of this Convention. But the committee on State Administration and the committee on the Executive, sitting jointly, have had these matters and this matter under consideration for more than a year; and I will confess now that in the beginning, with certain able men, students of government, appearing before us, I was somewhat impressed with their ability and their systems as they expounded them. I was impressed also by diagrams, magnificent in outline and in beauty, some quite similar to those you see before you. It has been an allurement to me in years gone by in amateur architecture to draw pictures and to plan buildings and schemes that seemed to me very desirable, but after a time, age having somewhat mellowed one's judgment, they have been discarded. And so, although I have expressed at times the inability of the Legislature to cope with this great question and have felt that something might be done, yet after a year of study, having discarded the scheme for a responsible government for this State, I have come to be an objector. I went into it honestly and it is my duty to report my findings at the present time, and I have so done.

Last winter, in order to try to inform myself more fully on this question, I was fortunate in being able to be transferred from one committee to the committee on Commissions, which now has become a permanent committee of the Legislature. It had been for three or four years a temporary committee and it had done most excellent work, and so followed the permanency of that committee. We had before that committee the scheme that is proposed here to-day, absolutely, no difference. Some of the matters recommended by the recess committee on Finances and Budget Procedure have become law.

Yesterday we had a good exposition of the desire of the majority of the committee in the presentation of this matter to you. I fail, however, to see how the exposition fitted with the resolution, because the resolution, if you read it carefully, simply groups the great number of commissions and boards under either seven or fifteen heads, or the bureau system. This system is really following out the scheme that has been adopted in Illinois. They reorganized their boards and commissions and made a list under nine heads of all their activities, and that, too, is in a way an attractive proposition to see if you can better things. But the true test is whether they work or not.

In the Illinois system everything was held up until the Governor's wishes were complied with. Nothing else could be done until that was accomplished. Immediately after the adoption of the bureau system in Illinois the expense increased a quarter of a million dollars or more. That is the simple thing to do if you only do it in an academic way without regard to results in the adaptability of a system to the work in hand. The recess committee had a junket to Illinois, — they say so in their report, House, No. 1185 of 1918, — and they saw the workings of this system in Illinois, a new system, only recently adopted, and they, being there only a very short time, reported and recommended to the Legislature of last winter that we adopt that system. Their report which was submitted to our committee says:

After a careful study of the administration of government in Massachusetts, by the various commissions, officials and departments doing the work of the State, and after visiting Illinois to study the results of the reorganization which has been effected in that State during the past year, the committee is convinced that the best type of organization for Massachusetts would be the bureau system.

The work of the Commonwealth is now performed by two hundred and sixteen more or less independent departments, boards and commissions. One hundred and ten have a single official in charge; three have a single official with an advisory council; and one hundred and three are boards or commissions. The committee is of opinion that the best form of organization for administrative work is the single executive official responsible to the Governor. Certain departments the work of which affects individual personal and property rights should also have a board or council attached.

[Report on State Finances and Budget, submitted to the General Court by the joint special committee on Finance and Budget Procedure, January, 1918, House, No. 1185, page 60.]

Now we had several bills before our committee on this report. There was one providing for the consolidation of the Trustees of Hospitals for Consumptives, the Bureau of Public Health and the Department of Health. We had before that committee the officers of these departments, and Dr. Hill, who appeared for the Board of Health, stated in his testimony given before us that it was not a desirable thing to combine three boards, and he went on to tell why, and others corroborated his statements. From all the evidence that we secured we could not see how we could fairly unite those boards, and we reported against it and the report was unanimously accepted.

We also had a bill to reorganize the State Board of Agriculture, establishing the Bureau of Conservation of Natural Resources, in which were to be consolidated the State Board of Agriculture, the Commissioner of Animal Industry, the State Forester, the State Forest Commission and the Board of Commissioners on Fisheries and Game. Those had been grouped under the head of the Bureau of Conservation of Natural Resources. We had two hearings, I believe, and many conferences, and we finally reported against it. We did reorganize the State Board of Agriculture and it was said by one of the members of the committee, who was a very able man in the Legislature, that that was an accomplishment of several years of labor and that they congratulated themselves that something progressive had been done. But while that was going on the scheme that was proposed to us was that we should group these together and take the chairman of each board as a sort of executive council, with a member with a suggested salary of $5,000 to have an oversight over them. That seemed to be a pure waste of money and the committee so reported, and the report was accepted by the House and the State Board of Agriculture only was reorganized. We also reorganized the Commission for the Blind. The bill before us was a very imposing bill, one with a commissioner and two assistants and offices in the State House and quite a grand affair. It was proposed so that they could have a better system of accounting and that there might be some head to the commission, but on investigation it was found that one person had caused a good deal of trouble and that it could be remedied easily by making the superintendent of the work of the commission a member of the commission with the powers of administration, so that the Supervisor of Administration might be able to find matters and place them in such shape that all matters

could be accounted for readily, and that was put through, a matter that cost the State almost nothing and yet cured the disease. We had one other reorganization, the reorganization of the Public Service Commission. From that Commission we dropped two members and changed the administration so that matters could not be held up in the absence of any of the members.

Now I have cited these cases, — and there are many others, — to show that there has been a progressive work in the Legislature to accomplish the object that this resolution is designed to accomplish. This resolution, as I say, is simply a grouping of the commissions. It does not make a responsible administration of affairs, such as the system in England, where the Prime Minister is responsible for all the acts of Parliament of his party, and if he fails he goes down and the other party comes in. We have no such system as that. We have a system of constitutional government, and what the people of Massachusetts desire is, I believe, a good government regardless of the political consequences to any ambitious politician.

The committee on State Administration and on the Executive, with a subcommittee of six, studied this matter, had several reports drawn, changed, and finally the one we have before us.

Mr. HORGAN of Boston: May I ask the gentleman if the committee on Commissions of the Legislature and he, in the investigations made of the present system, proceeded on the theory that the Legislature now enjoys the authority to combine commissions and to vest the necessary power and control over those commissions now sought in the executive of the Commonwealth?

Mr. WATERMAN: We did proceed on that idea. The reorganization of the commissions in Illinois was a legislative reorganization and I have not heard of any one disclaiming that it was a legislative function and could be borne out through the Legislature.

Now of course we have a good many bodies. In this report of the recess committee it says on page 60:

> The work of the Commonwealth is now performed by two hundred and sixteen more or less independent departments, boards and commissions. One hundred and ten have a single official in charge; three have a single official with an advisory council; and one hundred and three are boards or commissions. The committee is of opinion that the best form of organization for administrative work is the single executive official responsible to the Governor. Certain departments the work of which affects individual personal and property rights should also have a board or council attached.

These are natural results of the idea that, over night, almost, you can reorganize all the departments of the State and have efficiency follow.

Now the difference, as I believe, as shown in the chart there before you which somebody has been kind enough to present, — the "Chaos" and the "Order", — is that because they have not lines running from the circles in one group running to the "G", then all is chaos. But these boards and commissions have been formed by the Legislature back about 80 years ago, and it has been a progressive work of the Legislature trying to meet the demands of the citizens and expressed by petitioners who ask the Legislature from year to year to have some agency carry out certain reforms or certain duties. By that system you have got a direct application by the members of the

bodies intrusted with the work to carry out the work they are delegated to do by the Legislature. And this has gone on. But the cry now is, — and perhaps we all have shared in the criticism, — that now it is unwieldy, unscientific, unrelated and not efficient. Now that word "efficiency" has been worked almost to death. "Economy and efficiency." But, however, you have now these several boards and commissions. You have the committee of the Legislature, a permanent committee. You have also the Supervisor of Administration, now in power three years, whose duties are to examine all these boards and commissions and report to the Governor with such recommendations as he may deem wise; and in this method you can get at the very persons who are the agents of the matter in hand. Whereas if it is a bureau system with many different boards and agencies all linked up to one head with an expensive head, it soon will become, if it is not now beginning to be, that nothing can be done unless the head of the department says so, and you lose that direct application to the body who is the power and who is to work out the work of that body, the subordinate. So that the means of finding out and knowing and changing and improving would be arrived at easily, whereas in the other system it would be far different. I am told by good government authority that under the new charter of the city of Boston, in the bureau system of having so many departments in one bureau, it has caused a great trouble and inconvenience to the public, because nothing really can be done until a decision of the head has been reached.

Mr. BALCH of Boston: I should like to ask the gentleman if he is aware of the fact that since the city of Boston adopted the system of which he speaks, the course of the city's finances has been changed from the bankruptcy toward which it was headed to an increasing solvency and a pay-as-you-go policy successfully placed in operation by reason of the greater economy in administration.

Mr. WATERMAN: I was coming to that question directly. Now we have here adopted and proposed for the people's acceptance the executive budget system for our government. That is another check in regard to expenditure, and I believe it is a worthy move and will be part of the work of checking the labors of the commissions, and I will read to you some of the checks that the Governor already has upon the work of the State through its commissions.

The Governor of course has the veto power. We also have the Supervisor of Administration and the Auditor's Department, the Attorney-General, the General Court, the executive message, the Governor's Council, and publicity. Now there are eight ways whereby the work of the commissions and the executive department can be checked.

Mr. AVERY of Holyoke: I should like to ask the speaker upon his knowledge of the subject, his understanding of the proposed resolution, what would be the effect of it, we will say, on such a department as the State Corporation and Tax Department. Is it the understanding of the speaker that the control of this department, under the provisions of this resolution, would go back to the Governor?

Mr. WATERMAN: That is the idea, as I understand it.

Mr. AVERY: In other words, the control of the execution of the taxation laws of the Commonwealth would go back to the Governor

and the head appointed by him, and the present department would be clerical officials? Is that your understanding?

Mr. WATERMAN: That is the way I understand it, yes, sir.

Mr. DUTCH: As my ideas are absolutely contrary to that answer I will ask the gentleman to explain where in the resolution he finds justification for his answer.

Mr. WATERMAN [Reading from resolution]:

> Every executive and administrative office, board and commission now or hereafter established, excepting the Civil Service Commission and offices coming directly under the Governor and the Council, shall be placed in one of such departments.

Now I do not know what that language means, but I take it to mean with those two exceptions everything is under this bureau system.

Yesterday it was spoken of that we could do nothing with the Public Service Commission. That is a partially judicial commission. Here we have, as the gentleman from Holyoke has called attention, the Tax Commissioner's department, and there are others like that.

As I began to study and see if we were right in the supposition that we should advise this Convention on the question of a responsible government, — whether we were doing the right thing or not, — and as I look at the manual and find here 25 pages of commissions and boards and see what their duties are and what they have been doing, and so forth, it has caused me to hesitate as to the idea of ripping that practically all up and changing the operation of what they were doing, in much of which we want them to go right along as they are doing, which should not be interfered with by any other authority than the authority of the General Court, and I could not bring myself to advocate something that was only in the future and the hope of the future. And I believe that if one will study these different boards and commissions he will arrive at the conclusion that Massachusetts has a system which with the other checks will do more for the people of Massachusetts to produce sound and safe government for the benefit of all the people than any such system as we find suggested here. Of course I recognize that we have able men on these two committees, professional men, lawyers. I can only refer you to the honorable ex-Governor of Massachusetts (Mr. Walsh) and the ex-mayor of Boston, chairman of the Executive Committee (Mr. Quincy) whose interests are very large in this matter, together with 27 other men. So that when I take the position that I do, I do it with a good deal of hesitancy but as I am sworn to give my true judgment and opinion in such work as I may be able to do here, I have dissented from the report. I feel that with the experience of 80 years, with the study of the many, many men of the Legislatures gone by, and with their steady adherence to the application of the laws through commissions and bodies, which may be scrutinized readily and changed by the eight agencies that I have suggested, — that for the welfare and the good of all the people of Massachusetts, notwithstanding the political theories and platforms of candidates who may come and go, which are more or less irresponsible, and oftentimes are not meant to be anything but platforms and political invitations to the public, which if seen by the light of day and honest judgment have nothing of sound and solid merit, I warn you, beware of ripping up the result of 80 years of study.

Mr. Brown of Brockton: As I see this question, the broad division ought to be between those who are in favor of a strong centralization of power and those who are in favor of diffusing power. There are extremes in both cases. I always have supposed that one line of division in the political camps was along that very line. I always have supposed that democracy in the broadest sense of the term was best expressed through a diffusion of power. It was necessary that power should forever return to the center which gave it and that it should be so diffused that no one would obtain power enough to create oppression.

These departments that have grown in this State — and I have seen them grow, as a newspaper man — have come forward something like this: The Legislature has certain power delegated by the people. In the exercise of that power we will say, for instance, it proceeds to deal with the railroads. Soon it discovers that it is the same story over and over again each year, requiring careful consideration and investigation into the merits of the case. So the Legislature delegates its power to a commission with certain limits, not only to do certain duties imposed upon them, but they have the semi or quasi-judicial power of making rules which have all the effect of law within their administrative capacity. Proceeding along that theory and claiming, as some do, that there is inefficiency, it is not fair to assume that the one cause of inefficiency is in the independence of the commission. It easily can be proven that the inefficiency is elsewhere. But let us suppose just exactly what could take place under this proposed change. A department, for instance, is given the authority to adjudicate, to study and to determine what is for the common welfare, thus carrying out the full intent of the Legislature in giving that authority. Under such a system I assert that it is possible that a man may give a series of years, — it may be one term, it may be two terms, but he gives to his duty his whole time. If a man is doing his whole duty it might cause him to be awake nights and Sundays that he might carry out the mandate and not abuse the authority which the Legislature has given to him. Well, sir, what might happen under this proposed new system if some Governors might be elected? I judge the future only by the past. Why, sir, it is possible for a Governor to cite before him the head of the department; it is possible for the Governor to assume to know in three minutes more than the head of the department has learned in three years. The Governor would know only what he would want to know to throw down the head of the department. The head of the department, under this proposed new system, could be left almost utterly powerless to protect himself.

Do you say that is an overdrawn picture? I assure you it is not. You have only to look through this Commonwealth and find it has taken place. Why, we had a board established here a few years ago, — I forget just the time, I will name it, — the Board of Labor and Industries. It hardly had proceeded to get anywhere near acquainted with its duties before the whole board was incontinently tipped from top to bottom by a new Governor. The chairman of the commission is sitting in this Convention at this present time. The Governor had that power under the present system and he did not hesitate to exercise it for his own advancement, as he thought.

Again, in other departments it took the same Governor a whole year and the best part of another one before he could discover that a certain other department was not what in his opinion it ought to be. He discovered that it was not what it ought to be just about the time that the pressure for new appointments became so great that he had to discover some excuse to create vacancies. Why, men of this Convention, cannot you see what this new system would lead to? There it is on the wall; there is the display up there, and so far as some of us can discover, it creates more offices. Heads of departments will not be eliminated by reorganization. They will remain. The tendency has been to diffuse power, not to centralize it. The three-headed commission in the Board of Railroad Commissioners has been made a five-headed department. In the diffusion of that power among five members the judgment of the five men would be better than that of the three, it was said. There would be more justice for the people and for the corporations in a board of five than in a board of three.

Mr. DUTCH of Winchester: They went back to three members this last session.

Mr. BROWN: The member here calls to my attention the fact that they have just changed it back to three. But the change was influenced by other reasons than a desire for efficiency.

Under the proposed centralization, what an excellent opportunity there would be to control the election of a Governor, and having control of a Governor, control the whole State. I have not seen that any inefficiency comes from your present system. Inefficiency in your departments comes if the right kind of help cannot be secured on account of civil service. Civil service has its disadvantages. The State had a Board of Efficiency and Economy. It succeeded in inviting abuse on its head for doing nothing. There is now a Supervisor of Administration. It was generally supposed that the efficiency of the departments would be analyzed, and errors corrected. What did the first board accomplish but to be an assistant "bouncer" for the Governor who was then in office and wanted vacancies to furnish reasons why "bouncing" should proceed in regular and due order? That was the condition one year. The people forget readily, but that was the condition. Why give the opportunity and the temptation to some Governor to get control of the State because of the great power he could exercise? I believe, sir, that there is not a head of a department in this Commonwealth who does not feel under full obedience to the executive, who would not coöperate with the executive, who does not go to the executive with perplexing problems now as they have been going in the past and asked the Governor to help them out. I know of at least one head of a department who has gone to a Governor to help him out, and he got "helped out" in a way that he did not ask for a little later. Seriously I say the Governor has got all the power that he ought to have. It should take all of the time of a Governor now to attend to his business. You have said that he needs two years in order to free him from the restraints of listening to the people.

Mr. RICHARDSON of Newton: The members behind you cannot hear what you are saying.

Mr. BROWN: I am sorry; the gentleman calls my attention to the

fact that the people behind me do not hear. I am sorry for that, because I was under the impression that those behind me did hear. But I have practically finished what I want to say and do not want to be tempted to say much more. I reassert that centralization of authority is unwise.

A member suggests to me that I am not attacking the report of the committee. I thought that I was. I thought that the report of the committee broadly was an attempt to create some new heads, as shown by that proposed "Order" [referring to the chart on the wall], under whom all the other commissions should be subdivided. I have been undertaking to say that in my opinion such a departure would give us no greater efficiency than we have at the present time. I have said that in my opinion these commissions that have been created have been created by the Legislature; they have been given a definite function to perform. It is their duty to inform themselves to the very last degree upon that matter. If they do as they ought to do, there is no man who could come into the office of Governor of this Commonwealth and in a few minutes or a few hours or a few days obtain more knowledge of the duties of that department than the head of the department has obtained by his years of experience. If any such Governors were common, then it would be a duty to abrogate every department in this Commonwealth and put upon the Governor the sole duty of doing all the work under some subordinates whom he will find at work when he comes into the office.

Now, I have finished. If I have not attacked the report of the committee I am certainly in this position: I am against it and I am going to vote against it.

Mr. Underhill of Somerville: I wish to offer an amendment in the first paragraph striking out, in lines 5, 6 and 7, the words "The appointment of executive and administrative officers shall be classed as an executive function."; and striking out paragraph 3, as follows:

3. Heads of such executive departments shall upon request made to the Governor by either branch of the General Court attend such branch in person and furnish information on departmental matters as requested, unless the Governor shall state in writing that he deems it incompatible with the public interest that such information be given.

Although there may be a question as to whether my first amendment, striking out "the appointment of executive or administrative officers shall be classed as an executive function", is not already in the Constitution, I, for one, do not care to have that emphasized by a repetition or reiteration. As far as the second amendment is concerned, striking out section 3, the Convention has shown itself on other matters unalterably opposed to having the Governor or the heads of departments come before the Legislature and try to explain their purpose. But, sir, the rest of the resolution is a step in the right direction. It has become necessary to incorporate in our Constitution some such proposition and give such powers as are given herein to the executive department, the Governor and the Council. I have been very jealous, as all the members know, of the rights of the General Court, — of the Legislature, — of the rights of the House and the rights of the Senate, and have been strongly opposed to giving the Governor extraordinary powers, unfair advantage over the representatives of the people. But, sir, the commission form of govern-

ment, although I do not criticize it and believe that we have done a great deal of good through that form of government in Massachusetts, has grown to such an extent that the various departments should be coördinated and commissions should be consolidated in some instances.

Now let us analyze the political situation of to-day for a moment, and apply it to this resolution. There are two candidates, one of whom in all probability will be elected Governor next fall. The Republican party has no contest for Governor, and Calvin Coolidge, a man who has served in both branches of the Legislature and who has the confidence of his colleagues and the people may, and I hope and trust will, be the next Governor of the Commonwealth. But, sir, should anything happen, through unforeseen circumstances, and the Democratic candidate who seems to be sure of the nomination, Mr. Gaston, should be elected and step in the Governor's office, he is a man of great ability, he is a good organizer, and under either administration no harm would be done but great good might come out of this proposition.

Mr. GEORGE of Haverhill: May I ask the gentleman to explain what would happen if that political wanderer by the name of Long who is wandering around the State at the present time making speeches were elected Governor?

Mr. UNDERHILL: The question is pertinent but I do not think it a probability with which we need to concern ourselves just at present.

Now, sir, there is too much duplication of effort. You may not be interested or concerned in the saving of the taxpayers' money, but there is too great duplication of effort. To-day, when we should be conserving all of our energies, physical and financial, when we should prevent the duplication of work efficiently done, —

Mr. CREAMER of Lynn: I should like to know what the delegate from Somerville would think in case the present Governor were continued in office and this power was entrusted to him.

Mr. UNDERHILL: I am not dealing with the present Governor, but dealing with a positive, sure situation regarding whom we are going to delegate this power to next year, and I have confidence that either of the gentlemen I have in mind would carry out the provisions in a way and manner which would reflect credit not only on himself but on the Commonwealth. As far as the duplication of effort is concerned, if we do not need these men in their several departments we need them elsewhere. They are all good men or they would not have been appointed in the first place to these departments, and none of them need have any fear, if he is performing his duty satisfactorily and is working for the interest of the Commonwealth and his department, that he will be legislated out of a job.

Mr. BROWN of Brockton: I should like to ask the gentleman from Somerville this question: Can he conceive the possibility of this first Governor, whoever he may be, not doing the job just as it ought to be done, and if so, where are we then? There is no provision for any one after the first.

Mr. UNDERHILL: That is a remote possibility which I fear to cover lest it stretch my imagination to the breaking point. The Legislature has the power under this resolution, if the gentleman will

read it, — and that is what makes it in part very acceptable to me. It says in the second section:

The Governor shall recommend to the General Court for the year nineteen hundred and nineteen, a plan for organizing such departments in accordance herewith:

and later on it says, in line 24,

with such powers as the General Court may provide.

And later on, in line 31,

provided, that if the General Court fails to pass such a law —

a provision that in case the General Court, because of the friendship of individual members with the heads or members of departments, may not be able to bring about a constructive proposition, this power is to be entrusted to the Governor and Council.

Mr. CREED of Boston: I should like to ask the gentleman if this resolution permits future Legislatures to create new commissions. If the gentleman answers that question in the affirmative I should like to ask him how there is any gain in economy and efficiency in allowing the Legislature to create new activities and sprinkle them among the seven to fifteen departments that will be created by this constitutional amendment.

Mr. UNDERHILL: If there is necessity for the establishment of another commission it is well provided for in this resolution, and if it is necessary I for one should not oppose it. But I do not believe with a comprehensive scheme established by an executive who has the confidence of the Legislature and of the people of the Commonwealth, that there will be need of the appointment of further commissions. With the few exceptions which I make to the resolution, I do not see how any member of the General Court of the last few years, knowing how much friendship enters into the consideration of abolition or consolidation of commissions, would not be glad to be relieved of the embarrassment which must come to him in the choice between friendship and efficiency. I have personal friends at the head of or in various departments. I am somewhat independent, perhaps more so than some others, but I hate to sacrifice my friends or to feel that I am sacrificing a faithful public official. If we have a comprehensive scheme such as this it will eliminate doubt, confusion and embarrassment and will prove in the future a great benefit to the Commonwealth. I trust the resolution may have another reading.

Mr. HORGAN of Boston: I was somewhat impressed with the arguments advanced yesterday afternoon by the gentleman in charge of this measure (Mr. Dutch) and the gentleman from Fitchburg in the second division (Mr. Walsh), but it seems to me that before we attempt to adopt this resolution *in toto* as it appears under its designated number of 407, special emphasis ought to be laid upon why it is necessary, as provided in the last sentence of section 2 of this resolution, to insert the following provision:

provided, that if the General Court fails to pass such a law at its first session after the adoption of this amendment an organization in conformity herewith shall be established by an order passed by the Governor and Council, which shall have the effect of law.

It seems to me, despite the tendency of certain delegates in this Convention to favor a general proposition of this character, as evidenced, if my memory serves me right, in another resolution, that it is an unwise step for the delegates to this Convention to recommend to the people of this Commonwealth the vesting in the Governor and Council by the enactment into the constitutional law, whether in the form of resolutions or orders, of that which, under our Constitution and under our republican form of government, is distinctively and exclusively the prerogative of the direct representatives of the people elected for that special purpose. I cannot conceive, especially as long as we have annual sessions, of any condition or contingency that may arise that will justify the vesting of this authority in the Governor and his Council.

Another thing that troubles me is this: The gentleman in charge of this measure, if my memory serves me aright, stated at least once in the Convention that he believed that our function was to enunciate broad general principles of constitutional law and that legislation was to be left to the proper body, namely, the General Court. If in his judgment that contention was then sound, — and assume that he claims that it is sound to-day, — I cannot understand why he combines a constitutional amendment with direct legislation taking from the province of the General Court what evidently is its function.

And further, I seek light upon another question. If, as I believe, the General Court is entitled now both to consolidate commissions and to vest authority over those commissions in the Governor of this Commonwealth, why is it necessary to write into the fundamental law authority and power which now is enjoyed by the General Court? If the General Court enjoys that power and denies a public appeal to consolidate departments and to vest power in the Governor, under the initiative and referendum, which I feel justified in assuming will be enacted into the Constitution, the power of public opinion may be directed against the General Court in such a manner that they will be compelled to pay attention to the appeal of the public that commissions be consolidated and that more power over those commissions may be vested in the Governor of the Commonwealth.

Personally, as I said at the beginning, I believe that many of these commissions may well be abolished. I believe that many of them ought properly to be consolidated. I agree that the Governor of the Commonwealth ought to possess more direct power and authority over these commissions than he now enjoys. But I say that it is within the power of the Legislature of Massachusetts now to do those things; that it is the enactment of remedial law that is needed, not the vesting of further authority in a body which already enjoys that necessary authority. I doubt if it is wise under those circumstances, if, as seems certain, that power now is vested in the General Court, to place in the Constitution authority which we agree is vested in them already. If this condition may not be remedied through the force of public opinion, through the activities of citizens who are interested in the efficiency of the departments of our Commonwealth, the power still rests in the hands of the people, — if not by enactments by the direct representatives of the people, then perhaps in justice it may be claimed that relief may be obtained through the initiative and referendum. And for those reasons, unless the gentle-

man in charge of this proposition is able to convince me that there is not sufficient constitutional power now vested in the General Court, I for one will not vote to submit this resolution. I certainly, under no circumstance will vote for a resolution which provides that the Governor and Council may enact laws, — a duty which clearly, in my judgment, is the sole prerogative of the General Court.

Mr. HART of Cambridge: A college professor comes into a Constitutional Convention under great disadvantages; first, because there are so few of him; and, second, because he is stigmatized as a theorist, a closet philosopher, a book reader. I have been overwhelmed and humiliated many times in the debates upon this floor to discover that I am outside certain charmed circles; for instance, I never have been a member of either House of the Legislature; never even have been a Governor. To be sure, I discovered that the ex-members of the Legislature appeared to be divided into two schools of thought, both of which are theorizers and book men upon the question of the character of the Massachusetts Legislature. Even ex-Governors do not always agree as to the virtues of the General Court.

It is therefore a peculiar pleasure to be able to come into this question as an expert. A question has been reached at last upon which I have a right to speak as one who has been intimately connected with the subject.

Some twenty years ago I spent several years as a member of the commission of the Massachusetts Nautical Training School, and I take this opportunity to express my gratitude to the Commonwealth for giving me an opportunity to be in at the beginning of the first attempts at naval preparation for civilians. That commission has done a splendid work in preparing young men, first, to serve the merchant marine of their country, and then in this crisis to serve in the navy of the United States. Men holding commissions and important commands were trained in that school. It was a good thing for the Commonwealth and I flatter myself that the commission did a good job.

But I carried away and ever since have retained certain impressions with regard to the commission system of the Commonwealth of Massachusetts. That school had no connection with the regular State military training. We undertook naval training for civilians in our school; there was also a State militia system, but no coördination between the two. It was a school in which many branches were pursued besides the mere art of navigation; yet it was in no kind of relation with the other Commonwealth schools nor with the Board of Education which had those schools in charge. I felt then, I have felt since, that better work could have been done had the organization of the commissions of the Commonwealth been such as to bring the work of the training school for seamen and for naval officers into more close relation with other kindred schools of the government.

Mr. WATERMAN of Williamstown: May I ask the gentleman if he recommended or tried to bring about a consolidation to improve his department?

Mr. HART: I was too inconspicuous a member of the total force, too little versed in the arts of legislation, though I did my best to secure some improvement in the constitution of that commission. I will assure the gentleman that I should have been then, as I am now,

entirely willing to be a partner to a scheme of consolidation which would have improved that department in common with other departments.

I agree heartily with the gentleman who has just asked me a question (Mr. Waterman) that our sole purpose here is to provide good government. The word "efficiency" troubles him; we will say, therefore, a good government, and a good government is the government that governs. There is no other test. We have no right to be here, the individual has no right to a Legislature or to a Governor, to any section of the State government, unless it is so organized that it performs the great functions of governing.

Three generations ago our ancestors drew up a scheme of government which they called a Constitution. We have been assured over and over again that that Constitution made one hundred and twenty-eight years ago was good enough for them, and therefore good enough for us. Well, that was not the way our ancestors looked at it. The Constitution of 1780 was only four years this side of the great change in American National government. Why, if the Massachusetts statesmen had gone as far back for an inspiration as we go to-day, they would have been finding a control for the Convention of 1780 in the New England Confederation which was in force one hundred and twenty-eight years earlier, namely, in 1682. They were iconoclasts. They were new men. They were trying to solve current problems in a novel way. And I assure you that a later generation, twenty-five or fifty years hence, is not likely to be bound by the action of this Convention or the community of to-day, no matter how wise and how patient and skilful we may be. The next generation will ask and make a Constitution that corresponds with its own needs.

One of the chief difficulties with the Constitution of 1780 is that it was made for a farming, shipping and trading community, with almost no manufactures, with only one bank, with a few insurance companies. There had been almost no commercial corporations in Massachusetts previous to the Constitution of 1780. The Constitution did not look forward to a system of trade, and finance, and industry, and commerce, in which there would be such a great variety of business. Nor did the community then look forward to the different ways in which a body of people were to hold themselves responsible for the community at large. Why, in 1780 the insane were treated like mad cattle. Prisoners were treated like slaves, literally like slaves. In Connecticut prisoners of the State were actually condemned to live in a hole in the ground. That was their prison. But in the course of time we have developed a great variety of functions of government, and we have taken care of them in this Commonwealth by the growth of commissions.

We have heard a great deal in our debates, much that is informing, about the separation of powers, the division into three coördinate departments, the doctrine of checks and balances. Please observe that that principal division has been thrown out of balance by the enormous increase of special functions of government, things in which you must have permanent expert aid. For instance, you cannot have a Railroad Commission without appointing some men who understand railroads. You must choose men who have had some experience

when they begin their work. That has confused our government. Instead of the division of powers which our forefathers intended and which we supposed we had, we are divided, not into three coördinate powers, but into something like a hundred. That is to say, our various commissions are virtually little Legislatures, in some cases little courts. Instead of a government of three departments we have a government of three large planets plus a lot of commission-asteroids that do not seem to adhere to the solar system and that are not in relation directly to the Legislature. The Legislature creates them and defines their power, but cannot get back at them any more than can the Governor, after they are once appointed. I had occasion in my own experience as a commissioner of this Commonwealth to learn how small was the actual power of the Governor to correct difficulties that arose in a State commission.

There are three reasons to which we may appeal in behalf of the general principle of the measure that is before us. And there is no use discussing and trying to settle things that are not before us in this measure. A very distinguished member of this Convention yesterday in a speech upon this resolution laid down what he would like for an organization of the departments of the Commonwealth of Massachusetts. It was in essence something resembling the organization of the United States. But there is not anything of that kind in the resolution before us. I am not aware that any one who supports that measure, except the gentleman just quoted, would support in this Convention an out and out proposition for a Cabinet government. At least that attempt has been made. It has been discussed to some degree in the Convention and has gone by. The principal things that are not in this resolution are, then, as follows: First, the Cabinet system is not there. Second, the authority of the Legislature to create and define commissions is not taken away, with an exception that I will point out in a moment.

The gentleman in the first division who last spoke was troubled by the fact that under the resolution the Governor and Council might take action of a particular kind should the Legislature fail so to do. He considered that a part of the division of powers. You observe, of course, that the power, if it is exercised, will be conferred for this one occasion specifically by the amendment which is to be submitted and will have no force unless it is approved by the people; that is to say, so far as the constitutional objection exists, it is swept away by the fact that the amendment will cure any constitutional difficulty for the one occasion of revising the system.

It has been asked also what is the need of this measure, since the Legislature already has power to create commissions and departments. The answer is very simple. It has used that power by creating about a hundred commissions, and it is here proposed that the number of commissions shall not be less than seven nor more than, — my eye does not fall upon the exact number, — not more than fifteen. That is to say, the Legislature is limited by this constitutional amendment. That is the object of the amendment.

I believe heartily in giving a large degree of judgment and discretion to the members of the government in every direction. Our General Court has very large powers, but it likes the present system because it has created it and maintains it; therefore it is idle to

suppose that the Massachusetts General Court, upon its own motion, will give us the great change, the concentration of authority, which we so much need. We have heard objections here to the consolidation, the concentration of power. I care nothing whatever about the concentration of power in the hands of the Legislature or the courts or the executive *per se;* what I want is such concentration of power that we may get what we want, that the necessities of the community shall be provided for. What is the need of an elaborate budget system, to which this Convention appears to have given its adhesion? Because we are perfectly certain that the Legislature will not enact the kind of budget system which the majority of the members of this Convention think ought to be adopted and which therefore we are likely to submit for the action of the voters.

I have said that there are three reasons why some such plan as is here proposed ought to be adopted. Before stating them let me observe that this is the last chance to secure any kind of reform of our executive department from this Convention. The budget system, should it finally go through and be adopted, is a notable reform, but it is only part of the reform; and if it is right for us to suggest a budget system which shall coerce, so to speak, the Legislature in that particular direction, it is equally right, as is pointed out by ethics and constitutional law, for us to compel the Legislature also to give its assent to this amendment, either by preparing an act or later by altering such action as may be taken by the Governor and Council upon this subject.

A delegate addressed the chair.

Mr. HART: The gentleman I know is waiting eagerly to hear the three reasons why this proposition ought to go through, and I will state them with the utmost clearness and briefness in order to satisfy his laudable curiosity. In the first place we have the experience of ordinary life. We have a great governmental machine. We have a vast number of things to do. We have an army of State employees. We have an immense sum of money which is being applied to State purposes. In organizing a government to use that money for the benefit of the public we may be guided to some degree by the experience of private organizations of a similar kind. I have been accused of saying upon this floor that the object of government was to spend money; I will amend that by saying that its object is to *expend* money. That is why we come together in society, in order to get things done that cannot be done by individuals and we therefore combine, combine our taxes and combine our power. Is there a railroad that could possibly be organized upon the method which has been adopted by the Legislature of Massachusetts? Imagine a great railroad subdivided into a hundred semi-independent departments, each of which had a power of decision in certain local fields of that railroad! What would become of it? I will tell you. It would be taken over by the government as other railroads appear to have been taken, for time and eternity. We all know that you must secure a great concentration of authority in efficient railroading; and every railroad is subdivided into a group of departments, those are again subdivided, exactly the proposition that is here made for the Commonwealth of Massachusetts.

Mr. ADAMS of Quincy: Might I ask the gentleman who has been criticizing the proposition before the Convention if he would define a little more fully wherein this proposition lacks the energy which he suggests that the Cabinet system has, — this proposed system.

Mr. HART: I would very quickly answer the question, except that it is one not before the Convention, it is one upon which we can come to no decision, and therefore the gentleman will excuse me if I take the remaining four or five minutes for a more direct approach to the resolution as it is now pending.

In the second place, the experience of Massachusetts is that the commission system is not a good system. I challenge anyone sitting here who has served in either House of the Legislature, unless he has consulted some document within twelve hours, to say how many commissions there are in Massachusetts. Why, there are gentlemen here who know nine out of the ten Commandments, and who know within one who is going to be elected Governor of the Commonwealth at the next election, who could not sit down and write out a list of half the names of the commissions, — I doubt if most of us could put down more than a quarter of them. We know the Governor. We know the great departments of government. We do not know our commissions. We do not know how many there are. Yesterday I had a calculation made from the manual, which leads me to believe that Massachusetts at the beginning of the present year possessed 22 single-headed commissions; 72 commissions with more than one member; 7 boards of special trustees, making 99 commissions in all, and that the number of members of those commissions was about 390, together with 32 executives and clerks not technically members of the board, a total number of about 430 persons who are members of the State executive commissions. I observe that in the report from which the gentleman quoted this morning (No. 1185) the number is stated at 216 more or less independent departments, boards and commissions. I know not how that calculation is arrived at. I am perfectly satisfied with the number of 99, because that is about 84 too many.

I appeal to the experience of men who have done business with the commissions, whether there is not an admirable body of men in those commissions. Those with whom I have come into contact are men who are sincerely desirous to perform their functions. Yet you know how much pulling and hauling there is among them. It has been suggested here that any such action as is here proposed by the Legislature would result in the absorption of the commissions. Well, it is true that of the ninety-nine jobs that I have enumerated ninety may be actually good jobs; nevertheless a change must be made. A very considerable number of those engaged in them undoubtedly will be retained under any system. We have a large number of commissioners; some of the men who have served for many years could not be dispensed with. This is not a proposition to disrupt the civil service, it is not an attempt to sweep away and drive out of the public service men who have done their duty well; it is a proposition to reorganize those lines of service, and doubtless a very considerable number of the present commissioners and of their subordinates will find place under the new system.

Third and finally, there is an argument which in many ways surpasses in weight anything that has been said upon this floor, —

that is, the argument of the experience of the United States of America. We all know that that government was founded upon a different system, a Cabinet system, in which the President appointed and had the power of removal of the heads of the great departments. He has that power now. In two instances members of the Cabinet have been removed outright. In other instances they have been forced to resign or did resign because they thought the President did not sustain them, as was the case with Mr. Garrison, the then Secretary of War, two years and a half ago. That is, we have a thoroughly articulated system on the general plan shown in the chart here on the left. What is the result? Why, that the Federal government, with many faults and with much extravagance, is a government that arrives at its ends far better than the Commonwealth of Massachusetts. When the war broke out it was discovered that even that organization was permeated by a system of permanent bureaus dependent upon acts of Congress, in which we find most of the faults of our commission system here in Massachusetts.

By the recent Overman Bill the President of the United States was authorized to redistribute those bureaus as he chose. He has done so on a great scale, — for what purpose? For the purpose of saving the Nation. We are not only citizens of Massachusetts, we are citizens of the United States. Shall we have divided councils? We accept the method of the United States of America because we are satisfied that it is the only way by which the strength of the community at large of the United States of America can be assembled for its great National purpose, and yet we are perfectly willing to go on in Massachusetts with a system which on the face of it and in our own experience and in comparison with the work of private institutions is imperfect.

I am a citizen of Massachusetts. I have lived here forty-two years. I expect to lay my bones here. I love this Commonwealth, I want to see it great and prosperous, but I recognize, as we all must recognize, that there is now going on a tremendous pull between the States in their orbits and the Federal government in its orbit. If the community of Massachusetts does not organize itself so as to perform its functions to the best advantage, some of those functions will slide away and be absorbed by the National government. If we wish to resist that almost irresistible trend toward a centralization which means an abstraction from the power which we have been accustomed to exert through our form of government in the State, we must furnish a State government that will do our job, because otherwise there is a power which will reach down and over and beyond us, us and the other States.

I plead for the acceptance of the resolution before us, with such modifications as may be found necessary in debate, because I believe it is a step toward keeping Massachusetts in that orbit of the States of the Union, the separate, the proud and the sovereign States of the United States of America. [Applause.]

Mr. Newton of Everett moved that the resolution be amended by striking out in lines 31 to 36, inclusive, the following:

provided, that if the General Court fails to pass such a law at its first session after the adoption of this amendment an organization in conformity herewith shall be established by an order passed by the Governor and Council, which shall have the effect of law.

Mr. Newton: This resolution has three purposes. One is to turn the government of Massachusetts into a party government, so that the Governor who comes into office will have a right to remove all the heads of the different commissions that they propose to establish by the resolution and put partizans and party men into office, on the theory that his policies and his ideas will be better put into effect if he has that privilege. The second section proposes to give to the Council legislative power, which never yet has been contemplated. It proposes to say that if the Legislature in its wisdom rejects any proposal of the Governor for consolidation, no matter what the reasons may be, they can be set aside by the Council enacting and putting into the law that which the Governor wants. The third section is one that we already have passed upon. It is perfectly familiar in its idea but different in its form. It is simply another exhibition of the fine Italian hand of the gentleman from Boston in this division (Mr. Quincy), the chairman of one of the committees that have reported this measure. It proposes that the heads of departments shall come before the Legislature, and proposes that the Governor may refuse to give any information to the Legislature if in his opinion that information ought not to be given, bringing in the idea of the National government, where the President has that power, because in dealing with foreign nations it is assumed that some matters ought not to be divulged to the legislative department of the government.

Mr. Quincy of Boston: Will the gentleman from Everett (Mr. Newton) allow me to state that it is entirely immaterial to me whether that last section stays in or not. It is not the same proposition which was voted on before, but is limited in its nature, and perhaps only stating what is now the law, — that is, putting into the Constitution the right of the Legislature, which it probably now has, to summon in a head of a department. It is absolutely immaterial to me, and I think that will be the position of the gentleman in charge of the measure, whether this last section stays in or goes out. Now, will the gentleman from Everett (Mr. Newton), who I know wants to be fair and accurate and not to misinterpret the effect of the amendment under consideration, look at the amendment again and point out any provision in it which deprives the General Court of its full discretion to organize these departments as it sees fit? The gentleman suggested that if the Legislature did not follow the form of organization recommended by the Governor the Governor could then set aside the action of the Legislature and get the Council to pass it in the form which he wanted. Surely the gentleman will recognize on rereading the amendment that it contains no provision whatever of that character, that the Legislature is absolutely free to make any kind of organization, within the limits of this amendment, which it sees fit, whether or not that corresponds in the least to the recommendations of the Governor. The amendment merely holds a club, if you like, over the head of the Legislature to use those full powers. If the Legislature declines to carry out the constitutional mandate, then, and not until then, does the power of the Governor and Council apply.

Mr. Newton: I promised the gentleman from Lynn that I would be brief, but as my friend has taken most of my time I shall have to

ask the indulgence of the Convention a few moments. If the gentleman will read the resolution beginning with line 28 on page 3, and language means anything, then I stand by the statement that I made. He says here: "The General Court shall thereupon provide by law for organization of the executive departments in any manner consistent with the provisions hereof", second, "provided, that if the General Court fails to pass such a law at its first session after the adoption of this amendment an organization in conformity herewith shall be established by an order passed by the Governor and Council, which shall have the effect of law". Now, if that means anything it means what I said, that they propose in this resolution to say that if the Legislature in its wisdom sees fit to refuse to do what the Governor suggests it should do, then the Governor and Council can do it in spite of the Legislature.

They do not even have to do that. They simply have to say that they think it does not conform to what the Legislature proposes.

I yield, certainly (Mr. Balch of Boston having addressed the chair). If any light can be obtained on this proposition I should like to have it.

Mr. Balch: I will ask the gentleman why he did not read the next sentence following out the point at which he stopped, and which reads: "The organization of departments hereunder may from time to time be changed by law."

Mr. Newton: That is the very thing. "May be changed by law". What law? The law of the Governor and Council, not the law of the Legislature, but the law, because it says here the order of the Governor and Council shall have the full effect of law.

Mr. Balch: I feel sure I speak for the whole committee in saying that what the gentleman wishes is exactly what the committee intended on this point. He has defined an ambiguity in language which we did not consider ambiguous. If he will offer an amendment removing that ambiguity and making it plain that the effect is to be that which he wishes, I feel certain the committee will accept it gladly.

Mr. Newton: I already have offered an amendment, and was discussing that amendment, which proposes to take away, — or never to give to the Governor and Council, — the right of legislation which I believe belongs and always has belonged to the General Court. I did not desire to mislead anyone, especially my friend from Boston in the third division, but I understand him to say now that he is willing that section 3 no longer should be put in the resolution, and if he is also willing that this amendment which I have suggested should be adopted then the question is: Where is there any need of any constitutional amendment at all?

Mr. Mansfield of Boston: The gentleman enunciated what he considers three objections to this pending resolution, and he has devoted most of his argument to urging one particular objection, to wit, that if the Legislature does not act to enforce the provisions of the resolution he objects to giving the Governor and Council power to compel action and to compel its enforcement. I ask the gentleman in all fairness whether he urges that objection as a delegate who favors the resolution and the provisions in it, who would like to see it made a constitutional enactment, with the obligation expressed to

the Legislature to put it into force, or whether he expresses his advocacy of this amendment in the hope that the entire resolution may be defeated.

Mr. NEWTON: If I get the gist of the gentleman's question I think I can answer it frankly. I see nothing in this resolution that proposes any real constitutional amendment, for which there is any demand or any reason, except the proposition to give the Governor and the Council legislative power. I said that the first section of this measure, as I understood it, and as I have heard it discussed here and heard the statement made yesterday afternoon by its advocates, was that it proposed to make Massachusetts a party government, — proposed to say that we should have the style of government that we now recognize in National affairs, where it has become wholly a question of the party, where the President selects as his Cabinet men who belong to his party, and where we recognize that party government is a fact. Now, we never have believed in party government in Massachusetts. In the long time that I served in the Legislature it was rarely a party question ever came before us. We dealt with all questions, — attempted to deal with them, — in a broad and unpartizan spirit, and the people of this Commonwealth, as I understand, have indorsed that idea and have not in any way thought or believed or understood that our government was to be based on party lines at all. To be sure, we elect men on party questions, but when it comes to the acts of the Governor and the Legislature party questions are laid aside almost wholly, if not totally. Now, if we want that kind of a government, if we want a party government in Massachusetts, if we want to say that if a man happens to be elected Governor then he shall select his own partizans to carry out his particular ideals, that is one thing. If that is what the committee want then I understand their resolution, but for one I am not in favor of that idea. I prefer the present method, that we have used with success for, as far as I know, at least the last fifty years. As to the other question of the gentleman, I say this to him: That I am not in favor of this resolution because I believe that where it does require any constitutional amendment it is a wrong proposal and we ought not to so amend the Constitution, especially when it adds no additional power to the Legislature.

Mr. WALKER of Brookline: I trust that in the few words that I have to say on this subject I shall not be looked upon either as a liberal or as a conservative. There have been questions here that seem to have divided up along those lines, but this is purely a question of State administration, as the budget question was purely a question of State finance. What I am about to say I am about to say in opposition to the speech that has just been made by one who is considered a liberal in the Constitutional Convention. So let us get together, so to speak, as a committee without prejudice and look this matter squarely in the face.

I need not again remind you that Massachusetts is burdened with an excessive number of commissions, departments, boards, officers. That must be admitted. One of the commonest things throughout the Commonwealth, as we know, is criticism of the Commonwealth because of the many subdivisions of the administrative work of the Commonwealth. As I said in regard to the budget, I believe the

State expects this Convention to do something along the line of an executive budget. Am I wrong in believing that the State really wants this Convention to do something sound along the line of a better administrative organization of the Commonwealth? I do not think so. I do not believe that I am addressing myself to hostile ears when I say that. I think if we can find some better system of organization of the administrative work of the State, we all shall be glad to do so.

Now let me say a word in regard to this particular measure. In my judgment it is an excellent measure. It does not attempt to do the impossible, and still it goes far enough to accomplish the object which we all really desire. As a matter of fact, the administrative work of this Commonwealth or of any State in the United States can be divided logically into about six or eight departments. That is all that is necessary for the logical division of the administrative work of any State. The New York State Convention recently attempted to do the job of dividing the administrative work of New York. It provided something like a dozen, not many more, perhaps fifteen, I have forgotten just the number, but about a dozen administrative departments, and all the work of New York could be put, in the opinion of that Convention, into those few departments. We have a hundred, perhaps two hundred. Now, you know we do not want to leave it that way, and so it seems to me the committee has been very wise in the recommendation which it makes.

What has the committee said? It has said to the General Court: "We will give you latitude between seven and fifteen. Seven probably is enough, but you can double that number, if it is necessary, if it seems to you wise to do so. This Commonwealth shall not, however, subdivide its administrative work into more than fifteen departments." That is the object, the main object, of this proposition, and it accomplishes all that we seek to accomplish, does it not? In other words, it compels a reorganization of the administrative work of the Commonwealth into a reasonable number of departments. Then it leaves the Legislature absolutely free. Whenever there is a piece of administrative or executive work to be done it says to the Legislature, not "You cannot have that work done", it says to the Legislature: "You may have it done, but we wish the Legislature to consider where it belongs, in which of these departments, and to put that work into an already existing department instead of creating a new separate department to do it. That is what the Commonwealth has been doing for fifty years. When there was a little piece of work to be done we have set up a new commission or department to do it, and it has been done, and often done extremely well, but every time we do that we create another drain upon the treasury of the Commonwealth for offices, for overhead expense, for all kinds of expense. Each little commission or board is interested, as it ought to be, in its own work. It wants to develop its own work regardless of any other board or commission, and therefore it gets all the money it can for its own work. That is one reason why the expenses of this Commonwealth are climbing by leaps and bounds, because every little commission is coming before the Legislature and saying: "We are doing a good work. Give us more money." Now, for the proper administration of the business of the Commonwealth and for the

economy of the Commonwealth let us do this reasonable thing, simply cut down the number of administrative departments in the Commonwealth.

That is reasonable. Now, how can that be done? This resolution provides a way. It says to the Legislature: "Go ahead. Divide this work in any way you see fit into not more than fifteen departments." It requires the Governor in the first place to lay the work out for the Legislature, merely as a recommendation. Then the Legislature, with the Governor's opinion before it, may do absolutely as it sees fit. That surely is no restriction on the Legislature. Then the Legislature goes ahead and tries to do it. But I tell you that the Legislature cannot do it. It will try, but it cannot do it. Why? Because hundreds and hundreds of officers, boards, commissions, are involved, and they desire to hold on to their jobs if they can, — that is human nature, — and so they bring confusion into every Legislature that attempts anything like a reorganization. Why, they cannot actually make the obvious consolidations that ought to be made, because of the opposition that arises, because of the, — I do not want to use it in an invidious sense, — because of the lobby that immediately arises to prevent it and to bring confusion into the Legislature.

Now, the Legislature cannot do it. Two hundred and forty men cannot do it. I do not believe they will do it. I hope they will do it. Perhaps with the recommendation of the Governor before them they may do it. But if they cannot do it, then what next? Then the Governor and Council shall do it. The head of the executive department is to lay out the executive and administrative work of the Commonwealth itself and put it in force. Now, that is the way we will get it done, and that is the only way that Massachusetts will ever get it.

Now, what happens? The Governor has done the job with the Council, but the hands of the Legislature are not tied. The job having once been done, the Legislature may then change it in any way it sees fit. If the Governor and the Council have made mistakes the General Court may change it the next year or from year to year as experience shows that this department ought to do one job or another department ought to do another job. If it will be done better by establishing a bureau under a department to do the job, the General Court may establish it. It leaves the Legislature absolutely free. But for all time it says to the Legislature: "You shall not pursue the policy that Massachusetts has pursued for so long, of creating a commission or a department or a board for every little bit of administrative work to be done". That causes confusion. Of course it causes overlapping. Of course it causes expense.

Does not this Convention want to do that? Do not the people of Massachusetts want the Convention to do that? I believe they do, and I have confidence, absolute confidence, that this Convention will do it.

There is only one criticism of this resolution that I wish to call to the attention of this Convention, — only one. Of course no one cares anything about the third section, strike it out if you want to, it is unimportant; but there is only one criticism of it and that is found in lines 27 and 28, and I offer an amendment in the hands of the Clerk which I wish at this point to have read.

Mr. Walker moved that the resolution be amended by striking out, in lines 27 and 28, the words: "and shall be removable in such manner as may be provided by law", and inserting in place thereof the words "for such term as may be provided by law but shall be removable at any time by the Governor," so that the sentence should read:

Such head, unless his election is provided for by the Constitution, shall be appointed by the Governor with the consent of the Council for such term as may be provided by law but shall be removable at any time by the Governor.

Mr. Walker: My earnest desire in this matter is to back up the report of the committee. I do not wish to do anything to confuse the issue. If the Convention thinks it is unwise to make the change that I suggest then let us pass the matter as reported by the committee, possibly with the third section left out. Let us do just as the committee asks us. That is all right, let us do that. In my opinion, however, the matter of removal of heads of departments should not be left with the Legislature. It is an executive function and should be performed by the Governor. Under the amendment as is provided here the Legislature might say that the term of office should be for five years or ten years, for good behavior, for life, for anything they see fit. They might fix these departments so that their heads could not be removed. I do not think the Legislature would do it. But the Legislature might say that no man should be removed except on what amounts to impeachment, that is, if it be proved that he is dishonest or does something positively wrong. The tendency in the Legislature perhaps will be to give these officers too secure a tenure of office. Moreover, I do not believe that the Legislature should say to the executive department under what conditions administrative and executive officers should be removed. That is an executive function.

I believe the time has come to give up the system of a dozen or a hundred little Governors that we now have got. We have got a lot of little Governors, each with his own work to perform, responsible to no one. The time really has come to give up the system, and the only way to give the Governor real responsibility is to give him power of removal. Every officer in this Commonwealth will take notice that the Governor has power to remove him when he sees fit. Then the Governor may review the work that is being done by these commissions and may make the suggestion that this or the other thing be done. I believe Governors will be reasonable. I do not believe they are going to threaten, but with that power right in their hands they will be real Governors and the administrative and executive work will be under the control and command of the Governor, where it belongs, for he is the conspicuous man in the Commonwealth, he can be held to a real responsibility. If the Convention is not ready to go so far as that, then let it go so far as is suggested by the gentleman from Newton (Mr. Richardson). He suggests that removal shall be made by the Governor "with the consent of the Council." I do not believe that those words "with the consent of the Council" should be added, but if the Convention is of that opinion then do that, and if it is not willing to go any further than the committee has gone, simply leave it to the Legislature to determine this question. I am ready to support the resolution even then.

I do earnestly hope that this measure will go through in one form

or another, and I do personally hope that the Governor will be made the real administrative head of this Commonwealth, so that he may be held responsible by the people. If the Governor does wrong things, if he upsets the work of these commissions, if he throws sand in the gears, what of it? He has been elected by the people, has he not? I tell you the people have a right to elect a man as Governor who shall have some power to run the administrative part of the government. The Governor is responsible to the people, and if he does that thing every politician of the other party will rise and criticize him before the people, and the people may hold him responsible and put a man in who will administer the affairs of the Commonwealth wisely and well. Thus we get then a real responsibility.

So, in closing let me again say: Back up the report of your committee and pass the measure as it has been submitted to us. If you see fit to go a step farther, give the Governor the right of removal with the consent of the Council. If you are ready to do that, which in my opinion ought to be done, accept my amendment and give the Governor absolute power of removal. Still, you understand, he will be limited in his appointments. He cannot put a new man in, he cannot put an obviously unfit man in, he cannot put a mere politician in, because the Council is there to check any appointment which he makes. I do not criticize that, I believe that it is wise to have every appointment that is made by the Governor reviewed by the Council, — that is wise, — but when he is once in let the Governor hold him up to his work, let the Governor hold every commission up to its work through the power of removal. Let the Governor be a real Governor.

Mr. GEORGE of Haverhill: I want first to call attention to how reactionary a man may be without knowing it. My friend from Brookline (Mr. Walker) has just told you about making a real Governor. I remember in 1894, after we had much scandal in our boards of aldermen in dealing with the question of granting liquor licenses, there was a movement started to remedy the evil by creating local license commissions. This organization was headed by the dean of the Bristol bar, the Honorable Andrew J. Jennings, and they submitted a bill to take the licensing of liquor saloons away from the boards of aldermen and vesting it in a license board. These commissioners were appointed by the mayor for terms of two, four and six years. This real mayor had the right to make the appointment and to remove them at will. Many of us voted for that proposition with some misgiving. Within a year after the first election, these real mayors removed all their political opponents from the license boards and replaced them with their own political friends and thereby created such a local machine that the same men asked the following Legislature to pass a law to prevent the summary removal of a license commissioner by giving the Superior Court the right of review as to the cause of such removals, and I want to tell you, as a result it is just as easy to remove a license commissioner as it is to remove a Judge of the Supreme Judicial Court. Now, my friend from Brookline (Mr. Walker) after twenty-four years wants to inject that discarded method of making real mayors into our Constitution so that we can have real Governors.

We listened yesterday, as we have since, to two very illuminating addresses. The gentleman from Winchester (Mr. Dutch) has given

this matter a great deal of study, and he quoted a great many statistics to show us how the expenses of this Commonwealth have increased, and the necessity of reducing the number of State commissions and to extend the powers of the Governor to bring about a more efficient administration. I apprehend that his analysis and deductions find lodgment in the minds of many members of this Convention. It goes without saying that there has been a tremendous increased cost in about every human endeavor. It costs more to run a church now than it did thirty years ago, if the church is that old. It costs more to run our schools, our hospitals, our colleges, and every other public or private institution than it did thirty years ago, so the State is not alone in the matter of increasing the cost of government. My friend from Cambridge (Mr. Hart) has spoken along similar lines with a feeling that he was not taken, perhaps, as seriously as he had hoped when he took a seat in this Convention. There may be a reason for this. I understand my friend is a member of the faculty of that venerable institution across the river, and I find that thirty years ago they employed 180 instructors, and this year they have 892, and if you will compare this increase with the increased number of State "jobs" that the gentleman from Cambridge (Mr. Hart) has spoken about you will find that Harvard College, according to her size, has outstripped the Commonwealth of Massachusetts in creating "jobs" for the elect. [Laughter and applause.] Now, why do not these professors set an example at home? Then they could come in here and say: "See what we have done out at Harvard", "See what we have done up at Williamstown and Amherst."

Mr. HART of Cambridge: I will ask the gentleman whether he is aware that the faculty of Harvard College is carefully classified and subdivided into a small number of divisions and departments, without which it could not carry on its work.

Mr. GEORGE: I understand that Harvard has followed in the footsteps of the Commonwealth, as he says, by creating all these commissions and subcommissions to carry on the business of Harvard College. Now, I am not saying this for the purpose of criticizing Harvard. I see that Williamstown thirty years ago employed 21 instructors, last year it had 54; Amherst employed 29 thirty years ago; it now has 49; Yale employed 123 thirty years ago; it now has 478, but Harvard really beats them all. In their comparisons, you have heard them compare Massachusetts with such progressive States as South Carolina, Alabama, and other States down in that section of the country. [Laughter.] Why not bring our comparisons nearer home? A comparison between these institutions of learning show that Harvard is the most extravagant institution in the whole bunch. And yet these gentlemen come in here and try to tell us how to run Massachusetts. [Laughter and applause.]

My friend from Winchester (Mr. Dutch) who is also an instructor at Harvard is a member of a State commission, recently appointed by the Governor. I anticipate before six months he will report to the Legislature that that commission be abolished as an unnecessary commission. If he does, I shall take more stock in his argument about weeding out useless commissions.

My friend from Winchester says that we need to inject business methods into the administration of State affairs. Well, I agree with

him. If that is the only way to do it, it is perfectly proper. [Laughter.] I tried it for years while in the Legislature. For five years, I was on the committee on Ways and Means, and we kept down these commissions, and we kept our tax levy down to a million and a half a year. Only one year it went up to $1,750,000. The Legislature simply refused to increase commissions as well as to appoint needless recess committees. We stopped appointing committees that roamed all over the United States at the expense of the taxpayers. That was the way they injected business methods into the administration of this Commonwealth. Now, what does my friend propose to do? He says we are going to decrease commissions by consolidating them into seven to fifteen departments with from seven to fifteen heads. My friend says these heads of departments will be business men. I apprehend that that depends wholly upon the kind of Governors we will have.

That sounds well on paper, but the way I understand it, it simply means furnishing so many more jobs, not business but political "jobs". That is the way it will work out. I am not at all sure that these heads of departments will be limited to seven as claimed. You remember yesterday that the eloquent delegate from Fitchburg (Mr. Walsh) named seven, — yes, seven heads of departments who are to reflect the political views of the Governor. I have been trying to figure out why he said seven. I am still in much doubt for if I read the record of the State administrations of 1914 and 1915 correctly it will not stop at seven; believe me, it will be fifteen.

The gentleman from Fitchburg (Mr. Walsh) does not try to conceal his purpose. He tells it as it is. He says we are going to have not business appointments, but political appointments. We are going to have men to reflect the political opinion of the man who happens for the time being to be Governor. He believes that men ought to be turned out if they do not agree politically with the Governor, and therefore he proposes a sort of kitchen Cabinet to be protected by the Constitution, and he is to have not seven, but fifteen heads of departments or as many as he can get, because the policy of every administration since 1911 has been to put on the pay-roll every possible name that could be secured. That is what is called modern statecraft. [Laughter and applause.]

You observe these two divergent views. My friend from Winchester (Mr. Dutch) says it does not mean what my friend from Fitchburg says it means. He says that it means that they are going to appoint business men who are to apply business methods. My friend from Fitchburg (Mr. Walsh) says that he understands, and I think his understanding is correct, because of his experience, that they are to be appointed to "reflect", — do you know what that word means? — to reflect the political views of the Governor. That means politics, and frankness compels me to say that for the last eight years we have had all politics and no business in our State administration, and I regret to say there has been little or no improvement within the last three years. When things come to such a pass that we have to maintain a clearing-house for public appointments as an annex to the executive department, what is the use of giving the Governor an opportunity to appoint fifteen more officials at salaries of $8,000 or $10,000 a year?

I presume you have observed this map up here on the right wall. This map will not only prove the things I have said, but will prove anything that you want to prove. [Laughter.] I am going to avail myself of it, for I understand this map is put here for general use. Observe these small rings in the right hand corner. That represents the 180 instructors they had in Harvard thirty years ago. These larger rings represent the 892 instructors employed last year.

Mr. HART: More than that, Mr. George.

Mr. GEORGE: I can go through and show you what Williams College and Amherst College have done along similar lines. And then I can bring it down to a little later period. I can show you how recent administrations have increased the cost of our State government. I can show you what would likely happen if this proposal was adopted.

As I have said before, the last real business administration in Massachusetts was in the years when the late Eben S. Draper was Governor. He acted according to his own judgment. His judgment never would permit him to do anything for political effect. The chances were that if he was to do a given thing, he would do it in the way that would lose rather than bring him support. That was the kind of a man he was. He used to say: "I don't think I have a right to use the governorship to promote or advance my own political ambitions." That sentiment now is among the lost arts. [Laughter and applause.] Since Gov. Draper retired, we have had Governors who honestly believed that the Governor's office is like any other political office, and they have used it for their own personal aggrandizement and to further their personal and political ambitions, by appointments and otherwise. And it is a very singular thing that when you find a Governor who dislikes tainted money, who dislikes to associate with men of wealth, who always is living in mortal fear of being influenced by the "interests", you can depend upon it that such a Governor will peddle out commission after commission of the Commonwealth without any scruples whatsoever.

I want to show you what little virtue there was in the address of my friend from Fitchburg (Mr. Walsh) yesterday afternoon. He told you that the Governor did not have as much authority as mayors in this Commonwealth. Now, that is hardly true. It is evident that my friend knows very little about the mayors in this Commonwealth; he never was mayor. The fact is the Governor of Massachusetts has a very considerable authority. I well remember when Governor Greenhalge occupied the place over in the other end of the building we had a certain commissioner who was in league with a certain insurance company down on State Street, which was trying to freeze out an old policy holder, who had paid a great deal of money into the concern and had just missed paying his assessment by one day, in fact he was a day late in paying all his bills that particular month. They did not propose to take his money. He had paid in something more than $5,000, and they were more than pleased at his delinquency. This old policy holder on my advice went to the Insurance Commissioner, who I knew was identified at one time with this company. The aged man came back with tears in his eyes and told me of his treatment. I said: "You go to the Governor and lay the matter before him." As the Governor listened to the old man's story, he

said: "You leave the papers with me until to-morrow." The commissioner was sent for at once, and the Governor after listening to his version said: "If you can't fix this matter up at once, I am going to have a man in your place who can, and I am going to exercise all of my power as Governor of the Commonwealth to do it." The commissioner knew what that meant, and the matter was settled in short order.

On another occasion, when Roger Wolcott was Governor, we had certain commissioners who were holding down jobs in the State House, receiving substantial salaries, putting in their transportation expenses as well as for their keep. One of these commissioners tried to explain this away, but not satisfactorily to Governor Wolcott. The Governor had sent for him and asked the question: "Is it true that while you have been drawing $3,000 a year from the State treasury with an office in the State House, you are collecting transportation and your living expenses from the State treasury?" He replied: "Yes". The Governor said: "If you don't resign at once, I will use every power there is in this office to remove you." It is needless to say the command was obeyed to the letter. There is no difficulty about a Governor with a backbone doing things when he has real things to do.

Governor Andrews was able to do things and as a matter of history he never had any trouble such as has been depicted by the gentleman from Fitchburg. Governor Bullock, Governor Rice, Governor Robinson, Governor Ames and Governor Russell never had trouble. Governor Douglas never had trouble. The late Governor William Gaston, probably the last Gaston who ever will be Governor of Massachusetts [laughter], had no trouble. Benjamin F. Butler had trouble; he had trouble everywhere he went, and in every position he held, because he was looking for it. When we come down to the more recent administrations they began to have trouble, because the Governors not only wanted to run their department but they wanted to run all other departments including the Legislature. As I told you the other day, one of our recent Governors attempted to do a great many things he had no right to do, and of course he got into trouble. Any man can find trouble if he is looking for it.

Permit me to point out the difference between a political and a business administration by comparing the administration of 1915 with that for 1910. An analysis shows that in the general administration of departments of the State, that is, the administrative departments, the cost in 1910 was $616,000 in round numbers; in 1915 it amounted to $1,291,000, an increase of more than 100 per cent. The department engaged in the work of industrial and financial welfare in 1910 cost $174,409 while the expenses in 1915 were $731,000, an ncrease of over 300 per cent. The State Board of Health was one of the departments that the Governor in 1914 and 1915 reorganized. Did he reorganize it to save money? Have you heard of any Governor within the last eight years reorganizing any department to save money? If he did he made a mistake. The State Board of Health in 1910 cost $282,676; in 1915 it cost a trifle over $500,000, an increase of more than 80 per cent. The Railroad Commission, that cost $65,649 in 1910, and afterwards was reorganized, and some think demoralized, in the year 1915 cost $170,000 odd, an increase of some-

thing more than 160 per cent. The charitable departments required a total expenditure of $16,000,000 from 1906 to 1910, while from 1911 to 1915 the appropriations amounted to $25,750,000. You will observe that history proves that the kind of administration depends largely upon the kind of Governors we have.

I dislike to trespass upon your time, but suppose we had the same kind of Governors in the future. What then? The Governors we have had for the last eight years are object lessons [laughter] and if we do not profit by their and our experience it is our fault. Suppose these extraordinary powers had been a part of the Constitution during their term of office, does anybody believe that different results would have obtained? Now, under this new dispensation that has been presented so eloquently by my friend from Fitchburg (Mr. Walsh), based upon the theory suggested by his lordship (Mr. Whipple) from Brookline and London, who sits in this division, — the English system, "don't you know," — a candidate for Governor goes about the State saying: "I believe in" this, that or the other thing, and he promises that if he is elected Governor, he will accomplish a whole lot of things, regardless of the fact that he must deal with a Legislature that is elected also by the people. Yet the Legislature must acquiesce quietly in the recommendations of the Governor-elect. What is the use of having a Legislature? Suppose a Governor, after serving two years, was defeated and his whole administration repudiated? What then? The incoming Legislature, to be logical, would have to repeal everything that was done during the previous two years. Now, that is a very peculiar kind of political philosophy. I never heard it seriously urged before, and outside of these two distinguished members of this Convention, I have not heard it here.

The debate was continued after the recess.

Mr. Herbert A. Kenny of Boston: As an humble Democrat in this Convention, I should like to ask the distinguished gentleman from Haverhill (Mr. George) who went out of his way to say that no Governor bearing the name of Gaston would be elected again, whether or not he is not the accredited representative of United States Senator Weeks in Essex County, and whether or not his speech in this Convention, reported by our stenographers and paid for by the Commonwealth of Massachusetts, is not prepared for the purpose of propaganda for Senator Weeks in Essex County, attacking our dear Governor McCall and our dear Governor Walsh. And as the distinguished gentleman from Essex County spoke so kindly of saving money for the Commonwealth of Massachusetts, I should like to know if Senator Weeks did not write his speech and whether or not the stenographers of this Convention are to be reimbursed for taking the speech and whether or not the records of this Convention are to be printed and used as a circular in aid of the Senator?

Mr. James H. Brennan of Boston: Mr. President.

The President: For what purpose does the member rise?

Mr. Brennan: A point of order.

The President: The member will state his point of order.

Mr. Brennan: The personalities which the member is making use of are not in order.

The President: The member's remarks are not in order.

Mr. GEORGE of Haverhill: Whatever I said at this morning's session was said as a non-partizan. I took the administrations that are most familiar to us, the administrations of the last eight years, and I had no idea of speaking in a partizan sense, and I did not speak even in the way of criticism. I spoke of them as facts, and because the expenses of the State under one administration for a period of five years, — 1911 to 1915, — exceed the expenses of the five previous years, — 1906 to 1910, — by something like $26,000,000. I did not think there was any partizanship in mentioning it.

Now as to the other matter which the gentleman from Boston referred to concerning our distinguished United States Senator. I will say that I hold no such relations in Essex County or elsewhere, and as far as any propaganda is concerned I do not believe that our junior Senator needs any; I think things are going along very well without any propaganda, and when I referred to the late Governor Gaston I did not speak of him in criticism; I felt at the time I was paying him a compliment. I spoke of him as a very intelligent Governor, who when elected, represented the minority party of this State, and yet had not the slightest difficulty in getting along with a Council and a Legislature which was opposed to him politically. The only time that we ever have had any trouble in this State has been when the Governors have created the trouble themselves, and in most instances when they have meddled with things that did not concern them.

Mr. CURTIS of Revere: Is it a fact that the Governor of 1915 had full authority to remove three State officials?

Mr. GEORGE: I understand that three State officials were removed by the Governor who told us yesterday that the Governor did not have authority to remove any official for incompetency, malfeasance or otherwise. I understand that is a fact. I understand that any Governor has a way of removing an official for cause.

Now, I have about four minutes left and I do not intend to take any more time. I wanted to cite those things this morning to show you that these people who come in here to try to tell us how to improve conditions, when they have had an opportunity in public life have not exhibited any such zeal or made any endeavor on their part to put any such policy in operation. The Constitution of the Commonwealth does not prevent any Governor from conducting a business administration. We do not need this legislation. We can do now through the Legislature all the things that this proposal suggests. And why is it necessary to inject a statute into the Constitution of the Commonwealth when in two years from now we might want to make changes that we would be barred from doing until we amended the Constitution?

Nobody has asked for the passage of any such proposition as this. I am now answering my friend from Brookline (Mr. Walker). He told us the people wanted it. Well, I have not heard the people say anything about it, and I travel on the street cars, — that is, I did before the recent raise in fare [laughter], — and I travel on the steam cars and I walk the streets of my city and the streets of Boston, and there is not a single human being outside of this Convention who even has suggested the passage of any such a proposal as this. Now I ask: Where did the gentleman from Brookline get his information

that the people want this? It is true that a Governor in 1914 and 1915 advocated all these nostrums, and it is true that in the fall of 1915 he was defeated. Therefore I say that the people, whenever they have had an opportunity to express themselves as to whether or no they wanted to establish a Kaiser in the Governor's chair or to continue to have a Governor, have decided that they would not have the Kaiser. Therefore I do not think we are justified in passing any such proposition as this, and I submit there is no need of it. We can do all these things by law, and the answer to my friend's question, which was "What are we going to do?", — I tell you what we ought to do: If we take all the thousands and hundreds of thousands of dollars that have been raised by the "uplifters" of Massachusetts to reform everybody, and if we would spend that money in educating the people to feel that they are responsible for their government, that they are responsible for the conduct of their government, that they themselves, notwithstanding the fact that they may be poll-tax payers, are paying the taxes on the property they live in, and if you will let the people understand as they ought to understand that they alone can handle the situation, there will not be the slightest trouble, for whenever the people want to change their government or want to change the policy of their government they will do it by electing a Governor and a Legislature who will accomplish their purpose.

Mr. Washburn of Middleborough: If I may have for just a moment the attention of the gentleman who reported this resolution (Mr. Dutch) I should like to ask a question. Are there any elective officers whose election is not provided for by the Constitution? In other words is there any elective office which is not at the same time a constitutional office? If so, what is that office?

Perhaps the gentleman would prefer to defer his reply until he closes. I undertake to say that there is no such elective officer who is not also a constitutional officer. That being so, since by the terms of this resolution constitutional officers are expressly excepted, — they are carved out from the operation of this reorganization plan, — and since an elective officer is a constitutional officer, I want to ask him if he does not think the words in lines 25 and 26, "unless his election is provided for by the Constitution", are tautological and confusing?

Mr. Dutch: Answering the first question, there does not occur to me offhand a case of a head of a department or departmental officer who is elected whose election is not provided for by the Constitution. That is, to say it in another form, the only elected persons whom I recall now are your Auditor, your Treasurer and Receiver-General, Secretary and Attorney-General.

To answer the second question, however, the exception in lines 25 and 26 is absolutely necessary, and I am glad the question has been asked, because there seems to be a confusion here. It is contemplated by this very exception that perhaps the head of the Department of Finance will be the Auditor; the head of the Department of State may be the Secretary of the Commonwealth, as he is to-day, — no change; the head of the Department of Law may be the Attorney-General. That is, you can keep those same men as heads of departments. Of course, that being so, we must not shift it so that they

will be appointed. They will be selected just as they are to-day, but they may be designated under this act as heads of their several departments, and therefore we have to except them from the provisions as to appointed heads. I trust I have made that clear.

Mr. WASHBURN: It is not quite clear to me how they could be designated, in view of the contemplated provision:

> Such head, unless his election is provided for by the Constitution, shall be appointed by the Governor with the consent of the Council.

Now when you have a head whose election is provided for by the Constitution, as the Auditor, for example, I should think there might be a question of doubt as to whether he could be appointed as the head of a department by the Governor. I may be wrong. It is a matter of first impression.

Mr. DUTCH: He could not be appointed as such as the head of a department, but the department would be so laid out in the legislative act which finally will establish these departments that, by lines 22 and 23, he would be made the head of it. He would be designated as the head. Perhaps the confusion is this: The Governor, in submitting a plan to the Legislature, might say as a part of his plan: "We establish a Department of State, and the head of the Department of State shall be the Secretary of the Commonwealth as now elected under the Constitution." Very well. If the Legislature enacted that into law, approved that as part of the ultimate legislative plan which is provided for here, then he would be the head of that department, and therefore, of course, he would not be an appointed head.

Mr. LOMASNEY of Boston: The gentlemen who framed the Constitution of this Commonwealth were wise men and men who went into the questions of government thoroughly in those days, having the rights of all the people in view, and if any gentleman in this Convention will read the State Manual, he will find in the chapter entitled "Executive Power" what the duties of the Governor are. He is Commander-in-Chief of the army; it goes on in three or four pages more to give you the powers conferred upon the Governor by the Constitution. I am not going to enumerate those powers, because all of you gentlemen are acquainted with them. But one of the principal powers conferred upon the Governor is that of appointing, under the provisions of the Constitution, the persons who are to administer the laws and conduct the departments of the Commonwealth. And before we proceed to confer any further additional powers upon the Governor, or the Governor's Council, let us consider what their duties are now and how they have been discharged in the past. I have here, sir, the list of members of departments and of commissions in the State whose terms expire in the year 1918. There are about 206 whose terms expire at this time. It seems strange that so many of the terms of members of commissions appear to expire every month in the year. Why? So that the Governor, in accordance with the provision of the Constitution, should investigate the character of the persons whom he selects and see that they are qualified for the duties which they are to perform. If a Governor attends to that part of his duty, honestly, fearlessly and faithfully, he will have done a great deal of work.

Now the men who are in charge of this resolution say that the principal part is in lines 5 and 6, but they are making reference to so many different parts I do not know to which they refer. Beginning in line 7 it says:

> The executive and administrative work of the Commonwealth shall be reorganized in not less than seven nor more than fifteen executive departments.

All the commissions of the Commonwealth were created because of a great public demand to meet the special needs of the people. The gentleman from Brookline (Mr. Walker) told us: "We want a real Governor". Read in the Constitution the powers conferred upon our Governor to-day. The commissions of the Commonwealth were created in response to the demands of public sentiment to do some necessary and constructive work in this Commonwealth. Do you suppose, sir, if you create this board of seven members which, as a former Governor of the State says should come into existence with every other Governor and depart with him, that thereby you would reduce the number of officials who now are employed by the Commonwealth? Would they not simply be classed as deputies and be kept in their places on the ground that they are experts in their line of work? If they did not know a great deal when they went into office, they certainly have learned a great deal since. And why dispense with their services after the Commonwealth has educated them and the State is in a position now where it needs them; particularly, at this time of the Commonwealth's reorganization? Sir, under this resolution it seems to me that the question of reducing expenses needs no answer, because if it is true, as stated here, that the men composing these boards have been powerful enough to stop Legislatures interfering with them, will they not be powerful enough, I ask, to influence the board to which we delegate the power of the Legislature? As one representative in this Convention, I object to transferring to a body of eight Councillors the right to make laws for the people of the Commonwealth; and as a member of the minority party in this State, I want to state we have only one representative in the Governor's Council out of the eight members there, and he comes from Boston, while in the House of Representatives of the Commonwealth the Democratic party often has a third and a fourth of the membership; and it is always in a position to have a sixth or seventh of the membership in the Massachusetts Senate; and the members of that body come from all parts of the Commonwealth. Where does the equality of this proposition come in, when it is sought by the terms of this resolution to transfer, in case the Legislature will not act, the law-making power of the Commonwealth to the Governor's Council, where the minority party in this State has but one representative? Is that equal rights for all? Is that equal privileges to all? Of course not. What better chance has a man to come in before the Legislature, which is free from partizanship control, and free from executive orders, and present his case than before such a board? Are we going to improve our conditions by this change? I submit not.

I am one of those who believe that the Governor has power enough to do what is really for the good of this Commonwealth. No Governor sitting in the executive chamber who desires to benefit the Common-

wealth ever will find a Legislature unresponsive to a proper call to arms for the public interest. If a Governor tries to put through something that he may be talking for as a scheme to get votes, when you come to analyze and criticize it, of course men sworn as public officers to discharge their duty in accordance with the law cannot vote for such a proposition, and his platform policies fall as they should, because most of such men realize and will tell you frankly that political platforms are made not to be kept, but to run on. There is no question as to the truth of that statement.

Now, sir, I am interested in a proper discharge of the duties of the office of Governor, and, strange to say, I am not one of those who believes he should be judged by what he saves in dollars and cents to the government. The life, the happiness and the contentment of the people of the Commonwealth mean a great deal more to me than dollars and cents. If the Governor of the State sits in his chamber and carries out the responsibilities of his office, — and responsibilities which you know are conferred upon him by the Constitution, — weighs carefully all the claims of those who come before him for appointment to office, sees that the poor insane in our institutions are properly treated, that the prisoners in our institutions, many of whom unfortunately may have been started in life wrong, are treated right and given an opportunity to reform, and then looks over all the expenditures of the Commonwealth which he is called upon to sign his name to, do you not believe, sir, that he has duties enough to perform without taking up the question of making him the party boss or the leader of legislation in the General Court?

The trouble is with the Governors themselves; they overlook the plain facts of the situation and the promises that they have made; and when they are elected Governors they forget the ordinary working-man and often bow to their own desires to be elevated in the social scale, and gradually abandon their former views. Now, sir, I say I am and have been for many years interested in some of these fundamental social questions that go to the upbuilding of the State and Nation, and one of them is the treatment of the unfortunate youth of our city. In 1906 a bill was passed by the Legislature to establish the Boston Juvenile Court. Hon. Grafton D. Cushing was at that time a member of the Legislature. He consulted with Mr. John P. Manning who, with others, framed the act that was passed. When the act had been signed and the judges were to be appointed, the Governor at that time wanted all elements in this great cosmopolitan community represented in that court; and he tendered the place of judge to a Catholic who declined it; and Judge Baker was appointed in his place. But so desirable was it to have all elements of the community represented there, that there were appointed, — and I do not use these words offensively, — an Italian and a Jew as special judges of that court; and a colored attorney was made its clerk. All former acts affecting juvenile offenders were repealed and they started to take care of the youth of this city, realizing that kind-heartedness on the part of the right kind of judge counts, for if you start a boy on the wrong road he is likely to go forward through life as a man becoming what he should not be. Before that court boys under 17 years of age are now brought for violations of the law. There was in that court a few years ago a vacancy in the office of

judge and when you talk about power, when you talk about giving a Governor more duties, let us take up, for instance, this one case.

Here was a vacancy in the Juvenile Court of the city of Boston. There were a great many candidates for the position. Among the members of the Governor's Council was a young man who was born across the sea, who came to this country an immigrant, and who went into the schools here and received an education. Later he became secretary to Gen. Charles H. Taylor, a well-known citizen of this city, became a lawyer and a teacher in our evening schools. He had begun as a newsboy, had been through a city boy's life and knew all those pranks that every boy is familiar with in these days; and the members of the Governor's Council who were members of a different political party from him, but who had sat with him for two or three years, had the temerity to suggest to the Governor that in their opinion he would be a very desirable man for the position of justice of that court.

Now, sir, we must be charitable in considering all these things, and we will assume that because of the overwhelming desire to consider other great fundamental questions of State, this vacancy was not given its proper consideration by the Governor; but electioneering by the Governor was carried on and other matters were attended to, but the duty to the youth of this city whom we now are calling to arms to defend the Nation was forgotten. And what was the result? The Governor did not find in the whole city of Boston at that time a man who he felt was qualified to fill that position. And he nominated a citizen of Hingham. I desire to be charitable in reviewing this case. While the reasons might be assigned, let us assume that the Governor did not have the necessary time to consider that question properly.

Now, sir, that is one instance, and I know of several others.

Mr. HERBERT A. KENNY of Boston addressed the chair.

Mr. LOMASNEY: I refuse to yield.

I want to say to the gentleman that he may have his say at the proper time and may answer me then if he desires, but I am making an argument against this resolution and I do not propose to allow individuals like him to stand up smiling to interrupt me, sometimes without an intelligent desire to profit by the debate, but desiring merely to interrupt the line of thought that is going through my mind. And I trust, sir, that the gentleman will wait until I am within five minutes of closing my argument and I will then answer any question he desires.

What I have said seems to me of great consequence. You may ask, why? Because I have lived in that section of the city where the exercise of good judgment to the boy means everything toward leading him along the right road where he will grow up and be a good citizen. It means more to the Commonwealth than shaving down a few dollars on an appropriation bill.

And there comes another fundamental question suggested by this resolution. The gentleman from Fitchburg said yesterday that he believed in having the Governor appoint seven men to control these experts, who are to come into office with the Governor and to go out with him. Well, now, let us see how that plan would work out.

I am not charging that it is intended to do this, but we must consider not what you intend shall be done, but what you really can do. A Governor puts in seven men. Now, then, that is the power. After this appointment is made, there may be some gentlemen who desire a charter to go into the banking business, because under your general law now charters for trust companies are issued by a State board. It is nice to have a handy man around at such times and say to the Bank Commissioner: "Give John Jones and Jim Brown a charter for a trust company". There may arise a desire to pass out other important privileges. I am not going to enumerate the possibilities under such circumstances; you all are sensible men, and you all realize what the pressure and opportunities would be in such event. And then, if anything more should happen, why, it was an agent who spoke, and of course he did not speak with the consent of his master. Such a law would be creating a board of middlemen to get in between the people and their government without any check or responsibility on it. Is that an improvement upon the present system? I think not.

Then next, sir, comes the great question of the removal of the honest officials. When a young man comes into the public service and gives honest service, favoring neither friend nor foe, he makes enemies, and every one knows it. The man who does his duty without regard to friend or foe is the man who is not clapped on the back and of whom it is not said, "He is a good fellow", because he does his duty; he takes his office seriously and administers it faithfully. Now, let us assume that such a man is in office. He comes into office a young man. Let us take one instance, — and I speak of him with great respect. I refer to Mr. Warren P. Dudley, who was secretary of the Civil Service Commission, one of the hardest positions to fill, for he had to stand as a buffer between the people and the enforcement of the civil service law for years. He came to that office when it was created and he dedicated his whole life to that work. He was there standing for a strict enforcement of the law, criticized by men who were office-holders or office-seekers. I will admit that those of us who were active partizans felt he was too strict and I myself have heard him criticized by the reformers; but he always was doing his duty as he saw it and no one could swerve him an inch from his duty. Well, a Governor comes in who wants to get rid of a man of that stamp. Are you going to take out of the law the saving clause of protection to faithful employees of the Commonwealth, so that a man like him could be removed without being given a hearing? Why, sir, what public demand is there to start that kind of a system in Massachusetts? I am an old Jackson Democrat when I am talking to the crowd before election, but when you take your oath of office and swear to administer your office according to the Constitution and the laws, you are in a different position, and that is the way with many of the State officials. They must do their duty, no matter whom it affects. Now you would take the safeguard away from those men by giving a chance for them to be removed without a hearing under this resolution. Let us take the case of a man who was removed, who is sensitive, with a family, poor, proud, but honest. Are you going to change the law so as to give any unfair official a chance to

wreck a man's whole reputation, upon a theory read to you out of a book from the pen of Professor Holcombe or some one else like him? [Laughter.]

We must give these young men on the committee credit for their energy, and the gentleman from Winchester (Mr. Dutch) is one of them; there is no doubt that he feels that he is a wonder. He is from Winchester and is a member of some commission to revise the laws. He got elected to this Convention, but he should be modest and realize that the men who sat in the Legislature, even from Winchester, were pretty heavy men before his day, [laughter] and they voted to establish many of these commissions and they all could not be wrong, and the professor whose book he carries around with him as his Bible be right.

Why, sir, you must realize that this is a government of laws and not of men, and woe to the time when we depart from that fundamental principle and become a government of men and not of laws. Where are you going to be on some popular wave if that is to be the theory of our government? Who would have believed that a few years ago this country, so intelligently organized into two great political parties, would have become divided on the issues that arose at that time and that the party that had stayed in power with a few exceptions since the civil war would be swept aside in a night and see a new party almost carry the country? That shows you when the people feel that they have grievances which they want relieved and they organize to carry out their ideas for relief, there should be some kind of sound and conservative laws that cannot be trampled under foot at will.

We now see the Progressives of this State, who a few years ago almost carried it, lining up with the old parties that they were affiliated with before. But look what happened in the past. Look at the Know Nothing days when this Constitution and the sound laws of the Commonwealth kept the prejudices of the people in check. Sound laws are safeguards of the Republic; and the administration of the laws should be impartial. Fitness for public office should be determined by the Commonwealth, and no man who exercises his office honestly should be removed without a chance for a hearing and facing what every common criminal does, his accuser at the bar, so as to hear the evidence against him and have the opportunity to deny it. And, sir, for the purpose of creating "a real Governor", we are requested now to take out that safeguard. What kind of men have we been in the habit of having for Governor? I recall, — it may be because of being born so close to this State House, — I can recall pretty well the Governors since the latter seventies. The first Governor upon whom I had the honor of looking, who I believe was the ideal Governor of his time, with all due respect to that office and with no intention of reflecting on any other Governor, was the gentleman who defeated Governor Gaston; the father of the gentleman who has been named here to-day, — I mean Alexander H. Rice, a former president of the Boston Common Council, mayor of that city and Governor of the Commonwealth; a gentleman who was affable and approachable, generous and fair, earnest and efficient in carrying out his public and private affairs. He was one of the ideal old time Governors. The Governors of those days had different ideas for the

administration of the duties of their office. They did not make promises; they stood then for sound fundamental principles of government. They did not countenance offices being mortgaged in advance. They did not know that Tom, Dick and Harry had to be taken care of in the distribution of public offices.

When I am active in a political campaign, since I am working to carry out the principles and policies of my party and to bring success to the candidates we are trying to elect, I do my utmost to further that end. But when it comes to making laws, and further, when it comes to making a Constitution, I divest myself of all my party prejudice and I try to do what is right for the Commonwealth as I see the right. I see how more evil can come out of this proposition in 15 minutes [applause] than good in a lifetime of years. I see how more harm, no matter how well-intentioned these men may be, can come out of this proposition than any possible good that it can accomplish. The Legislature, now, has all the power of this resolution. I understand there has been a commission appointed that has been working on the subject-matter of this measure for the last year and a half, and I suppose I indicate only what is common knowledge to you, gentlemen, when I say that the report has been held back probably because of the conflicting interests in the party in this Commonwealth which is in a majority at the present time. Furthermore, you have a supervisor now, — you have a Supervisor of Administration in charge of these matters at the present time.

The committee is going into all these details; and the report with its conclusions will be submitted shortly. The committee is working overtime now for the purpose of bringing about economy in the State's administration. Suppose there were a large number of Massachusetts citizens before the committee asking to have these measures passed. Behind this resolution there were no doubt well-intentioned men. But look at what it would cost in dollars and cents to put them in force. See the special lines of work the Commonwealth would have to attend to; and then progressive men of progressive minds will tell you that they are trying to do what is right when they put the positions held by honest men in jeopardy. Every public officer who is in a position should be treated fairly by the law-making power. No man should be put in the humblest public office under civil service without an opportunity to be heard, if he is to be removed, because many unfair requests are made of him, and, sir, that these requests were made would no doubt be denied if the official said he was urged to do them; but if you take away the safeguard of a hearing and give unrestricted power of removal, I believe it will be a menace to the Commonwealth.

Why should heads of departments, many of them experts, why should they be rubber stamps for any Governor? You or I go to a Governor; we want something done. He sends for one of these men: "Do So and So For This Man". And then, what if he does not do it? Off comes his head. Is that efficient government? That is the kind of government that is advocated here. Come in with the Governor and go out with the Governor, said the gentleman from Fitchburg; take away the right of hearing on removal; give the Governor the power to cut off official heads. I have seen Legislatures bow to Governors. I have seen legislators come in and do this, that and the

other thing for the Governor. I have seen laws changed here by the Legislature at the request of Governors to get rid of men, and members of their own party, too.

The power given to the Governor in this amendment is dangerous. Power becomes tyranny when improperly exercised. Are we going to read into the Constitution this amendment so that we may have "a real Governor", and permit tyranny over honest and efficient officials that hardly would be tolerated in Russia? It seems to me, sir, we should not do so. Let us pause, and inasmuch as the Legislature can do everything that is proposed under this resolution, I say, let the commission that has been created report to it, and then wait till we see what it does before we strike at the fundamental safeguards of this old State. [Applause.]

Mr. Balch of Boston: Before I begin the body of my remarks I wish to deal, before they are forgotten, with a few things that have been said by opponents of this measure, and I desire first to pay my respects to the gentleman from Haverhill (Mr. George), whose eloquent address this morning, supposed to be hostile to this measure, in fact furnished, if properly analyzed, some of the strongest arguments in its favor which can possibly be adduced. The gentleman showed us by a line of facts which cannot be disputed that it is absolutely inevitable that the present complication of affairs should grow more complicated; that there is no stopping this process of growth in the complication of the business of public administration. And what is the conclusion from that? Why, that we must have some sort of order artificially introduced into it. The gentleman from old ward 8 in the third division (Mr. Lomasney) has given us a very powerful exposition of certain objections. Objections to what? To this measure now before you? Not at all. His objections apply almost exclusively to the amendment proposed by the gentleman from Brookline (Mr. Walker). Personally I agree with the gentleman from Brookline and not with the gentleman from old ward 8. That makes no difference. Let it be perfectly clear that what the gentleman from old ward 8 is fighting is not the measure on which you are now being asked to vote. It is that amendment, and that amendment only, to which he has addressed his remarks.

I said that amendment only. That is not quite accurate. He has been addressing his remarks also to what he was afraid some future Legislature might do under this measure. But almost in the same breath he contended that the Legislature could do that now if it chose. If he is right in his second position, what becomes of his first position?

One word about the remarks that the gentleman from Everett (Mr. Newton), made this morning. Of course we consider that he is fighting a man of straw there. We believe it absolutely clear that the language of the resolution gives the last word to the Legislature. That was most assuredly the intention. If the committee on Form and Phraseology feels that there is any possible ambiguity in the present words, — a thing we do not admit, — then let them be changed so that that ambiguity will be removed. But make no mistake about the intention of this measure to leave the last final word forever with the Legislature and not with the Governor and Council.

I am one of a very large group of men, — two committees sitting together, — who sat up with this baby at night and saw it through

its teething period and other infant troubles; and now I take my place with them to plead with you for it. This sounds as if I were a doctor. I am not, I am a lawyer. Lawyers are not called into conference over sick people. They are called into conference, however, over sick businesses and as consultants over sick businesses they have odd experiences.

I should like to tell you of a corporation I once was called upon to aid in investigating. The corporation was an extremely large one, with very many stockholders and a very large business. It was organized with a president and board of directors, but it had some very strange customs in the way it was run. For one thing, the president was forbidden ever to be present at any meeting of the board of directors. He was forbidden ever to communicate with them directly and they were forbidden to communicate with him. It was considered a breach of manners at a meeting of the directors for anybody to say what the president thought about anything. Furthermore, the directors arranged the business of the company in a strange way. They had a highly paid head sign-painter, for one thing, who painted the company's signs, but then they had a committee on advertising, then they had another highly paid superintendent of publicity. The superintendent of publicity attended to placing the newspaper advertising, and so on, and he pursued his own policy about it. The sign-painter painted his own signs in his own way and pursued his own policy about that. The committee on advertising had its own policy and pursued that. None of these three ever spoke to one another or had any common channel of communication; consequently the newspaper advertisements, the sign-board advertisements and the various other advertisements followed different, and often contradictory policies. Similarly with other matters.

The corporation intended to do well by its employees. It was interested in their health; but it had a committee on social welfare, and a superintendent of plumbing and the like, and a corps of doctors, all looking in part after the same thing. None of these people knew one another, or if so it was only by sight. Consequently, although there were three different sets of people all supposed to be more or less concerned with the supply of drinking water there was constant trouble with it. Each published annually a report covering very largely the same things and paying no attention whatever to the reports of the others. In this corporation no one ever sat down and planned out the division of work and responsibility. Committees and boards and official positions simply came into being from time to time, one scarcely knew how, remained for a period, jostling, crowding and interfering with one another, and then disappeared again as mysteriously as they started.

Now, gentlemen, annually the stockholders elected their president and their board of directors. Almost every year there were two or more candidates for the office of president and almost every year these candidates represented fundamentally different notions about how to run the business of the company. Customarily one candidate for the office of president wanted to spend a lot of money and expand the business. He wanted to spend a lot in advertising and put a lot of agents on the road. He wanted to take a risk and see the company grow. Customarily the other candidate wanted to take the opposite

course. He said: "Let us retract a little. We must build up our bank reserves before we can build up the business." Every year the two men ran on these bases. Every year the stockholders got very much excited, talked it all over, elected one or the other, and every year the same thing happened, — namely, — it made not the slightest difference which they elected, because the president could not do a blessed thing anyway, and the policy of the company continued to be just the same year after year, — one of vague drifting. It is true it got along after a fashion, because its men, its directors and its president and the members of the committees, who did the real work, were pretty good men; but it never had any settled policy, never got anywhere; it simply drifted down the stream. And what was the result? Although it got along fairly well, its liabilities were growing twice as fast as its assets.

I do not need to point out, gentlemen, what this corporation is. You all recognize the main outlines of our State government.

Now if any one asks me whether I think that is a fair argument, I should answer perfectly frankly that I do not. In the first place, the sketch I have given you is a caricature, — although it really is not so very badly exaggerated, — of the Commonwealth of Massachusetts. In the next place, I have lived long enough now to know, — it has taken me 20 years to find out; I used to believe the opposite, — but I have lived long enough now to realize that the business of a political corporation is not the same as the business of a business corporation. They are not strictly comparable. Efficiency is not the main and only object of government, by any manner of means, and one may get into serious trouble by pushing too far the analogy between a business corporation and a political corporation. Of course efficiency does not measure the success of a government. If so, the German government would be the best instead of one of the worst governments on earth. If so, our own State government would be one of the worst, instead of being, as it is, a pretty good government. One cannot measure everything in terms of efficiency. That whole proposition was reduced to an absurdity when the efficiency experts of the Carnegie Institution, I think it was, which was aiding our colleges, undertook to compare the merits of our colleges, and their professional experts undertook to state the efficiency of our universities in terms of cost per student hour. That was a carrying of the thing to extremes that caused its perpetrators to be laughed out of court on the whole proposition. But it is not because our government is inefficient that it is good. It is not because the German government is efficient that it is bad. There is no possible reason on earth why we should not have a government that is good and still reasonably efficient.

Now, sir, I agree with a great deal that was said this morning as to the failure of amateur, — yes, or even of professional, — experts and closet-students getting out beautiful diagrams showing interrelations of wheels within wheels and beautiful curved lines connecting everything. I agree that that kind of thing does not necessarily produce efficiency. I call your attenion to the fact that that is precisely what your committee here has not done. Instead of getting out one of these beautiful wall charts showing in the utmost detail just how everything is related to everything else in some grand, glorious, ambitious scheme cooked up by professionals who perhaps know very

little about it, we have provided the simplest possible rough framework by which a little of the confusion may be reduced, a simple sorting out may be had in the wisdom of the Legislature, and yet which in the course of time, as actual experience may show is wise, may grow into an organic whole well organized, instead of, as at present, a mere confusion worse confounded.

I call your attention now to the diagrams here. Of course no one here needs diagrams to understand the extremely simple proposition before you, and yet it seemed to me worth while to show graphically where we stand, because I think it is rather striking.

You observe here in the left hand figure representing the present state of affairs are seven colors. One cannot distinguish them in this hall by this artificial light very well, but in fact there are seven colors there. Those are to indicate that there are, more or less, about seven different subjects with which our commissioners and commissions deal. The circles are supposed to represent commissions of various sizes, overlapping and interfering in varying degrees, while the squares are supposed to represent individuals, and there are 100 of these circles and squares, corresponding to the actual fact of about a hundred different State commissions or single commissioners. Now see how the different colors are confused. Some like colors fail utterly to connect. Some jar with unlike colors. It is all true to life. It is not exaggerated. It is as things really are to-day. Then you see a complete gap between the Governor at the top and the commissions which do the governing. Is that exaggerated? No, that represents literally an exact fact. There is a vacuum there, a void. It is like the captain of a steamer with his telephone communication between the engine-room and the bridge cut. There is a complete gap there. The commissions keep on governing higgledy-piggledy, some well, some ill, each not knowing what the others are doing, — a complete picture of chaos.

Now turning to the other chart, the one at the right, you find the same seven colors, but now they have been sorted out, that is all.

Continuing with the diagram on the right, you will see that the Governor is connected up with the actually governing bodies. How is he connected? He is connected by solid lines with the head of each department, and that solid line it was the intention of the committee in drafting this to really have solid to some extent. The exact degree of control to be exercised by the Governor over the heads is not specified by the resolution. That is to be left to the wisdom of future Legislatures, guided by the cautious experimenting which I presume they will do. The heads of departments are those supposed to have some kind of supervisory and investigating powers over their respective departments. That is represented by lines which you will see dotted. Those are left dotted, those connecting lines, because we purposely have not intended to define how and to what degree that supervision is to be controlled. That will be the subject of experimentation, and of gradual settlement on the basis of experience. It may be very slight, it may be almost illusory. On the other hand, the time may come when it will seem wise to make those lines, too, solid lines. But we are not asking this Convention to pass on that; we are asking them to leave it to future Legislatures. The power to fix that must be somewhere, and we believe in the Legislature it belongs.

I reserved my rights on this resolution in the committee's report. I reserved my rights because for me personally the measure does not go far enough. Personally I agree with the argument submitted to you yesterday by the gentleman from Fitchburg, ex-Governor Walsh. I myself believe in a strong executive and I am sorry that this resolution does not provide for a strong executive. But I am strongly in favor of at least this minimum, even though we cannot have the strong executive. But I wish the Convention to observe carefully that it is utterly unfair and unjust if the measure is to suffer both from its weakness by not going far enough and also from attacks of the type it has had to withstand once or twice to-day based on the wholly fallacious supposition that it does provide for a strong executive. The fact is, it does not. I wish it did, and I did my best to see to it that it did, but I was defeated. The measure does not provide for that. I would have had all these heads of departments come and go automatically with the Governor. In my view those are merely the Governor's ten fingers, — they are seven fingers as shown in the diagram, — they are merely his ten fingers. If there were ten times as many working hours in the day as there are he would not need to have ten heads of departments, the Governor would be his own head of all departments; but as it is, no human being is strong enough to do that work, and consequently he must have eyes and ears represented by other bodies to do that work. He must have other heads to do it for him because he cannot do it himself on account of the physical limitation. But in my view, when you elect a Governor you ought at the same time to be electing his eyes and ears and fingers through which he works, — that is all these heads of departments ought to be. Consequently, I myself am very much in favor of the amendment offered by the gentleman from Brookline (Mr. Walker). Even that does not go far enough to suit me. I shall vote for it. There are many of you here who will not vote for it, who do not wish to see a strong executive, who are jealous of a powerful executive branch. Very well; if that measure is not approved by you it will be defeated. But do not attribute to this measure before you any of the dangers that go with the theory of a strong executive, so called.

Another amendment has been offered to this resolution by the gentleman from Quincy (Mr. Adams). Of that, too, I am strongly in favor. You will observe that the present measure makes it possible to substitute for a single individual in each of the places marked "H" in the right hand diagram, and representing department heads, a whole commission. That appears to be fundamentally bad practice. The farmers of New England had an old saying about boy labor. Any of you with boys of your own whom you are endeavoring to get to work on your war gardens will see the truth of the old saying. The old farmer said: "One boy is a boy; two boys is half a boy; three boys is no boy at all." And it is very true. It is the same with the executive. "One executive is an executive, two executives are half an executive and three executives upon the same job is no executive at all." Who would wish to see a committee in charge of a regiment? I think the gentleman from Quincy is very right in the amendment he has offered, and that the Legislature should not be encouraged to commit a purely executive work to committees or commissions. Com-

missions for quasi-judicial or purely judicial work, commissions for scientific work, commissions for investigation work, yes; but not commissions to be the Governor's eyes, his ears and his fingers.

Now, gentlemen, one attack was made on this measure this morning which struck me as having real weight, the attack made by the gentleman from Williamstown (Mr. Waterman). His contention was that if this was put into execution it would not increase efficiency. From that I must appeal to the field of actual experience. Political organizations may care more or they may care less about efficiency, but the pure business organization has to stand or fall by efficiency. It must and it does have efficiency. And what is business practice? Can you conceive of any sane business organization, whether incorporated or unincorporated, standing one moment for any so-called system such as we now labor under? It is not conceivable. It is impossible. If any business did that it would go to the wall within a twelvemonth. Business bodies have been forced by the law of self-preservation to undertake organization by departments, to undertake in some form and in some degree the system which the gentleman from Williamstown (Mr. Waterman) called the bureau system, — a name which I believe to be unfair; but let it stand.

I next appeal, since you may say the business organizations are not a fair test, to the experience of our capital city. I appeal to the first-hand knowledge of any gentleman here who is acquainted with the finances and the actual work of the city of Boston, whether the system which was put into operation there in the year 1909, closely resembling this, was not a step almost wholly to the good, whether that step is not largely responsible for the fact that the city of Boston, which was headed in 1908 and had been headed for ten years at breakneck speed for an actual and literal bankruptcy, whether the fact that it has been turned back from that and is now thoroughly solvent and reducing its debt year by year, is not largely because some sort of order and coördination was brought out of chaos by a measure somewhat similar to that you now are asked to pass upon, — somewhat similar, but different in this: That that was a hard and fast measure in the nature of detailed legislation, while you are not asked to pass on any detailed scheme for anything in the nature of legislation, you are asked to pass only on a broad, simple, elastic framework.

Now, gentlemen, one word more and I shall cease to abuse your patience. The argument has been made repeatedly that this measure should not go into the Constitution because it is in its character legislation. In my belief the gentleman from Winchester (Mr. Dutch) yesterday answered that question conclusively and sufficiently, and yet his answer seems not wholly to have satisfied some members. Let me repeat it once more in somewhat different language.

In the first place, what is a Constitution? What does a Constitution mean? According to my memory of Latin the word "Constitution" comes from the Latin verb *constituo*, which comes from two other words, *con* and *statuo*, which mean to stand together, and the whole word means the putting together, the construction of our government, the framework, the building of our government. Now, gentlemen, if providing the fundamental, simple model along which our government is to be made is not Constitution building, what is it? If the Constitution is the frame of government, then this piece

of the framework of government belongs in the Constitution. So much for a theoretical answer. The practical answer is just as conclusive, and that is that to leave this to the Legislature to originate is a farce on the face of it. The Legislature never has done, and no Legislature ever will do, a thorough reviewing piece of work of our fundamental scheme of government, for the simple reason that it cannot, and those of you who know the Legislature and practical conditions know that to be true, and that includes the bulk of the Convention.

Mr. SANFORD BATES of Boston: I imagine that this debate is reaching that stage when the minds of most men are made up, but I find myself in a peculiar situation, which I am convinced is more or less general. I realize, as does every student of public affairs in Massachusetts, the great need of cutting down the number of our commissions, but I am not willing to admit that because that is so it is necessary also in the same resolution to go ahead and give the Governor *carte blanche* to do it or to give him increased powers over what he has at the present time, and I am taking the floor for the moment simply to offer an amendment which if carried will produce the result which I think we all have in mind as one which ought to be produced, and will leave the rest of the detail to the Legislature. I propose to move to strike out sections 2 and 3 of this resolution, for the reason that I do not think they are in any way germane to the accomplishment of the purpose set out in section 1. All we want to do is to prohibit in the Constitution the countless establishment of these various commissions. I think that all we need is a simple constitutional provision. I think if those three lines, 7 to 10, were written in our Constitution, the result would be attained, there would be no less than seven nor more than fifteen departments, and let the Legislature do the rest.

What is the reason for sections 2 and 3? The fear of certain members of this Constitutional Convention that the Legislature will not do what the Constitution requires it to do. Well, I have served in the Legislature, and I yet remember the impression that was made upon me the first day when I was asked to hold up my hand and solemnly swear to support the Constitution of Massachusetts, and I do not believe that the time has come when 240 men will take that oath voluntarily and then proceed by their actions to forget it or to override that Constitution. I say that if there is a provision in the Constitution which the members of the Legislature can use as an excuse, or as a reason, or as a bulwark against the demands of these commissions for their continued existence that the Legislature gladly and soon will bring about this reform. It is true that the Legislature has tried it, it is true that the Legislature has appointed a commission to attempt to meet this evil and the commission has made some progress; but I say to you that the Legislature with a constitutional direction to do it will be much more likely to do it, and do it well. But even suppose they did not. Suppose they so far forgot their oath of office as not to do anything about it. The law is the law, the Constitution is the prime law of this Commonwealth. Assuming that our Constitution said there should be no more than fifteen departments, I want to submit to the consideration of those who are more profoundly learned in constitutional law than I am: What would be

the result if the Legislature sought to appropriate money for sixteen departments? What would be the status of that department which was established in defiance of this constitutional restriction? I think that is enough to suggest to the members of this Convention that the simple constitutional provision must be carried out by the Legislature, else our public business will be at a standstill, and any person who seeks the protection of the courts will find that our courts are only too ready to see that the law is carried out. Now, how can we with any hope for a satisfactory result, how can we in a constitutional provision, tell the Legislature to take the initiative in any matter? It seems to me that all we can do or all we ought to do is to say that certain things shall not be done, and then let the Legislature adjust the situation to meet that constitutional restriction. And so I move that sections 2 and 3 be stricken out.

Mr. CHANDLER of Somerville: There are something like 200 members of the Convention here to-day who would like to speak on this subject. For fear they will not get a chance I will move the previous question.

The main question was ordered.

Mr. ROBBINS of Chelmsford: I had not intended to take a moment to talk on this measure, but as a member of one of the committees that reported it I wish to say just a few words, and under the rule governing debate after the main question is ordered I will have ample time, I think, to conclude. The proposition before us is so radical in its nature that perhaps it at first seems more complicated than it really is. I believe there is no question in the minds of the delegates here but that there are many boards and commissions that now are separated that might properly be grouped into one. If this can be done, the advantages are too numerous, both from an economic standpoint and from the standpoint of centralization of responsibility, to be doubted. The gentleman in this division from Boston (Mr. Lomasney) has said: "Leave these matters to the Legislature". Under present conditions the Legislature has failed and will continue to fail to bring about this result, and why? Because of the hostility of those boards and commissions that are affected.

Now as to the power of the Governor to carry out policies upon which he stands and is elected. The gentleman from Haverhill (Mr. George) has cited some isolated cases of the power of the Governor, but I am inclined to give credit to the remarks of the ex-Governor in the second division (Mr. Walsh), who has been in the Governor's chair, and who says that the Governor's hands are tied. The whole question boiled down is this: Will this Convention have the courage to break away from established custom and recommend to the people a system of government which establishes a Governor endowed with power of appointing those heads of departments who he is sure will carry out the policies which he shall dictate and those policies upon which he stands accountable to the people who elected him?

Mr. GATES of Westborough: I will take up but just a minute of your time, and I would not do even that if I were not a member of the committee that reported this resolution and clerk of the joint committee. There have been said some things that were not absolutely correct, and I therefore would like to correct them, if possible.

The joint committee, as you know, consisted of thirty members and many of those members have held public office, — there was one ex-Governor, one Congressman, and there were many members of the Legislature, — and they were of one mind practically that there were too many commissions in the Commonwealth of Massachusetts. There are no members of this joint committee but who believe the commissioners are doing their duty and have served the State well, but we do not believe that it is wise that we should continue as many commissions and boards as we have. Every one who has studied this question knows that we have more boards and more commissions than the State should have, and why should not we reduce them? There are two reasons. They take up more room in this State House than they should. There have been large sums of money appropriated to make this State House larger. We many times have had to hire rooms outside; I do not know at the present time whether we do or not. But every year the Legislature makes more commissions, and there will be a time, if it keeps on indefinitely without abolishing any or concentrating any, when Beacon Hill will not be large enough for the buildings required to hold these commissions.

I believe some of these commissions can be consolidated, and to speak not on general principles but in detail, which is more common talk and perhaps is not what the Convention wants, I will mention what I mean. There are commissions in this State House whose chairman and secretary give only a very few hours a week or hours a year to the work, because there is not work sufficient for them to do. In 1909 I was chairman of a certain committee here, and a secretary had a bill in the Legislature that was referred to our committee. He wanted his salary increased from $1,800 to $3,000. I, as chairman of the committee, asked the secretary how many hours he put into the office a week. He said he went to his office two days a week, and two hours a day, and he got $1,800. He did not give up any of his regular business or his regular practice; it interfered not with his income whatever. I asked him if $1,800 for four hours a week did not pay him sufficiently. He said yes. Then I asked: "Why do you want your salary increased?" He replied: "There are other secretaries in the State House who don't put in any more time than I do. They get $3,000 and $3,500, and I believe we all should be used the same." That is the reason why he wanted his salary increased. A member of this joint committee, a man who had been in the State House and had an office in the State House for twenty years, told me that he knew commissioners who were drawing $3,500 and did not put in two hours a week. I believe that if any such thing exists the commissions should be consolidated and save expense.

But I know what happens when you talk about saving expense. I tried for years in the Legislature to save expense, and I have been told that the State does not want to save money and so that is no argument. But I believe that there should be a limit to the number of boards and commissions, and they should be reduced and can be reduced without hurting a thing. One gentleman in the third division says we have a commission on State Administration. We do have a commission on State Administration. The man at the head of that commission was Burbank, and Burbank brought in a plan to your committee suggesting the very thing that you have before you to-day.

Mr. Underhill of Somerville: A great deal of the criticism of this resolution has been directed at the amendment offered by the gentleman from Brookline in the third division (Mr. Walker) and I trust that the Convention will reject the amendment, for I really would like to support the resolution but I cannot bring myself to support it if that amendment is adopted. I am naturally a conservative, and this thing appeals to me for one particular reason. It has been the experience in California and in some other States that have adopted the initiative and referendum that the State has been overrun with new boards and new commissions and new salaried officers until they are on the verge of bankruptcy. Now, sir, if we have the initiative and referendum and it is adopted in this Commonwealth of Massachusetts, — I trust it will not occur, but if we do, — I want to be prepared. I want Massachusetts to be prepared through such a measure as this to forestall those commissions and boards that are bound to be extended under the initiative and referendum. Now, sir, if the Convention will accept the resolution as drawn, cutting out the third section, adopting an amendment striking a few words out of the first section, I believe they will have something in their Constitution which will deter the followers of the initiative and referendum from endeavoring to increase the boards and commissions which we have in Massachusetts to-day. The evil is here. It is bad enough as it is. Perhaps we cannot correct all the evil that exists, but, through this resolution, we can do something so that the evil will not be extended. I trust that the resolution will pass.

Mr. Richardson of Newton: The Convention is at another crisis, in my opinion. I wish that I had one tithe of the eloquence or the influence that the gentleman from Waltham (Mr. Luce), who ordinarily sits behind me, has, to bring to bear on this question at this time. Here is another time, gentlemen, when the conservatives of this Convention have got to face their duty or else shirk it. Here is a change that is demanded by the people of this State as but few propositions have been that have come before us. Here is a chance for this Convention not to be afraid, but to stand up and do something to reorganize and help the business administration of this State, which as everybody knows, and as is admitted even by those who do not favor this measure, is the very weakest point of the State's administration. What do the remarks of the gentleman from Haverhill (Mr. George) this morning amount to when they are subjected to analysis? They amount to nothing else but this: "God knows the situation is bad enough, now let us not touch it for fear we may make it worse." Is that an attitude in which a Constitutional Convention can face the people with confidence and pride? I think not. I appeal to this Convention to pass this matter to another reading. There is a chance for amendments later if amendments be necessary. The resolution goes only a short distance. The step in the direction of a more efficient government is all too short. But you have a chance to amend it on another reading. The people want a reorganization and an improvement in the efficiency of our government. I appeal to the business men in this Convention to recognize the fact that the Commonwealth of Massachusetts in this respect is but a great business, doing business at the present time under such conditions as would lead their own corporations and interests into

bankruptcy. The State cannot go into bankruptcy because the taxpayers' willing backs are under the burden, but even there there comes, sometime, a limit. Here is a thing, gentlemen, on which the Convention must take firm and constructive ground if it is to meet the approbation of the people.

A long time ago there was a Constitutional Convention in this country, and it was on the verge of breaking up because members could not agree upon a constructive proposition, and a man whom we since have come to know as the father of his country brought order out of chaos. He said to those disagreeing factions in the first Constitutional Convention of the United States: "Let us raise a standard to which the wise and the honest can repair. The event is in the hand of God." The main opposition to this measure, so far as I can analyze it, is fear of change. I appeal to this Convention not to be influenced by that unworthy argument. Let us raise a standard to which the wise and the honest can repair, and let the event be in the hand of God.

Mr. CURTIS of Revere: I cannot agree with the gentleman who last spoke that what this Convention fears most is the change. I do not think that is it. I cannot believe there is very serious objection in the mind of any delegate to this Convention as regards the first proposition, or that the number of commissions should be reduced. I think the last is the important question. When I arose before, it was merely to ask the gentleman from Boston (Mr. Bates), who now has left his seat, the gentleman who offered the amendment striking out sections 2 and 3, if he did not believe that to-day the Legislature had plenty of power to abolish these commissions. Of course it has. Certainly it has power to consolidate. But I am met immediately by the argument of some friends: "Oh, but they won't do it." How do you know they will not do it? "Oh, from past experience." Well, we have got to trust somebody. I had rather trust a Legislature elected by the people and the representatives of the people than some Governors of whom I knew.

Let me cite an illustration told me by a reputable attorney of Boston, who was counsel for a man in prison. This lawyer went to the Governor, — this is within ten years, it is not the Governor who sits in this Convention, I will say that, — and the Governor gave him his solemn promise that the man should have a pardon. He did not keep his word. He delayed, and delayed, and delayed, until finally the attorney went to him and said: "Governor, aren't you going to keep your word?" "No", he said, "I have changed my mind." Upon which the attorney said: "You are the biggest liar who ever sat in this chair". And all the Governor said to him was: "Oh, that is all right, my boy. Don't get mad over that." I think many know from experience to whom I refer.

The weakness of section 2 is this: It proceeds from the theory that all Governors are high-minded. They are not. For instance, might it not work out this way: Take a Governor who wanted to have his own way. Under section 2 he could put in the men he wanted. What would he do? He would send to the Legislature an impossible proposition, which he knew they would not accept. Of course they would reject an impossible proposition. Then according to the terms of section 2 it comes back to the Governor, and he has

a right to change his mind, and he would change his mind. There is nothing to prevent it and he would accomplish his purpose, despite the Legislature.

Mr. QUINCY of Boston: Is not the gentleman aware that under this resolution the Legislature would have an absolute right to reject the Governor's impossible proposition and substitute its own proper proposition and send this up to the Governor?

Mr. CURTIS of Revere: That would not cure the evil under that section 2 as I read that section, because it seems to me the phraseology is plain. The phraseology is plain that if he sent this impossible proposition to the Legislature and they rejected it then he would say: "I can read the English language. I will put this before the Council myself." Now, a Governor who would break his solemn word with a reputable attorney of this city would do just such a trick as that. For that reason I am in favor of the amendment offered by the gentleman in the first division (Mr. Sanford Bates) striking out sections 2 and 3, because I think there is a feeling in this Commonwealth that we are spending too much money for commissions.

Mr. CLARK of Brockton: I wish to ask the gentleman who now is speaking, if he is in favor of the amendment offered by the gentleman in the first division (Mr. Sanford Bates), if he is not in favor of giving this matter a reading to-day, so that we may have it before us for further consideration, study and amendment in the future. If not, if this goes down to-day, we lose it, we lose the opportunity of doing anything to save this Commonwealth from the great evil at which this is aimed, an evil that with each succeeding year is ever looming larger and larger.

Mr. CURTIS of Revere: I have but a moment to answer the gentleman's speech. I am not afraid, even if our present system should prevail, that old Massachusetts is going to stand disgraced among the Commonwealths of the Nation. I think that even with our present system we are getting along pretty well. Of course we can make some changes, of course we can practice economies, but when you set up the bugbear that unless you change this thing Massachusetts will be disgraced and degraded in the eyes of the Commonwealths, which is the gentleman's argument, I cannot for a minute admit that. I admit there are some evils, and I would like to have the amendment offered by the gentleman accepted as regards my own opinion, but even so I believe that he must feel, as I do, that if the Legislature has power to make this reform, as it undoubtedly has, then it means and should mean the defeat of this whole proposition.

Mr. QUINCY of Boston: I can only express the hope that members will vote with the text of this amendment before them. The opponents of this measure have used many arguments against it, perhaps justifiably, because some friends of this measure have used very broad arguments in its favor. This amendment does not introduce a Cabinet system. It does not introduce party government. It does not take away any power from the Legislature which properly belongs to the Legislature, except that the Legislature is compelled to act within a given time, otherwise the Governor will act subject to the right of the Legislature to repeal. I would not favor a proposition to compel the Legislature to take the Governor's scheme of

reorganization. There is nothing in this amendment which compels that at all. The Legislature can reject absolutely the Governor's scheme. It can substitute its own plan entirely different in every respect, and that becomes law unless the Governor vetoes it, as he has the right to veto any bill. I think the fears of some of the delegates who have spoken so strongly against this measure are unjustified by the text of the amendment. It does not restrict the Governor to naming new officials. It does not necessarily call for that appointment of new heads of departments. These new positions can be filled by heads of existing departments, by present officials, or commissions or boards; that to my mind is the way it probably would work out. For instance, we would take the registration departments, now independent, and would put them under the Department of Health. We would put under the Public Service Commission the Board of Gas and Electric Light Commissioners, which properly belongs there. We would group the business of the State under a logical system of departments, boards and commissions, only we would cut these down to not more than 15 in number, leaving them to be appointed by the Governor with such salaries and for such terms as the Legislature may see fit to authorize. If you leave this measure as it stands the change can be made only in such manner as the Legislature itself provides.

Mr. Dutch of Winchester: The difficulty in trying to sum up this long debate in ten minutes is that so much of it has been entirely beside the main point. Most of the opposition which has been expressed has been directed solely at amendments that are not part of the resolution itself. That I desire to make extremely clear, if I accomplish nothing else. This measure does not add one thing to the power of the Governor with respect to the appointment or removal of an administrative officer. That is literally and absolutely so, — not one change in that situation. My record is consistent in this Convention with reference to plans for super-Governors. I have been opposed to those plans. And I say again there is not one thing in this resolution itself which extends the power of the Governor on anything, on appointments or removals. Now, that is fundamental. I am obliged to the gentleman from Boston in the third division (Mr. Lomasney) for giving the reasons why I oppose the amendment of the gentleman from Brookline in the third division (Mr. Walker), because that amendment, as I understand, does give power of removal by the Governor absolutely. The committee as a whole does not favor that, and I certainly do not favor it, and it is not in the main resolution. If you will read the resolution it says that the whole question of removal is in the hands of the General Court, where it is to-day. Now, I hope that puts those arguments and all the talk that we have heard in that regard absolutely out of the mind of those who are seriously considering this proposition.

We are not discussing an executive measure. This is not a proposition to increase the powers of the Governor. If the Legislature see fit to set up heads of departments to be appointed and removed by the Governor at his will, all well and good. I made a mistake. They cannot do it as to appointments, because we do insist that appointments shall be confirmed by the Council; in other words, we put in that check which is not now in your Constitution, so that as

far as it goes it is a restriction on the permanent power of the Governor and not an increase of his power.

This is a plain proposition, as was stated, for the business reorganization of the State, to get it in shape to handle the tremendous business that you now are conducting here as a corporation, as a governmental corporation, and the tremendous increases that are bound to come.

Why, the argument of the gentleman from Haverhill (Mr. George) was a complete argument for this measure in its true sense. It was an argument against the amendment of the gentleman from Brookline (Mr. Walker), but it was an argument for this measure. He pointed out that commissions had been multiplied without any regard to necessity, a complete argument for this degree of control. He pointed out the increase of expenses, etc., and I am much obliged to him for doing so. The rest of the argument, as you know, was the old argument *ad hominem*. I think you recognize who the "*hominem*" was, but you all are opposed to that specious form of argument which does not go to the merits of the proposition. This is a Constitutional Convention, and I implore you to devote yourselves to the merits of the proposition as such.

Again, the amendment offered by the gentleman from Boston in the first division (Mr. Sanford Bates) seeks to cure the difficulty with the dog's tail by cutting it off behind the ears, and that is the object of the gentleman from Revere in the fourth division (Mr. Curtis) who less artfully finally discloses, what of course you knew, that he was against the whole proposition, and hence he thought that was a very good way to amend. Clearly the proposal is logically built up. The whole thing stands together, except for the third paragraph. When the matter was presented that paragraph was put fairly to the Convention, — whether you desired to follow the precedent of the existing Constitution as to the Secretary of the Commonwealth in these other departments. I said that personally I was entirely lukewarm about it. It is not essential to the rest of the plan. Accept, therefore, if you choose, the amendment of the gentleman from Somerville in the fourth division (Mr. Underhill), rejecting No. 3. I equally frankly said that the second sentence was not essential to the scheme, that it seemed rather desirable to put it in there but it was not essential. He has moved to strike that out, and, if you so desire, it is not at all essential to the scheme.

The other amendments I believe are thrust at the essence of the measure. They are not helpful amendments; they are not meant to be helpful amendments. Take the suggestion of the gentleman from Everett in the second division (Mr. Newton), to strike out the provision as to the Governor and Council; look what has been suggested about that. I cannot conceive of the slightest doubt that you understand that those words were put in there to say, and that they do say, that the Governor and Council were to act only in case the Legislature at the first session did not act and passed the proposition up, and that thereafter it again would be subject absolutely to the action of the Legislature. We cannot say anything more than that if you desire to put in here, in the 36th line, that the order of the Governor and Council shall have the force of law, subject to the further action of the General Court, that is entirely agreeable to us,

because it is what we want. It is not a point that should disturb us at this time, on this preliminary stage of the resolution, — it can be taken care of later or it can be taken care of by the committee on Form and Phraseology, because you know what the intent of the committee is.

The only point at which the Governor acts here is to initiate the plan, to put the thing before the Legislature shipshape, because we know he will be working on it and have a chance to work on it in connection with the Supervisor of Administration before the Legislature convenes. After that first initial step the Legislature has the entire control. If by some possibility the Legislature does not act, then the Governor and Council may put this purely administrative matter in effect. It is not making laws in the ordinary sense, it is not changing public policy in the ordinary sense; it is a pure matter of administrative plan, and purely temporary because always subject to the Legislature.

I again appeal to the Convention to pass this matter to another reading even though it need further perfection, because otherwise we will miss the opportunity to do something for an evil which everybody agrees exists.

Mr. WALSH of Fitchburg: Why is this proposition before us? It is because at the time the Constitution of Massachusetts was adopted no man held an administrative office who was not elected by the people. There were three branches of our government provided for: The judiciary, the legislative and the administrative. In recent years there has grown up the practice of creating by statute appointive administrative officers, a departure from the first policy of having only elective administrative officers, and the Legislature has assumed that authority and that power. Now, we must decide here the fundamental question, and it is one upon which you well may differ. Do we want our Legislature to have control over these administrative officers of our government who are not elected by the people? If so, why not let the President of the Senate and the Speaker of the House name the administrative officials of Massachusetts? Why ask the Governor to name public officials, give him power to remove them and give him no control over their public acts? How can that be answered? I believe if there is not placed in the Constitution some amendment controlling this situation we are likely to face a condition where the President of the Senate or the Speaker of the House, elected from small constituencies, will name the administrative officials in Massachusetts. They are doing it already. Within recent years there have been enacted laws in this Commonwealth where the Speaker of the House and the President of the Senate, together with the Governor of the State, named certain commissions. Let us centralize our power. It would appear from what some have said here that Governors no longer are popular, and that the Governorship is not the exalted, high office that we expect it to be. Massachusetts may come back again to the days of the great Governors of the past if she has been drifting away from these in recent years. Massachusetts may yet have Governors who are entitled to be vested with this power and to enjoy the confidence and respect of the people, — Governors who will seek to promote and advance the welfare, happiness and prosperity of the people of the State.

Let me give you an illustration of the growth of commissions, because this measure seeks to stop the multiplication of commissions. How do they originate? A group of gentlemen want to establish, or they did a few years ago, State forests. It was said: "Let us put that work with the State Forester". "Oh, no, let us have an unpaid commission of high-minded gentlemen who are especially interested in that proposition." The law was passed. They were named. Within a year or two they came back to the Legislature and said: "We want a secretary. We want a room in the State House. We want clerks". In this manner another expensive commission is established permanently. Under this proposed constitutional provision that commission would have to go to one of the seven or fifteen departments named.

The first amendment moved by Mr. Underhill of Somerville was rejected.

The amendment moved by Mr. Adams of Quincy was rejected.

The amendment moved by Mr. Richardson of Newton was rejected.

The amendment moved by Mr. Walker of Brookline was rejected, by a vote of 27 to 128.

The amendment moved by Mr. Newton of Everett was rejected.

The second amendment moved by Mr. Underhill of Somerville was rejected.

The amendment moved by Mr. Sanford Bates of Boston was rejected, by a vote of 83 to 88.

The resolution (No. 407) was rejected, Thursday, August 8, 1918, by a call of the yeas and nays, by a vote of 96 to 109.

On the following day Mr. Sullivan of Salem moved that the Convention reconsider the vote by which it had rejected the resolution.

Mr. Sullivan of Salem: I was one of those who voted yesterday afternoon in favor of document No. 407, so called, although I do not believe in the second and third sections. I voted for the amendment moved by the gentleman from Boston in the first division (Mr. Sanford Bates). I was sorry to see that he did not move for a roll-call on his amendment, because of the closeness of the vote, 83 to 88. I find in talking with some of the men who voted against the document as a whole that there were at least a dozen of them who voted, as I was tempted to do, against the main proposition simply because the amendment of the gentleman from Boston (Mr. Sanford Bates) had not carried. I am sorry that the committee in charge of this matter yesterday did not see that there was not a chance of passing the whole proposition and offer some sort of a compromise. But I am not going to try to debate the merits of the measure at this time. I have talked with the gentleman from Winchester (Mr. Dutch), who was in charge of the measure, and he has talked with his associates on the committee, and as I understand it they are willing to accept the substance of the first section and forget the second and third sections, which bring in the politics, the making of the Governor "a little King," with the power of the Czar in Russia before the days of the Bolsheviki, etc. They have agreed they will not debate the measure at this stage, but simply will vote for reconsideration and pass the first section along to another reading, and that neither the

substance nor the intent of the second and third sections will be included in the first section when we come to it at the next reading. With that statement, I move reconsideration.

Mr. GATES of Westborough: As a rule I am not in favor of reconsideration. I would not be in favor of this reconsideration if I did not feel that the resolution was killed by its friends, and what I mean by its friends is this: A large number of delegates here believed in section 1 but did not believe in sections 2 and 3. Now, the committee that reported this resolution were unanimous on section 1, or practically unanimous on section 1, that something should be done to consolidate and have under supervision the different boards of the State, but were not unanimous in adding to the resolution sections 2 and 3; and the gentleman who had charge of the resolution told the delegates that we were not seeking for sections 2 and 3 in that resolution, but we did want the first section adopted. I find that friends of the first section voted against the whole measure because the amendment that was offered here to strike out sections 2 and 3 was not carried, — those who were in favor of the first section, and many who were in favor of the whole resolution, voted against it because the amendment was not adopted. I believe that the delegates in this Convention know that something of this kind should be done. This work is the result of more than ten years' study. The joint committees of the committees on Executive and State Administration have been considering this subject for six months, and we brought something to the Convention that we believe will be adopted, — sections 1, 2 and 3. If we adopt section 1 we have saved the labor that has been put into this measure for many years, and I hope that reconsideration will be voted. I am as anxious as any man in this Convention to finish our work, but I would rather stay here another year than go home feeling that I had not done my duty. If I had to stay a year without pay I would rather do it and feel that I had stayed here until everything had been accomplished than go home and feel at the last minute that we had neglected something that we ought to have done.

Mr. GEORGE of Haverhill: Whenever I come into this Convention with a proposition and we have had a two days' discussion, and I am defeated, I always take my medicine, and there are no hard feelings because the members of the Convention did not happen to agree with me. This proposition has been on for two days and has been discussed thoroughly. The committee themselves disagreed as to what ought to be done, although they had considered this matter fifteen months. The gentleman from Winchester (Mr. Dutch) is quoted in the newspapers as saying that it left the subject-matter entirely in the hands of the Legislature. Another member says that it removes it from the Legislature. Another member says it gives no additional power to the Governor. And then the honored ex-Governor from Fitchburg (Mr. Walsh) says that it gives more power to the Governor. Then finally we are told by the gentleman from Winchester (Mr. Dutch) that it does not give any additional power to the Governor. If these statements are correct from each viewpoint, what is the use of passing a proposition that no two can agree upon, and especially those who have considered this matter for fifteen months?

We fought this matter out yesterday. What is the use of opening

this up again? There is a whole lot that can be said on this proposition if you get it back before the Convention. The committee would not agree to anything yesterday, they wanted the whole thing, and the result was they lost it. We had a fair fight. We had a roll-call. We have given more attention to this matter than we have to fifty per cent of the matters that have been considered in this Convention, and I do not think that we ought to take further time to go on a fishing expedition to find out if we cannot do something that nobody understands. I think the Convention yesterday understood that we did not want this proposition. The whole power is in the Legislature now, and whenever the public sentiment is in favor of these changes the Legislature will make them.

Mr. CHURCHILL of Amherst: I have not taken part in the debate on this question, because I had felt that members of the committee and others who have been giving special attention to it were far more competent than I to debate the details of the resolution. That has not been because I have not been intensely interested in the nature of this proposition, or the end and aim of the resolution. I think there is nothing in the proposals that have been before this Convention that has seemed to me more necessary for us to consider and to arrive at some clear result upon than this resolution. I had supposed until I had watched the progress of events that a question like this would be debated in this assembly utterly apart from politics, utterly apart from partizanship. I had said to myself that we have here a business question, a question as to the business administration of this State, the efficient handling of the great work that this Commonwealth commits to its government, and I have had sufficient experience to see how in this Commonwealth we have a system of handling this great business that no member of this Convention, not one, would for a moment approve in connection with any business in which he was directly personally interested. I have seen the great business of this Commonwealth divided among a large number of commissions, many of which are absolutely without control, and I have seen some of those commissions doing their work in a manner which is a disgrace to the Commonwealth. I do not like to make large statements. I certainly do not want to make an extravagant statement. I make that statement of my own personal knowledge.

Now, what is the proposal before us at this minute? We have had a large proposition, and the proposition as a whole has been voted down by a narrow majority. The suggestion is made to us this morning that we reconsider the rejection of this resolution and start, in a way that ought to arouse at least very little opposition, upon the process of making a business administration truly a business administration. We know, if we have watched events, the difficulties which a Legislature is subject to when it endeavors to handle this matter. We know the many inducements that members of the Legislature have not to let power out of their hands and the hands of their followers. We must, if we are going to have a good handling of our business, give to our Governor more power than he has. We must see clearly how he exercises that power. We must be able to hold him responsible for it, and to hit him if he does not do his duty. The trouble with the present situation is that the responsibility for this situation is so divided among different men that, I am

tempted to say, not one hundred men in the Commonwealth know or can know the actual situation and its needs.

I simply want to reënforce, as far as the words of one man may, the desire of the committee to ask this Convention to take the simplest possible form, the least controversial form, which nevertheless will assist us toward making our administration what everyone of us ought to wish it to be.

Mr. LOMASNEY of Boston: Yesterday was the day we had our case tried in court. The gentleman was present. We took this matter up the day before. We discussed it in all its details, and we came to a conclusion. Where are we going to be, sir, if we keep continually having reconsideration? I had to refuse the labor men of this Convention a few days ago to reconsider a matter which they thought essential, and which was beaten by only two votes, the question of giving cities and towns the right to go into the housing proposition. I said two votes; it might constitute one hundred votes when the day of action is on. I refused, and told them I could not vote to reconsider. We are going to stay here until the snow flies if we keep reconsideration going on every time a resolution is beaten by a few votes. This question has had its day, and we have passed on. Now, there were thirteen votes, or something like that, and a compromise offered and refused.

I am not criticizing and I am not denying the necessity of the coordination of departments, but the Legislature has that power now; and I understand, — and I only say that what I understand is known to a great many others, — that this question was being considered this year by the Supervisor of Administration, but owing to the unfortunate party warfare that has existed with gentlemen who represent different elements in the party they did not want to bring the matter in at this time. But the Legislature has the power now. The gentleman who brought this amendment up, with his intelligence, — I refer to Mr. Balch of Boston, — is going to be elected to the Legislature. The Legislature has the power, and he has the capacity and the persistence. You need not be afraid that the Legislature, after the remarkable vote that was given to this proposition here yesterday, will permit further delay. That is the viewpoint for us to take. Do you think the resolution is essential?

They had their day yesterday. They were beaten. I submit, sir, when we have our day in court let us bring all our forces forward. The people on the other side put forth their best efforts. They had the gentleman from Winchester (Mr. Dutch) open the debate. They had the gentleman from Fitchburg (Mr. Walsh), they had the gentleman from Boston; they had several other gentlemen, every one of great ability, present their side, and they were beaten. Now, why come in to-day and say what we did yesterday was of no account, that it was not discussed at all yesterday, that nobody understood it yesterday, the great man from Winchester and all the others kept silent, and they say to us now reconsider? I submit, there should be a final day for us all. We were all here. Every man and measure should be treated alike. We should not reconsider, and I hope we will not.

Mr. PILLSBURY of Wellesley: I voted yesterday to advance this resolution to another stage, regarding it as a well-meaning attempt of

two able committees to do something in a direction in which much ought to be done, and being willing to see this experiment tried though without any confidence that it is capable of accomplishing any valuable results. My friend from Salem (Mr. Sullivan) who moves the reconsideration says that the committee is now content to take section 1 without sections 2 and 3. It must be evident, I think, that there is nothing in section 1 which is by itself worth saving, and the debate yesterday developed another reason which to my mind is conclusive against reopening the subject. I do not suppose there is a man on this floor who doubts that a large proportion of the members of the Convention voting upon this resolution yesterday, on the one side or on the other, voted more or less under the influence of partizan political considerations. If the work of this Convention is to be bedraggled with partizan politics, the sooner we get through and go home the better. And I am now led to say what I have often been impelled to say, that this is not and never has been a real Constitutional Convention. It is a political convention, in which all controversies of any importance are controversies between opposing political forces, not always partizan, but nevertheless political. It is not a real deliberative body, sitting with an eye single to improving the structure of our government, as a Constitutional Convention ought to be, and the reason is plain. It came here packed by the work of an active organization to secure the passage of the initiative and referendum. All its proceedings have been colored by that circumstance, and that has pitched the key to everything that we have been doing here. I should be glad to see anything written into the Constitution toward strengthening the executive, which needs it, but I can see nothing in section 1 which is worth adopting by itself; and if the subject is reopened it is quite clear to my mind that it will precipitate another partizan political controversy out of which no real reform of the State government is likely to emerge.

Mr. Sanford Bates of Boston: I hope that reconsideration will prevail. I voted in favor of advancing this resolution one stage yesterday with the firm conviction that I would not vote for the resolution at its final stage unless it was amended so that the objectionable features were taken out. Now, the attacks by our genial friend from Haverhill (Mr. George) and the other men who have attacked this resolution are directed entirely at sections 2 and 3, and the two strong reasons that I think ought to convince members of this Convention to vote for reconsideration are these:

First, that section 1 in and of itself has not been fairly debated before this Convention. I made a motion to bring that section alone before the Convention in the last speech that was made before the previous question was voted. All the discussion for two days was held upon the other sections of the resolution. Now, is it not fair that that first section should have an opportunity to be debated and decided by roll-call, inasmuch as it was decided only by a close vote, in which if three men had changed it would have gone the other way? It may have been thought strange that somebody did not ask for a roll-call. I assumed that when two strong committees had sat upon this matter for six months the Convention would pay them the compliment of respecting their judgment to the extent of advancing this matter one stage, at least, and I hoped to be able in the mean-

time to get enough sentiment together so that on the second stage the objectionable features could be eliminated.

That brings me to the second reason. I think that this Convention owes it to the hard working committees which have considered this matter to at least give this resolution another lease of life until we can see if it is not possible to get at the real meat of the resolution. It was said here yesterday that there was not a single person in this Commonwealth who demanded a reduction of the number of commissions. I say that you do not have to go any farther than the street outside of this building and ask any man what he thinks of the complex system of our State government, and even the most unintelligent voter will say that there are too may officers and too many commissions. Now, with all due respect to my friend from Wellesley in this division (Mr. Pillsbury) who says that the first section will mean nothing, the first section says in black and white that the number of commissions shall be limited to fifteen, and when that is written in the Constitution of Massachusetts it takes a more able constitutional lawyer than my friend from Wellesley (Mr. Pillsbury) to establish sixteen departments and get away with it. I do not think we want to put detail into our Constitution, but if we do nothing more let us at least reflect the public sentiment to the extent of saying in the Constitution that we believe these commissions ought to be reduced, at least that no new ones be made. I do not know who my friend from Haverhill (Mr. George) was referring to when he said that one man held three commissions; but if whoever he referred to did and got away with it, there again is a pretty good argument that there are too many commissions. If one man could hold three it is about time we consolidated some of them. As usual my friend from Haverhill (Mr. George) has argued in favor of the proposition that he is voting against.

I hope that the men here who seriously want to vote for this reform will be given the opportunity. I am quite sure that we can rely on the word of this committee and the word of the men interested in the resolution that if this matter is reconsidered a motion will be made to strike out the objectionable parts and debate will be limited, the previous question will be moved immediately, and we can find out the real sentiment of this Convention on this matter.

Mr. BENNETT of Saugus: If we refuse to reconsider this matter we confess the incapacity of this Convention to deal with an admitted evil. Everybody agrees that that evil exists. There are some things in this amendment with which I do not agree. For one thing, I do not know very much about it, but I am afraid of it; that is, that if the Legislature does not pass a certain law it may be passed by the Governor and Council and have the force of law. Well, I have been brought up to regard legislation as somewhat different from that. But everybody knows that this evil exists. Somebody has referred to Russia. Well, now, one of the causes of the downfall of Russia, in addition to lack of education, in addition to the Bolsheviki and what not, perhaps the greatest cause of the downfall of Russia was the bureaucracy. Reforms have come up. Why, this Czar, poor man, who was executed the other day, the papers say, I think truthfully, wanted a peace policy, but what could he do with the bureaucracy?

It was the same way in the French Revolution. Louis XVI was a much better man than monarchs who had preceded him, but he could not do anything because of the desperate conditions surrounding him, the nobility, the privileged classes, — he could not do anything at all. I undertake to say that we are building up in this Commonwealth, perhaps innocently, a dangerous bureaucracy. Business has grown, and we tack on a room here and a shingle there, a desk here, and finally we have a great inchoate mass of administrative bureaus, and you cannot walk through the State House without stepping on the toes of a bureaucrat. You cannot go into a room but what you are confronted with somebody who thinks because he holds that kind of a position and is supposed to be an expert he is entitled to treat you with lofty disdain.

My friend from Haverhill (Mr. George), whom I love and admire for many reasons, has made the strongest speeches in this Convention in favor of this resolution. Everything he said has been in favor of it. Why, his reference to that map and to the chaotic condition of affairs was in favor of this amendment. Everything he said in his long and interesting and characteristic speech was in favor of the resolution, except his conclusion. By experience and temperament he is in favor of this measure. Now, why does he oppose it? Well, the gentleman from Wellesley (Mr. Pillsbury) has stated that. He has explained why so many oppose it. As to why my friend from ward 5 (Mr. Lomasney) opposes it, who can understand what profound thoughts are occurring behind that Websterian dome? [Laughter.] I will tell you why. This is only an impression, and if I am wrong I will take it back; but the impression in this house is that he opposes it because the gentleman from Fitchburg (Mr. Walsh) is in favor of it. [Laughter.]

We have a plain duty here, a plain and imperative duty, to do something in the direction of systematizing this great business of the Commonwealth, which would become as dangerous as it was in Russia and France were it not for the different conditions of the people. If I had time, — how long have I got?

The PRESIDENT: Half a minute.

Mr. BENNETT: Well, I have an occurrence, an anecdote, in Massachusetts which I should like to tell, but I will have to tell it some other time.

I hope that this will be reconsidered. We are not quitters. We are not going to squeal. We have a duty here. I do not like a lot of things there, but I do want to see this administrative monster in this State regulated and changed and properly subdued, and therefore I want to see this reconsidered.

Mr. WALKER of Brookline: I trust that this very important matter will be reconsidered. I wish to say that if it is reconsidered I will not press my amendment, I will not press any of my ideas in regard to the matter, but will be very glad to coöperate with the gentleman from Boston in the first division (Mr. Sanford Bates) in trying to bring out something that is worth while. I can offer a still further inducement: I promise not to make a speech on the subject.

The motion to reconsider prevailed, by a vote of 90 to 87, taken by a call of the yeas and nays.

On the recurring question, the resolution was ordered to a third reading, by a call of the yeas and nays, by a vote of 106 to 87.

It was read a third time Wednesday, August 14.

Mr. Sanford Bates of Boston: I am not going to move the amendment printed under my name in the calendar, for the reason that this noon time those interested in amending this measure that it might accomplish the object which section 1 was designed to accomplish agreed practically upon a substitute measure which I am going to move in just a minute.

The amendment printed under the name of the gentleman from Easthampton (Mr. Lyman) and the amendment printed under the name of the gentleman from Springfield (Mr. Bosworth) have been combined in a new draft which I offer, and I think I can say that this is satisfactory to both of those gentlemen, satisfactory to me and satisfactory also to the gentleman in charge of the original measure (Mr. Dutch). I simply want to call to the attention of the Convention that this is the simplest form of an amendment which will accomplish the desire to cut down the number of commissions. All the objectionable features, so far as I can find them and so far as they have been voiced in this Convention, have been eliminated from this amendment. I trust there will be no debate on it and that the matter can be adopted as agreed upon.

Mr. Bates moved that the resolution be amended by striking out the article of amendment printed in document No. 407 and substituting the following:

On or before January first, nineteen hundred and twenty-one, the executive and administrative work of the Commonwealth shall be organized in not more than twenty departments, under such supervision and regulation as the General Court may from time to time make by law. Every executive and administrative office, board and commission now or hereafter established to do such work, excepting offices coming directly under the Governor or the Council, shall be placed in one of such departments.

This amendment was adopted.

Mr. George of Haverhill: I should like to have explained the difference between this amendment and the amendment that was suggested by the gentleman in this division from Easthampton (Mr. Lyman).

The President: The Chair did not understand the question of the member.

Mr. George: I was inquiring whether the amendment that we had just adopted was an amendment that was offered by the gentleman in this division from Easthampton (Mr. Lyman).

The President: The amendment moved by Mr. Sanford Bates of Boston.

Mr. Sanford Bates: By way of answer to the gentleman's inquiry I should like to inquire of the Chair if this amendment is substituted whether or not it will not be printed in the calendar to-morrow as a substantial change in the resolution.

The President: The amendment already has been substituted, and under the rule the resolution will be referred to the committee on Form and Phraseology. The Chair so refers it.

The resolution was reported by that committee Thursday, August 15, in the following form (No. 426):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

On or before January first, nineteen hundred twenty-one, the executive and administrative work of the Commonwealth shall be organized in not more than twenty departments, in one of which every executive and administrative office, board and commission, except those officers serving directly under the Governor or the Council, shall be placed. Such departments shall be under such supervision and regulation as the General Court may from time to time prescribe by law.

Mr. LYMAN of Easthampton: I think I owe it to the Convention to state why I introduced this amendment, notice of which was given by the gentleman from Boston in the first division (Mr. Bates). When this matter originally came up for discussion it became apparent that in the resolution submitted by the committee the cure was worse than the disease. And while my amendment is broad enough to make possible practically everything that the committee advocated, and while it is strong enough not only to take care of the present but to carry the heavy loads of the future, yet it is conservative enough to allow us to continue along the lines which have made the Commonwealth famous. That is to say, by raising the committee's limit on the number of departments to twenty will allow us to consolidate those boards and commissions who can best work and best agree, and not undertake to jam into half a dozen departments the various activities of the Commonwealth some of which are so foreign to one another that they can no more mix than oil and water. So in my amendment I have endeavored to meet the objections of the gentleman from Westborough (Mr. Gates) who says that before the Convention adjourns some action should be taken in regard to reducing the number of commissions; of the gentleman from Haverhill in this division (Mr. George) who objected to appointing seven heads crowned with political glory and endowed with large salaries; of the gentleman from Boston in the third division (Mr. Lomasney) who objected to having those seven crowned heads made political footballs to be kicked around at the pleasure of the Governor; of the gentleman from Fitchburg (Mr. Walsh) who from experience in the Governor's chair insists that some action should be taken looking to the regulation and supervision of the various boards and commissions; and finally, to the large number of us who, while recognizing the need of reducing the number of commissions, object to establishing a bureau system in this Commonwealth. My amendment seeks to accomplish three things: First, it reduces the commissions to one-fifth of the present number; second, it provides for their supervision and regulation; and, third, by putting a constitutional limit on the number of departments, we draw a line beyond which the General Court shall not pass.

The resolution as amended by the substitution of the new draft recommended by the committee on Form and Phraseology (No. 426) was passed to be engrossed Tuesday, August 20.

It was considered Wednesday, August 21, for submission to the people.

Mr. AVERY of Holyoke: I do not want to delay, I do not intend to occupy the time of the Convention. I think we ought to think this resolution over just once more before we send it along. It provides that —

On or before January first, nineteen hundred twenty-one, the executive and administrative work of the Commonwealth shall be organized in not more than twenty

departments, in one of which every executive and administrative office, board and commission, except those officers serving directly under the Governor or the Council, shall be placed. Such departments shall be under such supervision and regulation as the General Court may from time to time prescribe by law.

We have at this time an abuse in the Commonwealth. We probably have too many commissions. The number of commissions has been exaggerated. A large number of them are local affairs — the Fall River Police Commission, the Mount Greylock Commission, this commission and that commission which is absolutely and always will be local and always ought to be local. There are some departments here in the State House which could be consolidated. Now we say that in these few years ahead of us the Legislature shall take all the administrative business of the Commonwealth and group it in not more than twenty departments. What will that mean? It will mean twenty new offices, twenty more salaries, and additional expense to the Commonwealth. We do not know that it will mean any cutting off of employees. We have no guarantee of anything of that kind. We simply arbitrarily say that the whole administrative work of this Commonwealth shall be all recast and shall be grouped. What do we gain by the mere grouping? Just because we follow out some fad, just because we follow out some theory, we are not going to get any more efficiency. I defy you to go into the work of any State and find a finer body of public service which has accomplished more for the people for the money and for the time than the commissions of Massachusetts have done. Why? Because they have done their work removed from the atmosphere of politics. They have attracted to themselves men who took pride in their work and who would work. Many of these commissions are not paid commissions. We are adopting a rigid, arbitrary provision that has no constructive features in it at all, and I think at this time we ought to pause and hesitate.

Mr. Dutch of Winchester: I think just a word should be said in answer to the suggestions of the gentleman from Holyoke, because they indicate a misconception. In the first place, he suggests that there may be difficulty with respect to local commissions. May I point out that his examples of a local commission, as the Fall River Police Commission or the Boston Excise Board, are not included in this resolution, because the resolution has been phrased carefully by those who put it in to avoid an ambiguity which did exist in the original resolution, so that it includes only commissions doing the administrative work of the State, not administrative work of any city or town. Secondly, as to his Mount Greylock Commission and the like, those very readily, of course, can be grouped in a department of public works or resources, or what not. There will be no legal difficulty at all in retaining those. As to the gentleman's next objection, that this will set up twenty new offices, that is not true. If the Legislature desires to do so, it may; but this amendment particularly provides that the Legislature may select existing officers or boards to be heads of departments. In fact, there is nothing requiring heads of departments. That was in the original resolution.

I want to say that this resolution was put in as a result of the combined efforts of the distinguished gentleman from Easthampton (Mr. Lyman), who has had long experience on the committee on Ways and Means; Mr. Sanford Bates of Boston, Mr. Bosworth of Springfield

and others, and the form is satisfactory to them as well as to the gentleman from ward 5 in the third division (Mr. Lomasney). It is entirely conservative, it is entirely safe, it is entirely in the hands of the Legislature, and yet it does the work which, as was pointed out in the editorial in the Boston Herald on the 12th of August, must be done. I think I should not take your time to read from this editorial, which, however, did urge the Convention to take some steps along this line and in the very form that is provided for in this short and simplified draft of the proposition.

Mr. GEORGE of Haverhill: Of course this is not the proposition that came in here from the committee, according to the remarks of my friend from Winchester. It has been so arranged by a sort of sleight-of-hand performance that while they started it at seven departments, now they have got it up to twenty. He says that certain other commissions are not going to be included. How do we know they are not going to be included? The resolution does not say so.

I have no particular objection to offer to this amendment, but the gentleman from Holyoke (Mr. Avery) has told the truth. It means that the Legislature will provide for twenty departments with twenty heads, which will have the same number of employees or more than they have now, so that we shall not have gained anything in point of economy. I thought in the first instance that that was the object they proposed to accomplish. You do not have to invite the Legislature of Massachusetts to add any more offices. They will take the hint very quickly, and instead of having any less commissions they will take a hundred commissions and add twenty more, and all the distinguished gentry all along the line will receive their salaries just as they do now. What is the use of putting such a proposition as that on the ballot? How do we know that twenty should be the number? How did we know the other day that seven should be the number? We are telling the Legislature to do something without knowing what they ought to do.

I was going out on the train the other evening with a gentleman who is conducting a big business in New Hampshire, and he was telling me his experience with an expert. This expert was a professor in a small New England college, receiving a salary of $2,200 or $2,300 a year, and they employed him at $3,500 a year to have supervision of the mill. So he went to the expert one Monday morning and asked him to breeze a band saw and very soon found that he never had done so himself. "You can't do this?" he was asked with some surprise. "Oh, no," he said. "I can tell how it should be done." In other words, he could tell somebody else who already knew how to run a band saw.

We are in much the same position, except that we cannot even tell how. We have studied the Constitution and we say to the Legislature: "We don't know whether there ought to be seven or twenty departments, but we have gone all over this proposition and we have come to the conclusion that you ought to have twenty departments. We don't know how it should be done, we don't know how it ought to be done, but it is up to you, and you do it."

Now I think that this Convention ought to go slow. We ought not to tell the Legislature to do something that we cannot do ourselves. If we are going to encumber the ballot with this provision I only want to make this prophecy: I do not care whether it passes or

not, but in three years from now if this proposal becomes operative, there will be twenty more heads of departments than there are now, and that will be the sum total of the result of adopting this resolution.

Mr. BROWN of Brockton: I hope this resolution will not go on the ballot. My reason is this: I voted against it at every stage. This is a day of specialization. You take a man who is fitted to do a job and give him that job, and you hold him responsible for that job. If he produces results you keep him; if he does not, you fire him. The very moment you put that man under some directing head, that moment you weaken his efficiency. From that moment he has less desire for initiative; he depends upon his superior for orders. This will be the effect when these various departments are put under directing authority. A department is created to carry out a special line of work. It is supposed that men are appointed to that department to do that work. This resolution carries the general idea that some system may overcome this natural law. It cannot do it. If any department is not needed, wipe it out. The departments are running well under present conditions. I hope this matter will be defeated.

The Convention voted, Wednesday, August 21, by a vote of 124 to 56, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 158,394 to 81,586.

LIV.

SELECTIONS FOR THE PUBLIC SERVICE.

Mr. Elmer L. Curtiss of Hingham presented the following resolution (No. 264):

Resolved, That it is expedient to amend the Constitution by adding thereto a new article, substantially as follows: —

ARTICLE.

Appointments and promotions in the civil service of the Commonwealth and of the counties, cities, and towns thereof shall be made according to merit and fitness, to be ascertained so far as practicable by examinations, which, so far as practicable, shall be open and competitive, may include, wholly or in part, examination into past education, training, experience and achievements in life, and shall be without preference to any persons or class of persons, except that the present laws, so far as they give preference to honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war who are citizens and residents of this Commonwealth, may continue in force.

The department of civil service shall be under the direction of a State Civil Service Commission which shall have control of the examinations herein provided for, and shall be charged with the duty of investigating and reporting upon the administration and efficiency of the civil service. Laws shall be made to provide for the enforcement of this article.

The committees on State Administration and the Executive, sitting jointly, reported, July 30, 1918, the following new draft (No. 408) (Messrs. Waterman of Williamstown and Mahoney of Boston, of the committee on State Administration, and Mr. Nutting of Leominster, of the committee on the Executive, dissenting):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

To secure an administration of public affairs safeguarded from undue partisan and personal influences, all paid public servants of the Commonwealth or any division thereof not elected by the people, and not responsible for the formation of policies, shall be chosen on the basis of merit and fitness ascertained, so far as practicable, by a State Civil Service Commission and through competitive examinations, practical tests, and consideration of the applicant's experience and record, including military or naval service; provided that preference based on citizenship may be established by law, and that nothing herein contained shall be construed to take away any existing preference of veterans of the civil war. The General Court may determine what public servants are responsible for the formation of policies.

No public servants so chosen shall be removed except for such cause and in such manner as the Civil Service Commission may provide by general rules approved by the Governor and Council.

The Civil Service Commission as now established by law shall exercise the powers conferred by this article

unless or until other provision is made by law not inconsistent herewith, but the members of said commission shall hereafter be appointed for terms of not less than five years each.

This article shall not apply to judges nor, until otherwise provided by law, to employees of the General Court. This article shall take effect on the first day of July, nineteen hundred and nineteen: provided that persons then in the public service and not classified by civil service laws and rules may retain their positions without examination.

The resolution was read a second time Thursday, August 8, but the discussion was not begun until the next day.

Mr. Elmer L. Curtiss of Hingham moved that the resolution be amended by inserting before the word "provided", in line 13, the words "provided that the Civil Service Commission shall allow by way of preference to all applicants honorably discharged from the military or naval service of the United States who are citizens of the United States and of this Commonwealth such number of marks as it may deem consistent with maintaining the efficiency of the public service, and that in certifying names for appointment such honorably discharged applicants shall be given the preference over all other applicants who have received equal number of marks, and".

This amendment was rejected.

Mr. Joseph J. Leonard of Boston moved that the resolution be amended by striking out lines 4 to 35, inclusive, and inserting in place thereof the following:

The General Court may determine by law the basis upon which those foreign born male persons who did not render military or naval service, and who, being eligible to naturalization, did not become citizens of the United States before any specified date in the period of the present war, may hereafter enter the public service or any civil division thereof.

This amendment was rejected, by a vote of 36 to 72.

Mr. Brooks Adams of Quincy moved that the resolution be amended by striking out, in lines 7 and 8, the words ", and not responsible for the formation of policies,"; and by striking out, in lines 17 and 18, the words "The General Court may determine what public servants are responsible for the formation of policies."

These amendments were rejected.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution be amended by striking out lines 4 to 35, inclusive, and inserting in place thereof the following:

Appointments and promotions in the civil service of the Commonwealth and of all political divisions thereof shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive.

This amendment was rejected, by a vote of 45 to 76.

The resolution (No. 408) was rejected Friday, August 9, 1918, by a vote of 36 to 98.

THE DEBATE.

Mr. QUINCY of Boston: I merely desire to state, on behalf of the joint committees reporting this measure, as the acting chairman at the time when the report was made, that the intrusting of this report to the gentleman from Hingham (Mr. Curtiss), a member at present of the Civil Service Commission, was made by vote of the committee and against the desire of the gentleman from Hingham himself. He

felt that owing to the fact that he was a member of the Civil Service Commission, whose powers would be enlarged under this constitutional amendment if adopted, it would be better to intrust this report to some other member of the joint committee. The committee, however, felt, and manifested its position by a unanimous vote, that that objection was an insufficient one and that the report would not be in any way prejudiced by intrusting it to the gentleman from Hingham; and it further felt that it was so essential that the member reporting this amendment should be thoroughly familiar with the question, — which in some of its aspects may be called a technical one, — that it was wise and proper to overrule the hesitation or the doubt of the gentleman from Hingham, and to ask him to take charge of this report before the Convention.

Mr. Curtiss of Hingham: Whenever a matter of this kind that brings in a new substance is presented by a committee I have the feeling that the ordinary procedure of waiting for attack is not quite the right one, that the burden of proof is upon the committee that presents the topic for your consideration and acceptance. Just why I should have been chosen, after my expression of feeling, I do not know, unless it is this, — that my colleagues had the feeling that no man was properly fitted to handle this topic unless he had the hide of a rhinoceros, and knowing my experience for the past five years they thought that probably I had developed that hide. And in truth, I do feel something like the man of 110 pounds who was waiting upon a young woman who weighed 220. One evening when he was in the kitchen doing his courting in the most gallant manner he took the young lady upon his knee, and after she had been there more than an hour she decided to have a little pity, and she asked: "John, ain't I heavy?" "No," he replied, "I'm numb now." And so I appear before you as the exponent of the reasons for this proposition.

The very first thing that you have a right to demand from the committee, — remember that this came from the joint committees on the Executive and State Administration, — the first thing is: Why is it a constitutional matter? Foremost, because it deals with general policies and, as far as possible under the conditions that exist in our own State, avoids dealing with the details of the administration, which should be the result of rules and statutes. Secondly, it has not been in the Constitution of this and other States for the reason that civil service is comparatively new. Some thirty-odd years ago it was first placed upon the statute-books of the United States, then of New York, and then of Massachusetts, and gradually other States and cities adopted the system. Six States, — I am not sure, the last data that I had was about a year ago, — six States have adopted the system as a State system. Two hundred and seventeen cities outside of those six States have adopted it as the fundamental method of appointing to office in those cities, and it appeared in the fundamental law or the charter of those 217 cities. Since its adoption it has been added to the Constitution and made a constitutional provision of the State of Ohio, — I am not sure of the result in California, but probably in California, — and in the State of New York.

Personally I rather favor the New York provision, which is:

Appointments and promotions in the civil service of the State and of all the civil divisions thereof, including cities and villages, shall be made according to merit and

fitness, to be ascertained as far as practicable by examinations, which, so far as practicable, shall be competitive.

But the New York constitutional provision failed at once when we attempted to apply it to our own Commonwealth, for this reason: That in New York the judges are elected and in Massachusetts are appointed, and it seemed to the committee that judges should be exempted from civil service. More than that, it was the unanimous feeling, I think, of the committee that heads of departments should not necessarily be included, as they are in New York, under civil service provisions. In other words, in considering the general subject, the committees sitting jointly had the feeling that there were certain places that should be exempt and under the control of the Legislature, that the Legislature should be the determining power as to whether or not the positions should be covered by a civil service provision. And so you will see in examining the provision that has been presented to you that the rights of the Legislature in those matters have been recognized and preserved, or at least we have tried to guard them carefully.

So much for the reason of a constitutional provision. Now let us take the measure itself. You are entitled to an explanation of the proposition.

In the first place, elective officers, of course, should be and are eliminated by constitutional provision.

Secondly, — and here is where the Legislature has been left in control, — all officers, whether appointed or elected, who are responsible for the formation of policies, whether it be of the Commonwealth or of any political division thereof, are exempted, and at least the Legislature has the right to say whether they shall come under civil service. Therefore it is stated in this measure that those officers who are responsible for the formation of policies are exempt, and further on in the resolution it says the General Court may determine what public servants are responsible for the formation of public policies. That does not go so far as the friends of the Civil Service Reform Association wanted, it does not go so far as the State of New York, it does not go so far as the State of Illinois. But with our old New England town-meeting ideas and the ideas of the control by the people, this committee felt, — and I think this was true even of those who have dissented, — that at least the people should control where policies are a matter of consideration.

This resolution does not change the present situation very much. The present system does not include, — and I think a fair statement of the situation should be given to you, — it does not include the officials of the counties. It does not include all of the officials of the treasury departments, whether of the State or of the counties, towns or cities. Our action in the past has been very inconsistent in regard to the treasury departments. That of the State is exempt. Again, picking out Boston, as has been quite common in this hall, Boston's treasury department and collection department are placed under civil service. Lowell and Fall River have been placed under civil service by special act of the Legislature, and all the rest of the cities are exempt. Now this is true: Either there is a mistake in exempting any, or there is a mistake in omitting any. It is true again in regard to the counties, that the county of Suffolk has been singled out for

special legislative action, and there are some of the institutions of the county of Suffolk that have been placed by an act of the Legislature under civil service, and all other counties have been strong enough to keep from under its control. And again it is true that either a mistake was made in putting any part of Suffolk County under civil service, or the mistake was made in omitting to put the other counties under it. We cannot get away from that dilemma. This resolution includes them all unless they happen to be elective officers or are responsible for the formation of public policies.

On the second page there is a very strong addition and one, let me say as an exponent of the measure and meaning to find no fault with it, that I personally did not favor, although I believe that logically it belongs in the resolution, and I accept it. In every other State except Massachusetts and in every other city the question of removal is under the control of the Civil Service Commission. The labor-unions of this State have knocked at the doors of this Legislature year in and year out for the past twelve years, demanding that the Civil Service Commission be given control of removals. The bills have not gone through, for the simple reason that the Legislature did not wish to increase the appropriation that the Commission had at its disposal. Remember that the commission of this Commonwealth has under its jurisdiction some 72,000 people, including laborers and the various clerks and experts. They are spread all over the Commonwealth, every city, many towns, and it meant an unlimited amount of work unless some ample provision were made for it. And the laborers, in my opinion properly, complain, — although I was glad the burden was not placed upon us in the existing situation that we have found ourselves, — the laborers have complained that the burden of proof is placed upon them, that they were discharged and they were obliged to prove that they were wrongfully discharged, rather than for the appointing official to prove that they were rightfully discharged. They claimed that those laws put an unfair burden upon them, that they were obliged to pay attorneys to go into court; that no matter what the outcome, an injustice was done them. And I sympathized with them to that extent, but I did see the increasing burden of expense under this provision. That is a direct increase in the powers of the civil service.

Now next, — and let me save the gentleman who tried to be witty in his commenting on this resolution from being obliged to spring his wit upon the Convention, — in the next paragraph the term of the commission has been fixed. One gentleman of the committee remarked that the resolution was all right in every particular except one thing, that the Civil Service Commission had forgotten to fix its salary at five or six thousand dollars a year. I will get it out of his system for him and tell you why it was left in the state that it is.

Strictly speaking, it appears to be a matter of legislation or something that does not belong in the Constitution at all, and it so impressed the members of the committee; but after listening to the arguments of those who opposed it I am convinced that it belongs where it is. The idea was this, that by fixing the terms it would render it impossible for any one Governor to do what has been done in the State of New York, what has been done in California, what has been done more than once in Illinois, — to control the Civil

Service Commission by any appointment he might make. In other words, we have violated for the time being what appears to be an underlying principle in regard to constitutional matters to render impossible what has been a scandal in the State of New York by one Governor making such appointments that he controlled the commission and succeeded in getting rules formulated to serve his own purposes and help build a political machine. That is the reason of this particular provision, so a five-year term was provided, no two appointments expiring at the same time.

Mr. CREED of Boston: I should like to ask the gentleman if in those larger States he has referred to they have a Governor's Council that controls in some respects any appointments of the Governor?

Mr. CURTISS: In none of those States, I believe, do they have a Governor's Council.

The last section is merely a section placed in the provision to protect the judges so far as the matter of civil service is concerned, and also to give the Legislature control of its own employees.

Now there is one State in the Union that has placed the employees of the Legislature under the civil service, namely, Wisconsin, and, I think probably rightly, it has pointed with considerable pride to the results that have been accomplished. But your committees sitting jointly had the feeling that no matter what the argument might be in its favor, there would be the feeling on the part of the Legislative branch, which is the branch in close touch with the people, that it would be more or less hampered if obliged to take employees that came from the civil service lists; in other words, that it should control its own employees. And this clause was placed there finally after much debate for the reasons given. The rest of the section is merely matter of detail.

Now as to the provisions regarding the method of ascertaining the fitness of appointees. I know that there is a widespread feeling of unrest at times concerning the civil service examinations and appointments. I never yet came in contact with a man who was criticizing the appointments who would fix his finger definitely upon any charge of unfairness in the method of examination. I never yet had a man criticize the examination papers and come up to the civil service rooms and substantiate the criticism that he had made. Not long ago, — longer ago than it at first seemed, — a gentleman met me on the street at the foot of School Street and criticized our examinations and said: "Why, there was a man came up for foreman in the street department of the city of Boston; he was going to lay paving stones and take care of the men who were to pave the streets; and you gave him the absurd question: 'How wide is the Amazon at its mouth?'" I said in reply, — and I think any one of the commissioners would have said a similar thing: "You are right in your criticism; it is a most absurd thing if it took place." "But it did take place." "Good enough! Come up to the civil service rooms. You know the man, do you not?" "Yes." "Come up to the civil service rooms, take that man's paper out and show me that question, and there is going to be trouble in the examination department." Nearly two years have passed and he has not been there yet; and he has not been there, not because he falsified, but because some man ex-

plained his failure in that way. No such question or any other question in geography ever has been asked, — except local geography in the fire department, — since the civil service of Massachusetts has been established, as far as I can find out; certainly not in the last nine years.

Again, — and it went all over the Commonwealth in the newspapers, and my admiring and many who were not my admiring friends cut it out and pasted it on postal cards and sent it to me, — and this was the question: A man appeared for the position of bookkeeper in the State House, and the Civil Service Commission asked him this question: "How far is it from the earth to the moon?" I think I have a collection of about 20 of those, or did have.

Mr. MAHONEY of Boston: I should like to ask the commissioner what departments to-day are outside of civil service.

Mr. CURTISS: I will answer the gentleman in a moment. Let me finish simply the thought that I had. The question was: "How far is it from the earth to the moon?" The answer given, — and it was printed because of its absurdity, and it was a beautiful answer if the question ever was asked, — was: "I don't know, but I do know this, that the moon is so far away from the earth that it will not affect my duties as bookkeeper in the State House."

Now the actual fact is, that no such question ever was asked and in the Massachusetts service no question pertaining to astronomy ever has been asked. It is true that in some of the United States departments, especially in the Bureau of Navigation, they are obliged to ask such questions.

Now let me answer the question of the gentleman from Boston (Mr. Mahoney) if I understand it correctly, which is, what departments in the State House are outside of civil service? If I am correct, the Treasurer's department; certain employees in the insurance department; certain employees of the Public Service Commission department. But mark you, there have been inspectors in the gas department, inspectors in the boiler department, inspectors in this, that and the other, employees here, there and elsewhere, who to-day are under civil service, — why? Because of any action of the commission? No. When the place was first established certain men had their eyes upon the positions, and they were exempt from civil service, and when those men got the appointment they wanted to get in out of the wet and they put up an umbrella in the form of a statute placing them under civil service, — not at any instigation of the Civil Service Commission, but at the instigation of the very men themselves. The last instance occurred in this last session of the Legislature, and we did not know it until the names were sent to us. It occurred in the Gas and Electric Light Commission.

Mr. MAHONEY: Is it not true that the employees under the Treasurer are under a bond and are exempt from civil service?

Mr. CURTISS: It is true, sir, in answer to the gentleman's question, that many but not all of the employees in the Treasurer's department are under bonds. It is true also that the employees in the city of Boston treasury department are under bond and under civil service, too, and the city pays for the bond, and they can bond one clerk as well as another.

The method of the civil service examinations has bothered many and stands in the way of many, and it is appropriate to give a very brief explanation.

It has been said over and over again, — it is an old but weak cry: "You cannot pick out anything except stenographers and clerks by an examination." And you and I have in mind the day that we sat in the school-room and had problems placed before us to solve, and that was our examination. But it is not the examination of the Civil Service Commission. It is true that there are academic topics presented which appertain to or have a bearing upon the duties to be performed. It is true that men are asked to solve problems, to write letters, to take dictation; but it is true also that there is a greater examination, and it is the examination of experience.

If the criticism that has been made upon the method of examination was true, you would find standing at the top of the experts for civil engineers, for sanitary engineers, doctors and positions of similar character, — you would find — what? The recent graduates from Harvard, the Massachusetts Institute of Technology and various other institutions throughout the State and the land. What is the fact? When an examination takes place those young men present themselves, and they do well, too. But they are not the ones who stand at the top of the list. They are way down. Why? Because the poorer students present themselves? Far from it. Many of them come to 90 and 100 per cent on the academic problems. In addition to that they file with the commission an experience sheet, in which they state in full their entire life history so far as business affairs are concerned. That experience sheet is marked and ranked just exactly as though it were a problem in arithmetic, — not by the commissioners, who know nothing about it, but by men who are experts in that particular line of work. If it is for the position of a physician, it is by high-grade practical physicians and not college professors. If it is for the position of engineer, the men who mark those papers and who make those papers in the beginning, — it is not our chief examiner, it is not the commissioners or any one of them, but men who willingly give their service, high-priced service sometimes, for almost nothing to serve the Commonwealth. And they mark the papers, and that experience sheet is marked and the man's life history receives its appropriate mark and the man is placed from experience in his proper position. Then, instead of counting that mark as equal to a problem in arithmetic it bears anywhere from one to five or six times the weight. The result is this: That when a list is made up the boys who recently have graduated are way down on the list and the men who have worked at the profession for years are way at the top. I have an example in mind at this particular moment, — the chief wharfinger under the Port Directors, a place that ultimately was to pay $4,500. If the common criticism were true, the Civil Service Commission by any method it might devise could not fill that place. An examination was held and the examiners, — without giving their names, because I have forgotten them, even if I wished to name them, — were men who were engaged in wharfage and transport business, one of them connected with one of the largest railroads in the State and another with one of the largest steamship lines coming into Boston. Men who were doing the thing every day were

the examiners. They framed the questions. They did not see the candidates. The papers when answered were submitted to them and they marked them. What was the result? Man No. 1 was a Massachusetts man who had been in the wharfinger business as an assistant and chief superintendent of wharves and finally wharfinger for one of the large steamship companies for more than twenty years. No. 2 was a man who had been connected with the wharves and docks of Boston and had been connected with the freight department of one of the largest railroads for more than ten years. No. 3 was a Massachusetts man by birth and still a citizen, although living in New York, who wished to return here, who was the chief wharfinger of one of the largest wharves in New York. Now those are the men who should have gotten to the top, and by the method pursued they are the men who did get to the top.

But I wish to confine myself largely to the resolution itself except where information is actually needed.

[They] shall be chosen on the basis of merit and fitness ascertained, so far as practicable, by a State Civil Service Commission —

Stop there for the moment. That means, if the commission finds it practicable to do so and wishes to make a rule, that they may include teachers, librarians, — teachers to-day are exempt; librarians are exempt because the commission has found that it is a practical thing to leave the libraries alone so long as the librarians are fair and conduct their own examination. That is the result in New York. Teachers are not included, because teachers undergo another examination and are appointed by other authorities as the result of merit.

But to go on:

and through competitive examinations, practical tests, and consideration of the applicant's experience and record, including military or naval service;

And I shall move to insert after the word "service", in line 13, the amendment printed under my name. I do this after consultation with members of the committee; and while I have been unable to see all of the members, I understand from those with whom I have talked that it is with the consent of the committee.

The amendment moved by Mr. Curtiss was as follows: Insert before the word "provided", in line 13, the words "provided that the Civil Service Commission shall allow by way of preference to all applicants honorably discharged from the military or naval service of the United States who are citizens of the United States and of this Commonwealth such number of marks as it may deem consistent with maintaining the efficiency of the public service, and that in certifying names for appointment such honorably discharged applicants shall be given the preference over all other applicants who have received equal number of marks, and".

Mr. Dennis D. Driscoll of Boston: Will the delegate yield for a question on that point which he just spoke of? Why not get the committee together officially and not place the responsibility on the gentleman who is speaking for the resolution? Why not get the committee who met jointly on the subject-matter to come together and give to our boys in the trenches the same right they give to the veterans when they come back? Consider that question.

Mr. Curtiss: We might just as well face that problem now as

later. I thought I would leave it until the last thing, — the question of the veterans' preference.

Without meaning in any way, shape or manner to criticize the Legislature or to criticize the veterans, remember when I speak of the veterans of the civil war I speak of my own father. But one of the worst things that ever happened in Massachusetts was the peculiar preference given to the veterans of our civil war. I could name a department under this dome, sir, which within the last five years went months without appointing its secretary because there was on that list a civil war veteran. I could name in the city hall of Boston department after department that refused to make appointments because the first man who must come to them was a civil war veteran.

Now, sir, I take it, — and I speak with all sincerity, — I take it, sir, that those men who have shown the disposition to serve the country by making the last sacrifice should be given, if possible for them to do the work, a preference. For four generations prior to my own my ancestors have served this country in war, and it is one of the regrets of my own life that I have been unable to the present moment, although I have offered my services, to get into service. [Applause.]

What are you going to do with gentlemen like my friend (Mr. Bouvé), who weeps almost that his boys are in service and that he cannot serve at their side? What are you going to do with the thousands of young men who have made the same offer to sacrifice and have been found physically wanting? What are you going to do with the thousands of young men who have been found perfectly fit and the government has said to them: "We find that your services will be of more value in the workshop"? Without these young men in the workshop our boys in France — and there are some 50 of them who have been under my command in the militia, and my heart goes out to them, and I want them to have all and a little more than belongs to them, — what are you going to do with those young men? What is the real truth? The real truth is, the offer of sacrifice and the willingness to sacrifice is the real thing to be measured. Those men who are unwilling should be discriminated against in some way if we can find a way. But further still, I know some of those young men; I know what they went for. For pecuniary reward when they came back? Ah, no. They were animated by a higher spirit than that. They went out to fight for the good government of the United States. They went out animated by ideals and they are ready to lay down their life's blood for those ideals. They are fighting to-day on the fields of France, as our fathers have fought on other fields, for the purpose of making this the best government there is on the face of the earth. And they do not ask that we reward them by doing for them that which will undo the thing for which they shed their blood to accomplish. [Applause.]

One thing more. It has been said, — and I sympathize with the saying and the feeling, — that it is not a question of giving them a preference, but it is a question of allowing them to express themselves upon that preference. Let us see. If that is true these young men when they come back have got to live under this form of government with every amendment that is adopted, as the result of our work, and any argument that will put aside this resolution on that ground will put aside everything that we have considered. I am

not sure that it should not have been done, but the majority with their greater wisdom decided that it should not be, and I bow to the will of that majority. I have the greatest sympathy with those who honestly, — and I believe that most of those who are acting and thinking of the boys abroad are acting honestly, — with those people who want to see these boys properly protected. I am sorry that we differ in our method. I heartily approve of anything that can be done for them. But I have the utmost contempt and disgust for a certain class of men who have attempted to conceal their actual motive in attempting to protect counties and others by putting on the sheep's wool over their own wolfish hide.

I have tried to explain the resolution and the motives that led to its present form. Before I am seated, sir, I will say that I will answer any questions that happen to be within my range; and also, I will move the amendment which is printed under my name. [Applause.]

Mr. Clark of Brockton: I am not going to trespass upon your time for any considerable length. I do not deem it necessary. From the remarks that I have heard in the corridors and in the hall I do not think it necessary for any extended argument. But I will say a few words.

Theoretically, civil service is one of the finest things, one that should commend itself to every citizen of the Commonwealth, considered purely from a theoretical standpoint. But I regret, gentlemen, that practically it has not worked out so that I can give it my support. I wish it had done so, but it has not.

I have had an opportunity to study its workings considerably in the last ten years. Now the Legislature has full power to extend it. It has extended it from time to time. An effort has been made at different times, a considerable number of times in the past few years, to extend it so as to embrace county employees. When I was a member of one of the committees here, the committee on Public Institutions, a bill came before that committee. The county commissioners came up from all parts of the State and they were unanimously opposed to any extension of the civil service to embrace their employees. Why? "Because," they said, "we can get men who will do the work that we want done better by going out and selecting them ourselves." Their contention was this, that the Civil Service Commission took cognizance chiefly of the technical knowledge, the technical acquirements of the applicants, but they did not take into consideration, to the extent that they should, the temperament, the habits, the disposition and all that goes to make a man efficient and to fit him for a given position.

When I was on the committee on Public Institutions I visited practically every public institution in this Commonwealth, and inquired of the superintendents of those institutions, one after another, how the civil service worked out with them; and I do not recall to-day that I found a superintendent in one of the institutions who felt that the civil service rules of this Commonwealth were of any advantage to his institution, but, on the other hand, one superintendent told me that a few months before we visited the institution their engineer was compelled to tender his resignation. They came up to the State House to the office of the Civil Service Commission; they

inquired for a man. They were given a list of three men who stood high in the examination. They selected the man who stood at the head of those three, they installed him in that institution to take charge of the engines, and in less than ten days that man was intoxicated to an extent that that engine under his management was a source of peril to every inmate and every attendant in that institution. Of course he was discharged. The man standing next in rank was taken. He was placed in charge of the engine room. In less than one month's time that man was so much under the influence of intoxicating liquors that he too was discharged and the third man taken. The third man proved to be an efficient man, although standing considerably lower in a technical examination than the other men.

I remember very well, gentlemen, — and probably you have had some opportunities for observation and perhaps you remember, — that a few years ago the firemen came up to the Legislature and asked to be placed under the civil service rules. Why? So as to take that important department in all of our cities out of politics, absolutely out of politics. What is the condition to-day? There is no organization in this Commonwealth more deeply in politics than the firemen, organized as they are. When they wanted one day off in eight, when they wanted one day off in five, when they wanted one day off in three, when they wanted a pension, when they wanted many other things, — I am not finding any fault with the firemen, not at all, but they have got it all because they were united. They came up to the Legislature and the firemen in every city in this Commonwealth went to the Senators and the Representatives from their districts and they told their Senators and Representatives what they wanted, and they made them feel some way or other that it was wise to vote for just what the firemen wanted, and they got it. You know how it is here in Boston. The Boston firemen have one day off in three. The next year perhaps they will want one day off in two. I do not say they should not have it. That is not what I am saying, but I am showing you gentlemen that it is one of the strongest political organizations in the Commonwealth.

Mr. Dutch of Winchester: I should like to ask the gentleman what that political activity in their organization has got to do with the civil service method of choosing them, and if he desires to throw the choice of those firemen into politics as well as the rest of them.

Mr. Clark: I was endeavoring to say, — and I do not think the gentleman from Winchester could misunderstand, — I do not say the firemen were taken out of politics. They are in politics up to their ears continuously, and I do not blame them. They are in politics. They are in politics at home. They are in politics here; they were in politics yesterday.

The debate was continued after the recess.

Mr. Clark: There may not be 160 members, possibly not, but it is a great pleasure to me and an honor to address the faithful ones of this Convention [applause], and I consider those who remained and have come in for the afternoon as the faithful ones and entitled to credit.

I am going to occupy only a few minutes until others have come

in, and then I will abdicate to some man or men who can speak interestingly, entertainingly and instructively. We are hearing good words from the front in France and in Belgium to-day, and we are all highly delighted with it, but let us bear in mind that something more than three years ago the German hordes intrenched themselves north of the River Aisne, they dug themselves in, and we never as yet have dislodged them from those trenches. We are driving them back, and it is only a question of time when we will dislodge them, when we will have them on the run, when we will have them in Berlin. [Applause.]

I have a reason for mentioning this. The Germans felt secure, intrenched as they were, and I know that the men who have passed the civil service examination and have secured positions of public trust feel equally as secure in their positions; and when an effort is made to dislodge them, when there is reason for it, as has occurred in places that have come to my knowledge and under my observation, each official whose business it was to dislodge them has said: "I am powerless. They snap their fingers at me and say: 'I am under civil service rules.'" You say they can dislodge them, they can depose them, they can displace them by proving certain charges. Very true, but you know as well as I that oftentimes what is common knowledge, what is recognized as a fact, is extremely difficult to prove in a court. So it is at a hearing. You lawyers are better aware of this than I am, and oftentimes you are cautious about bringing a suit because you say: "While we recognize the facts the evidence is defective." Here is where we are lame, where the man who has passed the civil service has an advantage.

I told you this morning that the county commissioners did not desire this. I have learned from a member of this Convention, one of the able men, one of the men who never has spoken here, but one of the ablest, one whose word is as good as his note, that the clerk of the Supreme Judicial Court in his county has said to him that if this goes through and he is compelled to employ civil service men it will embarrass his work very materially, he believes. Let me illustrate by an incident connected with my life and experience in Vermont, for I come from the Green Mountain State and am as green as the mountains themselves. I was a member of a county, — Orleans County, — medical society there. There was another member of that society who could write the best articles for our society at the annual and semi-annual meetings of any man connected with it. He could pass the best examination. He was the best read, he was the best trained man so far as book knowledge was concerned, so far as school training could make him efficient, but at the bedside he was practically a failure. He could get almost no business. His family suffered because he could not earn the money. He could sit in his office and write articles for the papers, the medical journals, and for the medical societies. This illustrates one point that I wish to bring out. It is this: That a man's technical education is not all that should be considered in connection with his fitness for any position. There is the temperament, there is the personal equation, that is to be taken into consideration. What one of you business men here to-day would like to have civil service rules applied to your employees, to your clerks in your offices? You prefer to select your

own clerks, your own employees. And just so a man to whom you intrust a department of the public service I believe should be allowed to select those persons that he believes are most efficient; and when he makes a mistake and selects one that proves unfitted to the position, he should have the full liberty to discharge that person and secure another.

Mr. FLYNN of Malden: I was one of the members of the joint committee which reported this resolution. I did not dissent, but reserved my rights, and I reserved my rights because there were certain portions in the first section with which I found considerable difficulty. I raised the question concerning those portions in the committee, and hoped that before the matter came into the Convention the objections I raised might be cured; but instead, after reading the resolution over again and again, and after hearing the arguments of the gentleman from Hingham (Mr. Curtiss) in charge of the resolution, I am convinced that instead of having the objections that I raised cured they have been all the more intensified.

The argument of the gentleman from Hingham (Mr. Curtiss) has been very illuminating, and I agree with him to a considerable extent along the line of argument which gives to the Civil Service Commission of this State credit for the good work that it has done in the past. I myself have had a little experience with the Civil Service Commission as a member of the Legislature, and for six years in the evening schools of my city I conducted a class in civil service and saw for myself the great benefits that can accrue from the civil service department and from civil service examinations. But I believe, and sincerely so, that the Legislature of Massachusetts to date has been fairly generous in granting powers to the Civil Service Commission; and while there has not been any abuse of those powers, and while the Civil Service Commission is as little open to criticism, perhaps, as any commission in this building, I still believe that this resolution gives them altogether too great, too broad and too autocratic powers.

The gentleman from Hingham (Mr. Curtiss) passed over without much explanation what appears to me to be the real essential feature of the measure. When it was before our committee, and when I reserved my rights, it was even at that time limited to all appointed paid public officials of a subordinate character, not responsible for the formation of policies; but the Civil Service League or Civil Service Alliance, whatever the proper name may be, were worried for fear that that phraseology might not include the officers of cities and towns who are elected by the city council, and they wished all those offices to be brought under their control. I raised the objection that the district attorneys' offices, for instance, in the different counties, are now being fairly well conducted, and that it would not be right to extend to the Civil Service Commission power to appoint the assistant district attorneys of our counties. I raised the point that it would not be fair to extend to the Civil Service Commission power over the private secretary of the Governor of this Commonwealth. I did not think that the Civil Service Commission should choose the Assistant Attorneys-General of the State. I believed that the Secretary of the Commonwealth should be afforded the privilege of choosing his deputies, and so with the various other offices

throughout the State. I believe in the present system of choosing the deputy sheriffs of our different counties, and I believe that there is no class of public employees in the State that renders any better service than the clerks of our various courts throughout the State; and yet this measure as it is framed at present, and as the intention of the majority of the committee evidently is, would place all these offices that I have enumerated under the civil service department. If you will read the first section you will see that it includes all paid public officials or servants of the Commonwealth or any division thereof not elected by the people and not responsible for the formation of policies. Now, what is the meaning of that phrase "not responsible for the formation of policies"? In my mind it is a very vague phrase. The meaning is not at all clear to me. Although this resolution gives to the General Court the power to determine what officers are responsible for the formation of policies, still I think that a reasonable interpretation by the General Court of the meaning of those words would place practically every officer in the Commonwealth of Massachusetts not directly elected by the people under the control of this one department.

The main objection in my mind has been versed in the closing words of the gentleman from Brockton (Mr. Clark). I believe, for instance, when a man is elected by the votes of the people to act as district attorney of a county he is responsible not only for his own acts but he is responsible entirely for the conduct of the affairs of that office. He is as much responsible for the acts of his first assistant or second assistant or any assistant as he is for his own acts, and for their acts he is directly responsible to the people who elect him. If this resolution went through it is entirely possible that while the district attorney of a county might be technically responsible to the people for his own acts he will have practically no jurisdiction over the assistants in his own office, and the same is true regarding the Attorney-General and the same is true regarding the subordinates in all the offices of the State.

In one clause of this measure the Civil Service Commission is taken care of. The gentleman who opened the argument said that their term was limited. It is not limited, if I read the resolution correctly. The only limitation is on the minimum term, for the resolution says that "the members of said commission shall hereafter be appointed for terms of not less than five years." What does that mean? It means that at no time is the Civil Service Commission, or are the members of that commission, directly responsible to any one. In other words, if this resolution is adopted it means that you are placing under the control of the Civil Service Commission practically the entire management of the Commonwealth of Massachusetts, and the membership of that commission itself is at no time responsible to any one. I think that that objection should be fatal to the resolution.

I agree entirely with the gentleman from Hingham (Mr. Curtiss) that it is not proper for any one to come here and represent that he is speaking in behalf of the boys at the front, when his real purpose is speaking for some other reason; but if the objection that this resolution is detrimental to the boys in the service now can reasonably be raised, and it has been voiced to me, not by people who are in-

terested in county government, but by members of different patriotic organizations, then that objection in itself should be fatal also.

It seems to me that while the departments of Massachusetts, and while some of the offices in Massachusetts and in the counties and cities thereof, are not being conducted in an ideal way, it would be a mistake, a grave and serious mistake, to intrust to any irresponsible body the broad and autocratic powers that this measure contemplates.

Mr. Adams of Quincy: I have the misfortune as a member of this committee to differ with the majority, and I differ with them on a point which has seemed to me to go to the substance of the resolution. Therefore I cannot, I fear, vote for it. I have pointed out in the calendar the chief difficulty which I have found, which I feel, which I pointed out to the committee during its hearing; but it is by no means all. They have got a phrase in this resolution which I conceive to be fatal. In the first place, they say that the Legislature is to be responsible for those who are responsible for the formation of policies, and I move to strike out, in lines 17 and 18, the words "The General Court may determine what public servants are responsible for the formation of policies."

I insist that this phraseology in these words in this section points out such a radical difference of view between the member of the civil service, who is responsible for it, and me that I personally cannot agree to his proposition for amending the Constitution. He proposes, I take it, that the Legislature is to become responsible for all the men in the civil service who supposed themselves to be responsible for the formation of policies. Now, what does that mean? It can mean only one thing, — that you are going to create a civil service which is to be the exact thing that you do not want and cannot have if you are to have a true civil service. The man who creates a policy cannot be a competent or efficient civil servant. That is absolutely demonstrable to any one who will think for a moment upon the duties of the civil service and what the man who is responsible for the formation of policies is, and it is a question which goes to the very root of administrative efficiency; and I submit that the man who proposes this measure cannot be a man who can create an efficient civil service. That is absolutely impossible, in my judgment. Such a man is unfit even to touch the question of civil service, and the reason is obvious, the reason is perfectly clear. The two systems are contradictory. A man who is a civil servant is a man whose business is to obey. That is all he has got to do. A man in government who is not a civil servant is a man who has got to direct. And that is the difference between a civil servant and a man who is not a civil servant. A man who is a civil servant has no more business to think of the policy which he is trying to carry out than an officer of an army has business to dictate to his General what policy *he* is going to carry out. It is absurd, it is in its nature ridiculous, to suppose that a civil servant can have such a position. Otherwise you cannot have a civil service, you are going to have as many formers of policies as you have servants. What we are after, if we have any unity or idea at all in this business, what we are after is to infuse the greatest energy which we can into the service of the State. It is as if you were to say to the steel company that every subhead of a bureau is going to be a former of policies. The idea is monstrous.

It is as if every Lieutenant in the army were to come to his Major-General and tell him what he thought his policy ought to be, how he thought his policy ought to be formed. The Legislature is going to take all the officials that it pleases in the State and is going to make them all policy formers, and is going to have them tell the Governor, who is supposed to be alone responsible for policies and alone responsible for the administrative civil service, what sort of a policy he is to form in that particular department.

To me that single objection is fatal to this measure. It goes to the very root of the whole matter. Until we can arrive at a point where the one thing on which we are concentrated is to get a service which can execute a policy which has been conceived by a head, we cannot have an effective State administration. Nor can we ever have an effective State administration in any department of government or social life. That is out of the question. It is as absolutely out of the question, as it is to give to this blessed Civil Service Commission the power of turning out the servants. What have they got to do with turning out the servants? What have they got to say about it anyhow? It is not their business. The man who is to be responsible for the formation of policies, as they call it, is the person who has got to say whether or not the service is performed satisfactorily. He is the person who has got to say. How is the service of the United States made efficient? It is because the President can tell a man if he is not competent, if he is not satisfactory; he can tell his Cabinet if they are not satisfactory, and they go, and there is not any argument about it one way or the other. The Cabinet do not form policies; the Cabinet submit to the President their view. That is their business. If the President does not approve, the Cabinet officer goes, and there is not any argument, there is no comment about it; he is not satisfactory, and there is an end of it. And so it is with a department. A chief either performs a satisfactory administrative job or he does not, and the President makes up his mind as to that. That is the way in which you get a policy carried out, and that is the way in which you get a policy formed; but you cannot get a policy formed by this business of having half a hundred policy formers who are to be appointed by the Legislature, or chosen by the Legislature, in entire disregard of what the Governor thinks. If the Governor is going to be responsible for the administration of this State, as you say in the first paragraph of this resolution, why, of course all the rest of it is contradictory, all the rest of it is absolutely contradictory. You cannot imagine such a thing going toward anything excepting confusion.

I have submitted these views to my colleagues in the committee many times. I have said that I could not be responsible for any such recommendations as they were making. I think this resolution ought to be beaten. It is better at once to say that we cannot have anything to do with the matter and to start fair on the right course than it is to go into a system which can lead, in my opinion, only to confusion and disaster.

Mr. Joseph J. Leonard of Boston moved that the resolution be amended by striking out lines 4 to 35, inclusive, and inserting in place thereof the following:

The General Court may determine by law the basis upon which those foreign born male persons who did not render military or naval service, and who, being eligible to

naturalization, did not become citizens of the United States before any specified date in the period of the present war, may hereafter enter the public service or of any civil division thereof.

Mr. LEONARD: The amendment which is found on the top of page 2 of the calendar endeavors to express, in perhaps not the best of language, a situation that I believe the Convention should meet. I think we should be more concerned in the situation to which I will endeavor to address myself than we are as to the question as to how many of the men now in the service are going to hold public positions hereafter, and I think we should consider the status of those men who are now male residents within our borders and who, when the convenient time comes, will become citizens and when they are citizens will be candidates then for appointive office. I refer to male residents who are subjects of alien powers, it may be the allied powers, it may be enemy alien countries, or it may be neutral nations. That is something to which we should address ourselves. After this war is over these men will have the opportunity of entering the public employ as citizens, and they are not citizens to-day.

It is all very well for us to talk about the men in the service and what the Civil Service Commission as a body embedded in the Constitution may do. I think that nearly every man here must have had experience somewhat similar to mine in serving in some way or other with the local boards that have examined the men who have gone forward. I know that in my own neighborhood I never held a higher opinion of the young men of that district than after I had seen them go through the medical and physical tests and take their way on toward the front. It was only yesterday that my folks received a letter from my youngest brother, who has just arrived on the first stage of his journey "over there." It was a characteristic letter, written to his mother, and it contained a sentimental description of the coast of Ireland, which he knew would make an appeal to her. It had a postscript at the end saying that he was informed subsequently that the coast he had described was the coast of Scotland, but it was the best substitute under the circumstances that he could offer. And that is the spirit of our men. There were a few stanzas in the Boston Herald yesterday, written by Edgar Guest, that convey something of the sentiment of the letters that come from the boys:

He never tells the pain of it,
He dreams about the gain of it,
His letters ring of victory
And glorious days to be.
He never pens the hurt of it,
The drudgery and dirt of it.
To-morrow's better, finer world
Is all that he can see.

It's fine, he writes, to share in it,
To have the chance to dare in it,
To see the Flag we love so well
Still dancing in the sky;
To be a living part of it,
The flesh and blood and heart of it,
And feel that all that's good shall live
Long after we shall die.

We have seen them go forth from our districts. We have seen them go forth from this Convention. I had the privilege last week of dining with one of our fellow-members, Mr. McCormack of Boston, a young man who had established himself in his chosen profession, and when I say that the members of this Convention know what it is to be a young lawyer, to feel that one has made good in his practice. He told me of his experience in Camp Devens, — he is now, I believe, a sergeant, drawing his $36 or so a month, — he would not change conditions with me, or with any other man in civil life for any consideration, and I know he meant it and was not merely saying it as a matter of effective talk.

While these men have gone forward let us consider some of the others who have remained behind. Let us consider that class which is very numerous in every district, — those men who have not yet assumed any obligation of American citizenship, the men who have no intention of assuming any such obligation at present, men who have claimed exemption from military service because they are subjects of alien powers. What is going to happen? Under the resolution that we have here what is going to happen? I am not wishing to criticize the Civil Service Commission. I agree thoroughly with most, I think with all, that the gentleman from Hingham (Mr. Curtiss) said so far as that would apply as matters of legislation, and I can bear testimony from whatever I have had to do with the members of that body that they are courteous and efficient officials. But the young man who is occupying the place of our brothers, the male resident who has his trade, his occupation and his business and who is perfecting himself in his chosen field at home while our men are rendering service and are training themselves only in the one pursuit of catching the Hun, — when that man acquires citizenship he will be able to come up and pass his test by the State Civil Service Commission through competitive examination, a practical test, taking into consideration and giving credit for his experience. We know, as the gentleman said, that the Civil Service Commission have experts to mark the applicants in their efficiency, and these shrewd, careful and prudent men, the male residents, non-citizens of to-day, will be able to take advantage of that situation. I say instead of being so much afraid to-day of what the young man in the service is going to do by way of entering public employ when he comes back, let us make a beginning on the matter of those men who are not bearing their share of the burden of the day.

The old order changes from time to time, and gives place to new. We can look back through a period of years and realize how public sentiment has changed from time to time regarding veterans in the civil employ. Let me refer very briefly to the Convention of 1853, by way of illustration. I think that we have not got at any time a very complete picture of the Convention of 1853. I remember when we first assembled that some delegate offered an order that any survivor of that Convention might have a seat here, but I have not seen any of them, so we do not know much about their method of procedure. But it seems to me as I read some of the mental pabulum that is spread forth in the pages of their records that they had a very nice method in those days of bringing in the wild flowers from the forest and the lilies of the fields and the roses of the gardens and

decorating the President's rostrum, so that it was a sort of a sylvan bower, and then they talked of love and temperance and peace. Here is one gentleman: "I am sure if temperance and love prevail what is offensive and sinful in the military spirit will pass away." And another: "My venerable friend upon my right, whose present appearance goes back to my earliest recollection, declared that it was his wish the militia system, according to the statement of the chairman of the committee who made the report, might die out in this State, that it ought to be left to die out under the old Constitution, where it now stands, without any attempt to infuse new life into it. If we cannot take any of its present life out let us not, sir, attempt to infuse into it fresh vigor. It will live long enough at best, and the sooner it takes its departure for the appropriate place in the universe the better for our race." And, gentlemen, there is page after page of that from the forefathers. Why, I would not adopt some of these men as forefathers when I read some of this truck, unless they gave me a bond and sureties to indemnify me for the damages they have done sometimes by foolish utterance. And yet, that was within ten years of the time when the Nation stood at Gettysburg and when we had to travel the bloody way to Appomattox; and although it was only ten years, just measure the difference in what the Nation learned from 1853 to 1863. And does it not also mark something of the distance that we have traveled from 1914 to 1918?

I have heard at different times in this Convention some of the gentlemen with military experience tell about the American soldier, the volunteer, and much about his shortcomings. And by the way, if the Civil Service Commission by the Constitution are going to have the right to exercise their discretion and have a sliding scale as to credit for military service, I do not know just exactly how they would do it. But just think of the discretion that you are giving to a body to exercise, to take into consideration how much this man shall be entitled to and how much the other man! You are asked to write the Civil Service Commission into the Constitution where we have the executive, the legislative, the judicial, but not the other departments of the State. But I suppose if this discretionary power is given I might also qualify, if I were ever to take a civil service examination, for some credit for military service; for although I have been somewhat modest about it I may as well confess that for the past year I have had service as a second-class private in the organization generally known as the Home Guard, but more accurately referred to as the State Guard. I have been and am a second-class private and I am willing to admit, for reasons which perhaps I had best not enumerate, my chances for promotion in the ranks are not particularly brilliant at this time. It may be due in some degree to a family tradition concerning my ancestors to the effect that their presence in any community always made for the peace of the neighborhood, because if there were any quarrels or scraps or social combats being formed they generally were represented on at least one side of the controversy, and by taking a little more than their *per capita* quota of controversy they made for the peace and well-being of the rest of the community. Their understanding of general orders was summed up in the rule that if there was a nuisance hanging at or near the post they should abate the nuisance and not bother the corporal

of the guard. But they made it a point never to beat a man unless he deserved it.

Aside from all this question of the military capacity of the various men who may come up and claim it, just think of the discretion that we at this day are asked to write into our Constitution. Why, our boys over there on the front, over on the other side or as they are going, I think have their thoughts revert back home as they go to each stage of the journey, and they know as they are about to receive the word to go over the top that the people back home are behind them, and that we are not sitting here in this pleasant atmosphere, with these nice associations, and trying in some cold, calculating way to forestall any possible raid that our young men may make upon public office. I am sure that that is not the spirit of this Convention. I am confident that nothing like the passage of this resolution is going to happen. Let the Civil Service Commission establish its case before the committees of the Legislature, as they have done, let them render proper service, but for heaven's sake do not let this Constitutional Convention, after the record it has been making, in these late days submit to the people any such proposition as that we are going to place in an appointive board this matter of trying to weigh and appraise the military service of our boys and put it in the Constitution, where the people through their legislators cannot reach it.

That is the impossible situation. I am somewhat surprised to think that the committee has propounded that seriously before this Convention. But when we do this, when we do strike out, as I believe we will, the recommendations of this committee, do not, I beg of you, overlook this other fact that I have tried feebly to call to your attention. I believe that this does need action. Every man who has served on an exemption board knows that in his particular district there is a large percentage of men claiming exemption because they are aliens. They are shrewd, careful, industrious, law-abiding men, and they are perfecting themselves in experience and in training. They are in receipt of more wages than they ever had any expectation of earning. They are here on the ground. They are able to know what civil service examinations will take place in the future, and they are able to select the time when they will take upon themselves the burden of American citizenship. I trust that when the time comes the Massachusetts Legislature will say that no individual within our boundaries who has had it within his power to become a citizen of this Commonwealth, and who did not assume this obligation in the time of need, ever shall enter our public employ. I would go as far as that, although I have not gone as far as that in my resolution. Let us think of that side of the question. The exemptions in some of these districts are large. These men who are not citizens can compete with our men for public employ. Their examination papers will not be known. Now, let us give the Legislature the power to say to such men who now are slacking: "If you are going to take an examination for public employ in this Commonwealth you have got to put down in your paper when you came to this State, when you became a citizen, and what was your status during this great war."

Mr. ANDERSON of Newton: Has not the Legislature power now to take care of that?

Mr. LEONARD: I believe not. I do not say that entirely on my own responsibility, but I have consulted with men who have had something to do with the formation of the documents that have been our guidance in this Convention, and they are in doubt as to whether the Legislature has that power. I think there is a grave question whether the Legislature could distinguish in this regard between classes of citizens after a man becomes a citizen.

Mr. DUTCH of Winchester: I dislike to be put in the position of opposing the gentleman's suggestions absolutely, and I wonder if he would not be willing to make it as an additional paragraph or put it in as a separate proposition in some way. It does not seem to me quite fair to this Convention that we should have to vote on it as a substitute. I think that is unfair to the main proposition. And yet we might like to vote for the gentleman's proposition on its own merits. I think he should be willing to stand on it.

Mr. LEONARD: The question that the gentleman from Winchester (Mr. Dutch) asks me relates to the manner in which it first came to my mind and in which I offered it as found in the calendar of yesterday; but upon further study of the problem I have become more and more confirmed in my mind that the embedding of the Civil Service Commission in the Constitution and the giving to them of this wide range of discretion, whereby they without any other authority would say what a man shall be entitled to for the services he has rendered his country, was inadvisable. I have had conferences also with various members in the chamber, and they have agreed with me, and acting largely upon their judgment I have thought it was best that this should be offered as a substitute, and for that reason I prefer to offer it in that form.

Mr. MAHONEY of Boston: My name appears on this resolution as a dissenter. I want to say to the members of this Convention that only two persons appeared for this resolution, and they were two members of the Civil Service League. You will notice in lines 4 and 5 of the resolution it reads: "To secure an administration of public affairs safeguarded from undue partizan and personal influence." Do you mean to tell me that as long as the civil service lives there will not be undue partizan influence used? You know that; the committee knows that as well as I do. This measure, if it is passed, places every department under the civil service law. In line 9 it says "so far as practicable". What does that mean? It means that if a head of a department should send down for a name, and if that name is not on the list, the civil service gives him power to appoint that man until such time as an examination takes place.

Now, what departments will this proposition affect? That is the principal question. First, it will take in the Governor's department. All the employees under the Governor are outside of civil service. It takes in also two men in the office of the Secretary of the Commonwealth who are supposed to be personal representatives of the Secretary. Next it takes in the Bank Commissioner's office. As you know, the employees of the Bank Commissioner's office are exempt from civil service, and why should they not be exempt? There is a department that must have honest men, and they must be straightforward in every way, because if they should divulge a secret of one bank to another under that system they could be discharged at once, but

under a civil service they would have to be given a hearing, and nobody knows what time that hearing would take place. The same thing applies to the Treasurer's department. All the employees of the Treasurer's department are outside of the civil service, but they are all bonded, the same as in the Bank Commissioner's office. All the employees in the Bank Commissioner's office are bonded. And then comes the Tax Commissioner's office. In an act of the Legislature of 1916 it allowed the Tax Commissioner to appoint fifty deputy collectors, — I believe that is about the number they have appointed, fifty, — and they must be approved by the Governor's Council. Then comes the Auditor's department. In the Auditor's department by an act of the Legislature two Deputy Auditors and an accountant are appointed, and they must be approved by the Governor's Council.

When we come down to the civil service, why, the Civil Service Commission themselves, when they want a man, go to the Legislature and try to get some special act through to put that man in office, in their own office. I will read here from the civil service laws and rules, on page 23:

> The Civil Service Commissioners may employ in their department two additional inspectors, one of whom shall be a pay-roll inspector at a salary not exceeding $1,200 per annum, and the other shall be a physical inspector at a salary not exceeding $1,500 per annum. The said inspectors shall also be paid the necessary traveling expenses incurred in the performance of their duty.

And on page 31:

> The Civil Service Commissioners may appoint a deputy examiner, who under their direction shall superintend any examination held under the provision of chapter 19 of the Revised Laws and acts in amendment thereof, and shall perform such other duties as the commissioners may prescribe. He shall receive an annual salary not exceeding $2,500, as shall be approved by the Governor and Council, together with traveling expenses incurred in the performance of his official duty.

That shows that even the Civil Service Commission when they want a man go to the Legislature and create an act for that one purpose.

The main object of this resolution by this committee is to hit at the county employees. Now, you know in Suffolk County the sheriff is under a heavy bond. He has the appointment of the men, but if a man is to be discharged in that department he must be given a hearing before three judges, and those three judges decide whether to keep that man or let him go.

Line 13 includes the military and naval service. As you know, at the present time the veterans of the civil war are exempt from civil service to some extent. That extent is this: If a head of a department wants to appoint a veteran he can do so; but sometimes we have seen in the past that the head of a department does not want that veteran, and what is the outcome? They call for an examination. Then that veteran can take that examination, and if he receives sixty-five per cent he goes to the top, but if he should not receive sixty-five per cent he loses out. I believe that we ought to do something for the boys across the sea and also the Spanish war veterans, but I want to say as credit to the Spanish war veterans that they want this measure defeated. We have had Liberty Loan meetings to create money for our government, for clothes, ammunition, etc.

We have had Red Cross meetings for the purpose of helping our boys across the sea in sickness. We have had War Thrift Stamp meetings, and for what? To continue this war. And here in the Constitutional Convention we want to enact in the Constitution some law that will put those boys, when they come from over the seas, under civil service. I do not think that is right, and I do not think there is a member of this Convention who thinks it is right.

Now, who wants this resolution? Merely two or three members of this committee who have got civil service on their brain. I do not think the Governor of Massachusetts wants it, and I am satisfied the Bank Commissioner of this State does not want it, and I am perfectly satisfied that the Treasurer of this State does not want it; so the best thing we can do with this resolution is to throw it out of the window and defeat it at once.

Mr. CREED of Boston: I should like to ask a question of the gentleman from Hingham (Mr. Curtiss) in charge of this report. I should like to ask if he will kindly give the Convention his opinion as to the public officials who will have the formation of policies, and whether or not the Legislature will be the sole judge of exempting those officials.

Mr. CURTISS of Hingham: In answer to the gentleman's question, I will use as an illustration first the superintendent of parks in some city. Ordinarily the superintendent of parks is a superintendent and executive officer purely and simply. I can easily conceive, however, that a political campaign in a city might be carried on as to the park policy to be adopted, whether it should be extended, whether it should be curtailed, whether there should be a saving, how far it should be extended, and many other questions that might arise in connection with it. It might be that under such conditions the head of the department would be a policy-forming head in that particular city. I chose that because it is fairly close to the line. Again, the same thing might come from the chief of police as to the method of carrying on the police work. It might come in the fire department, more marked, I think, in both police and fire than in the parks. Then, again, there are other heads of departments which undoubtedly would become direct policy-forming departments. The street department head would be that as to his policy for taking and laying out streets. There is an exercise of the sovereign functions of the people, and yet the head of that department is an appointive officer, and it would be absolutely unfair, in my opinion, to have a superintendent of streets or any other officer who really had the final say in everything except the formal matters beyond the control of the chief executive, exercise rights of eminent domain. The superintendent of streets would make his recommendations; the taking would be made perhaps by some other official, but he really is the man who formulates the policy. That being the case, I believe that those who are connected with the civil service work, who advocate that it be extended to heads of departments without restriction, are wrong, and that is the reason that in this particular measure, sir, I like the provision which places responsibility where it belongs, upon the representatives of the people, the final say as to which officers are policy-forming.

Do I answer your question?

Mr. Creed: In the city of Boston, as I understand it, the commissioner appoints the superintendent of parks. Who forms the policy then? The commissioner, who appoints the superintendent, or the superintendent of parks of our greater Boston system? Who forms the policy? Which of those two officials?

Mr. Curtiss: If I understand the gentleman's question properly, it is a question of where the line of demarcation is between the superintendent of parks and the park commissioners. Is that right? If the park commissioners are good for anything, sir, the park commissioners form the policy, and they are the heads of the department. It may be that the Legislature might give such power to a superintendent that he would come pretty closely to the line, but under ordinary conditions where there are commissioners the superintendent is not a policy-forming official and should be under civil service. If he is the real head of the department, however, the case is different.

Mr. Brooks Adams of Quincy moved that the resolution be amended by striking out, in lines 7 and 8, the words ", and not responsible for the formation of policies,"; and by striking out, in lines 17 and 18, the words "The General Court may determine what public servants are responsible for the formation of policies."

Mr. Pillsbury: Nothing was farther from my thoughts when this debate began than to intrude into it, but I see a situation arising here in which I feel constrained to interpose. I should like to see the fundamental principles of what we used to call civil service reform written into the Constitution, and I exceedingly dislike to vote against any measure in which I know the friends of civil service reform, the friends of a sound civil service, are much interested, as I believe they are in the pending resolution. But I have voted consistently here from the beginning, or tried to, against every attempt to legislate in the Constitution, against every attempt to write into the Constitution legislative details which do not belong there and which are bound to be troublesome if they are put there, of which the initiative and referendum in the form in which we adopted it is perhaps the worst example in the whole history of Constitution-making. Now I have little doubt that a large number of the members of the Convention are in accord with this view. They would like to see the fundamental principles of civil service reform embedded in the Constitution, but they have various objections to details, which instantly arise to confuse the subject as soon as we begin to deal with a proposition in the form of the present resolution, and I apprehend that for this reason the resolution may be defeated and the opportunity of doing anything be lost. In the hope of accomplishing something by way of advance toward putting our civil service upon a sound basis in a proper form, that is to say, in the form of fundamental principles which belong in the Constitution, where legislative details do not belong, I venture to offer the amendment which I will send to the desk.

The amendment moved by Mr. Pillsbury was: Strike out lines 4 to 35, inclusive, and insert in place thereof the following:

Appointments and promotions in the civil service of the Commonwealth and of all political divisions thereof shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive.

Mr. Bouvé of Hingham: I listened with great interest to the admirable remarks of the gentleman from Hingham (Mr. Curtiss) this morning, with the spirit of which I am in general accord; but it seems to me that the second section is almost directly contradictory to the resolution which we passed this morning, giving the Governor in effect much greater powers. Here by this second section, after making some general rules, the Governor is forever tied and unable to remove a single official, no matter how inefficient; and for that reason I think the second section should be struck out, even if the rest is passed. I regret very much that the various gentlemen who arose to ask questions of the gentleman from Hingham (Mr. Curtiss) were not able to do so, because I think it would have thrown light on the subject, and that Mr. Curtiss would be able to throw a great deal of light upon the resolution. Now I should like to ask the gentleman from Hingham (Mr. Curtiss) if this resolution now does not include every single department, including the military department, the determination of office in which has just been passed by this Convention in an entirely different way. I should like to ask him if he thinks the efficiency of that department, which is necessarily the most arbitrary of all, would be increased if the Governor had to go to the Civil Service Commission and ask them to pass upon his Adjutant-General or upon the members of his staff, the Surgeon-General and the Paymaster-General, and the men who are directly responsible for carrying on in the most efficient way the military department, which necessarily must work in the most efficient way in accordance with the Commander-in-Chief's wish.

Mr. Dennis D. Driscoll of Boston: I should like to get an opinion from the Civil Service Commissioners, from the gentleman who is here as a delegate, or from any delegate who sits in this Convention, so that I can return the information that has been asked of me by representatives of labor-unions outside this door. If a strike has taken place in a city such as has now taken place in the city of Springfield, Mass., of engineers, and if the civil service by the request of the officials of the city furnish men to fill the places while the strike is on, then if those men refuse to accept the strikers' places do they lose their rating? I have just been informed by the business agent of the engineers association, Mr. Comerford, of the engineers of this city, that in the city of Springfield the wages paid by employers outside of the city government have been asked of the city and that there is a division of the city government, between the mayor and the city council, which I do not know, and that the men who are on strike have been informed in writing that if a request is made upon the civil service they would have to furnish men from the civil service to take their place. If the said men refuse to take those jobs because there is a strike there, will they lose their rating in the civil service?

Mr. Newhall of Stoneham: The other day I said a few words in this chamber relative to the change in the militia law. At that time I took the position that certain amendments to the Constitution were unnecessary, and I felt at that time that the boys across the water might feel that we were casting some reflection upon them. We have a resolution before us to-day, an amendment to our Constitution, that I believe should be defeated. If there is any merit in the amend-

ments as offered by the different gentlemen, I have failed to see it. I believe that the amendment is wrong in principle. If you will read it you will find in the very first line it says:

> To secure an administration of public affairs safeguarded from undue partizan and personal influences,

And it goes on. Now you take the last few words of that same amendment, and what do they attempt to do? They attempt to build up between now and the time when this becomes operative, — I think it is July 1, 1919, — they are going to place every single employee of the Commonwealth and its subdivisions under civil service without examination. That is the principle under which civil service has been accepted in the respective cities and towns in this Commonwealth. It has not been because the people in those localities have been in favor of adopting civil service; it is because certain people holding public office in those communities realized that perhaps the time was short for them, and by their political influence and prestige they have "put across" the proposition that allows them to be put under civil service for life. That is, the cities accept certain provisions of the civil service act which will put those men in those positions for life, without examination.

I contend that that part of this constitutional amendment is absolutely wrong. If the committee who reported this resolution thought that we should start things right in the Constitution, why did they put this new clause in, except that they knew that there would be no place for this proposition if it went to the people, — they knew that would give them more prestige so that they could get it by the people.

Read down to the latter part of the first section, lines 13-16, where it speaks of preference for war service. I served in the Spanish war; I represented this Commonwealth in the Spanish war, and I want to say that the Civil Service Commission at the present time make certain statements and have in their rules certain provisions by which men who served in that war may gain certain preferences. Those preferences are on a "service paper," so called, and I defy the Civil Service Commission to tell me of any man who served in the Spanish war who ever received his job through that preference. I contend if this is written into the Constitution it means absolutely nothing, — absolutely nothing. And I want to say I am not afraid of what these boys across the water are going to do when they come back. I have had conversations with certain members of this committee and they have told me that that was what they were afraid of, that they would raid the Legislature and have a law passed by which they should have all the positions in the public service. I believe they should have them; and I take that attitude knowing well that certain citizens of this Commonwealth have been unable to pass certain physical tests to get into the army. I contend that they are unfortunate that they could not pass those tests, and I contend that they are exactly in the position that I would be in if I took an examination for policeman in my town or some particular city; I would be unfortunate in that I might not pass the physical tests, and I contend that is the only way we can face this question properly. If we are going to take this step we should take it along

the line of the amendment of the gentleman from Boston (Mr. Leonard). I have been chairman of a registration board, and I have heard man after man claim exemption on the ground of alienage, and it was impossible for me under the rule to give them anything but class 5. And I know what those men are doing. I know they have got the best jobs they ever have had in their lives, and I know they are studying nights. And when this great strife is over they will take out their papers; they will knock at the doors of the public service, and I know that the Civil Service Commission under this proposition would be able to give them a job. [Applause.]

Mr. Dutch of Winchester: We are here endeavoring to do something in connection with the same situation which led to putting that chart [of the increase in State debt] on the wall, led to the adoption of a State budget system, and led you this morning to do something, after all, to provide for the reorganization of the business system of the Commonwealth. Civil service is in line with the same thing, the same desire. The Commonwealth is engaged in a tremendous business enterprise. It is going to be engaged in more tremendous business enterprises. Now we have got to get ready for them. We talk about making the world safe for democracy. We have got to look out for our democracy itself. We have got to see that our democracy can compete with the other people. We have got to make it efficient; we have got to keep it honest and straight.

Now I take it we can assume, to start with, that the high-minded men of this Convention, — and that is all members, — agree with the gentleman from Wellesley (Mr. Pillsbury) that we no longer talk about civil service reform. That was 20 or 30 years ago. We all now believe in a sound civil service, and we have got to put it on the map, because there has been no other chance to do it since '53. The suggestion that he makes is similar to that which New York adopted in 1894, which has caused practically no litigation and which has worked well except for their multiplicity of commissions, city civil service commissions, instead of a central body to administer the law. I have here, what I should like to quote if time permitted, Elihu Root's remarks in the Convention of 1894 supporting that civil service proposition, which was carried over intact by the new Convention over which he presided.

Remarks were made about the present Governor. I do not know what the present Governor thinks at the present moment, but I have in my hands a recommendation which he made in his inaugural address of January 6, 1916, urging the Legislature to go forward and extend the civil service and bring Massachusetts, which was one of the pioneers in this campaign against the spoils system, — one of the pioneers for the merit system of public service, — to bring her into the van, to bring her forward, because other States and the United States have overtaken us in this matter.

Of course there are plenty of other authorities. Look into any result of study, whether it is by the theorist or whether it is by the hard-headed politician who occasionally puts his thoughts in writing, and you will find them favoring the fundamental proposition.

Now, that is the essential thing. Let us not make the mistake of kicking this out because we do not like this phrase or that phrase. Let us not get into the mix-up we got into the other day. This is

only the second reading. We must do something to make civil service firm in the organic law, because it is fundamental. That is the reason it belongs in the Constitution, as the gentleman from Wellesley has said; there is no question about that with reference to this measure.

The two committees sitting jointly have reported this measure. It has been gone over by a good many outside the Convention. We believe it is fair and entirely safe. Of course we are criticized by the gentleman from Quincy in this division (Mr. Adams) because we do not go far enough. We do not dare go any farther, but leave the rest to the Legislature. These words "so far as practicable" are the limiting words in the Constitution of New York under which that State has operated with entire success, and the Legislature has the control of the rest.

In regard to the distinction of policy-forming officials, I can quote from a report by a joint committee of the National Civil Service Reform League and the National Municipal League, favoring this very distinction that we make, declaring that they kept in mind that those officials who formulate and establish policies must be in close touch with the people, either by direct election or through appointment and removal without restraint by those who are elected by the people, and therefore, at least for the present, until our methods and ideas change, should be outside of the civil service list; whereas, on the other hand, operating officials who carry out the policies so determined, who do the actual administrating, should be within it.

We had the question up here the other day in the midst of the State administration debate, whether a certain speaker believed that "to the victor belongs the spoils". Why was the question asked? As a matter of scorn. Nobody defends the spoils system. But, gentlemen, that is the alternative.

Now civil service reform has been handicapped, I will admit, by the way in which it sometimes has been administered. We are too apt to think of the civil service examination as meaning a set of school-rooms with desks and blackboards. That is not it. A Civil Service Commission properly selects its men for the higher positions in exactly the way that you would select men for the higher positions in your business.

In closing, I want to repudiate this scandalous attempt of men who have been after the Legislature repeatedly to break down the bars for themselves and now try to hide behind the "boys across" to get you to kill this measure.

Mr. WATERMAN of Williamstown: I am recorded as a dissenter on this resolution. I am sorry that I have to dissent sometimes, but I was driven to it. When this matter was brought up and we gave a public hearing, there were two persons who appeared representing the Civil Service Reform Association, and the gist of their whole appeal was that we must put this into the Constitution in order to save it, and that the boys coming back from this world-war would destroy the whole civil service of the State. If my blood ever boiled it was at that time. What do you think of gentlemen, — supposed to be such, — coming before a committee of this Constitutional Convention and saying that those boys who have offered their lives for the benefit of democracy and the liberty of the people of the world should not have any choice or any opportunity when they

should return, if any of them do? That was the principal reason that set me to thinking.

Then there is another reason. We have in Massachusetts a Civil Service Commission, and it is claimed by that commission and by others that that is the best commission there is in the world. If that is so, what harm is there in letting them stand on their own feet? They have the power now given by the Legislature, and why put it in the Constitution? So, if for no other reason, this should be left open for decency's sake, that we may not cast an insult on our own boys when they return home. And if you do not believe what you read in the papers to-day, when deaths and mortal wounds are recorded, — what will they think of us when we hurl this insult to such men and their families and the fathers and the mothers?

This is not so vital a question as some would lead you to believe. I want to put a little human touch in this thing if I may. Last winter we had House Bill No. 778, accompanying the petition of Dennis A. Kennedy that the powers and duties of the Civil Service Commission be enlarged and that the compensation of the members be increased. It went before the Public Service Committee. It called for the extension of the civil service rules and regulations to all the cities and towns, just as is provided in this resolution presented here. It provided also that the compensation of the chairman of the board should be increased from $2,500 to $5,000 and that the other members should be increased from $2,000 to $4,500. Then in the resolution here before us to-day it says that the appointment shall be for not less than five years. Now, does anybody see any avarice or any desire for power in those two things? I certainly do, and I think you do. So I believe the thing to do is to leave it in the hands of the Legislature. And, too, in 1916, when it was recommended that we extend the civil service to all departments in the State, what did the Legislature do? They said No, with a very emphatic vote. They said the system should not go any farther than it had gone, but that they might weed out the dead wood. So I trust, with a consideration of decency in our minds and hearts, that we shall reject this whole proposition. [Applause.]

Mr. Tatman of Worcester: This resolution deals with "all paid public servants of the Commonwealth or any division thereof", — I suppose that means cities, — "not elected by the people, and not responsible for the formation of policies," and so forth. I take it that that applies to city clerks, city auditors, city solicitors and all other officers who ordinarily are elected by the city councils of cities. They are to be "chosen on the basis of merit . . . by a State Civil Service Commission," and I do not believe that the citizens of Worcester, which I represent, or of any other city in this Commonwealth, would desire to have a State Civil Service Commission selecting those officers from anywhere in the State and imposing a city clerk or a city solicitor or a city auditor upon any city, regardless of the choice of the citizens of that place. And I do not believe that it stamps anybody as being in favor of the spoils system to demand the right to live under the home rule which is now guaranteed us by our city charters.

Mr. Balch of Boston: I am told that there is no use in debating this matter at this late hour. I am told that the enemies of this

resolution have got it killed. I am told that in the corridor outside there is, or has been there during the day, a representative of one of the county rings who by himself has done enough to get it killed. I am told that the enemies of the merit system and the friends of the spoils system, using the fact that we have our sons and friends abroad as soldiers, using that as a stick to beat the dog with, have got it killed. I am told that the Republican machine has got it killed. I am told that the Democratic machine has got it killed. I do not believe it. I refuse to believe, until a count of heads has shown it, that this Convention has surrendered its right to think for itself and decide for itself. Soon, within a few minutes, we shall know which of us believe in a merit system and which of us believe in continuing a spoils system for our county rings and different parts of the body politic. This is the first reading of this resolution. There are at least two chances to amend. Voting for it at the present time does not mean that any one agrees to all the detail. Voting to kill it now, however, does eliminate all chances to amend, does clearly indicate that those who vote against it disapprove of a merit system in public service. I am told that organized labor may be against it. If that is true, which yet remains to be seen, there is a complete inconsistency. One of the things for which organized labor is fighting is to see to it that arbitrary and unreasonable discharges are not made. That is the gist of this resolution. It is to protect against undue political interference the man in public service who merits remaining there. For this principle organized labor should stand as solid as a rock, and would if it understood the true purport of the measure.

One word and I will finish. I have received, — doubtless you all have received, — a flood of literature from the officers of certain organizations bitterly opposing this resolution, who purport to speak for our absent soldiers although the organizations themselves are not composed of soldiers, or at least not of soldiers in this war. I cannot express the contempt I feel for the attempt to drag our soldiers who are abroad into politics in this way. They are being used as mere stalking-horses to beat this measure, for ulterior motives. What certain professional and self-constituted "friends of the soldiers" apparently want is that a flat five or ten per cent should be added artificially to the examination marks of all soldiers. In other words, that when fifty men compete for a certain position and one of them is a soldier he shall be returned as having received 85 per cent, although he really received only 75 per cent, thus being made to appear to have beaten men who really beat him. Why, of course an applicant should have proper credit for what he has done for his country, and in most cases it should be much more than a flat five or ten per cent. The resolution before you expressly provides for that while entirely separating the recognition of military service from the results of competitive examination. But ordering the Civil Service Commission to tamper with the examination returns is not a proper way to do it. To me it seems actually insulting to the soldiers. It seems as if there was a feeling in some quarters that a proper reward for an American man, an American boy, who has offered his life for his country, is to say to him on his return: "We as a grateful Commonwealth, realizing that you have given us your all, will, as a reward, order the Civil Service Commission to falsify your examina-

tion returns." Why, to me, that seems almost as if such people thought our men would be willing to cheat at examinations! If that is the reward we intend to give our returning soldiers, if that is the kind of reward we think our soldiers want, let us know it now and take shame to ourselves.

Mr. CURTISS: In the short time that is allotted to me I will try in a general way to answer some of the questions which have been directed to me and some of the objections that have been made to the resolution, and especially to the underlying principle of civil service. I am going to take some of those objections in reverse order, simply because they catch my eye in that way.

The gentleman from Worcester in the second division (Mr. Tatman), who recently spoke, made reference to the lack of local preference and stated that if such a measure as this was passed Worcester might find itself saddled with a city clerk that it did not want, he having been appointed originally, perhaps, from Pittsfield. Know, sir, that in all appointments that are made and have been made in any locality in this Commonwealth, local preference always has been given and is given now; and I cannot conceive any commission, no matter how foolish it may be, that will neglect that preference. Moreover, he called attention to the fact especially that the city clerks were the men who we might find above all saddled upon us. Does he know that the City Clerks' Association of this Commonwealth has knocked for three successive years at the door of the Legislature demanding that the city clerks, — this call came not from the Civil Service Commission, not from the Civil Service Reform Association, not from anybody outside, but from the inside, — the city clerks have asked that the civil service law be extended to them? Unfortunate indeed, unfortunate indeed, was his illustration, and what is true there is true in half a dozen other lines of work.

Again let me call the attention of my fellow-members to the bill that was referred to by my fellow-member for whom I have the highest respect, coming from Williamstown (Mr. Waterman). He failed to give you the name of the bill. He failed to tell you who opposed the bill. The bill accompanied a petition by labor-unions demanding that the Civil Service Commissioners of this State give all their time to their duties and that they receive adequate pay that they might be able to give that time. It was opposed, as far as it was opposed, — because the commission as a body never has openly opposed any measure but has given its opinion, — so far as there was any opposition it was by the members of the Legislature themselves and members of the Civil Service Commission.

Now, questions have been directed across this hall as to the method of handling personality. It has been said that heads of departments find themselves saddled with clerks who are not fitted for their job, that they find themselves working side by side with those who are out of harmony with them and with the department. I have no doubt that that is true. No man, no matter who he is, unless he is an absolute fool, will claim that civil service is a perfect method of selection of employees. The ideal method undoubtedly is the method that exists in the best factories, where the manufacturer or superintendent goes out and picks employees wherever he finds them and promotes men who have proved themselves in the service. Unfor-

tunately for us there is one great guiding and controlling principle, and that is the pocket-book of the manufacturer, which fails to exist when the employer is the public.

Moreover, there is another element, and it is this: It is the element that this is the business of every citizen of the Commonwealth and that every citizen is entitled, if he can prove his worth, at least to make the attempt to perform part of his own work.

Again, another question that has been thrown across this floor to-day and also by insinuation, that it is unfair, especially to the courts; that the courts should have the choice of their own clerks. Does the gentleman know who made that statement that the judges of the municipal courts in Boston year after year appeared in this legislative hall objecting to the extension of the civil service to their department; that a short time ago, three or four years ago, those same judges, absolutely staggered at the situation of court interpreter, asked the Civil Service Commission to help them out and hold an examination for interpreter; that as the result of that examination the very thing that they had been suspecting for some time was proved, that the interpreter they had been using did not understand the speaking language of one of the tongues that he was attempting to translate; that as a result of that the Civil Service Commission gave the courts an interpreter, and as a further result, — and it is in print, — the judges of that court have suggested that the time has come when civil service should be extended to the clerks in the courts of Boston? Look at the recent reports.

I am not going to take very much more of your time. You are intelligent men. You know the issue at stake fully as well or perhaps better than I. Utterly regardless of whether you take this resolution which has been prepared, which I believe to be a good one, if you have the real interests of the heart of the Commonwealth at stake, — and I believe you have, — it is your bounden duty to put something into the Constitution. If this resolution is too complicated, if this goes too much into detail, brush it one side, accept the amendment of the gentleman from Wellesley or any other that will save the principle, but for goodness' sake and for the sake of the old Commonwealth that we all love, save the principle.

I want one word more, and then I am done. It has been said over and over again as a charge against the system that it is un-American because it is creating a class and because it is not giving proper reward to gentlemen who have served and offered from time to time to sacrifice for the Nation. I know for one that every soldier resents the suggestion that he wants a reward for his ignorance and wishes to perform duties for which he is not prepared. So far as this system being un-American, do you, any one of you, for a single moment believe it is un-American to say to the average boy and girl: "Utterly regardless of what your father or mother is, utterly regardless of the wealth that you may have at your command, regardless of the men who may stand back of you and vouch for you, if you can prove your own worth you can at least serve the Commonwealth in some form"?

Mr. Balch of Boston: I rise to a question of personal privilege.

The President: The member will state his question of personal privilege.

Mr. Balch: My question of personal privilege is that owing to the rules under which we operate and which cut me off before I had an opportunity to make my thought clear, my recent remarks have been wholly misunderstood; and I ask for a chance to rectify the misunderstanding.

The President: The member speaking to his question of privilege has the floor.

Mr. Balch: I am informed that I was understood by some persons on the floor of this Convention to state or to insinuate that some of our soldiers might desire to cheat at examination. I trust that if that had been my statement, or if it has been so misunderstood, it would have met with the hearty and instantaneous resentment of the Convention. It is the exact opposite of what I was trying to say. To me it is incredible that anything so utterly contrary to the spirit of what I was trying to say, and would have made clear if the rules had enabled me to continue, should be believed. It never will be believed by any friend of mine, but I wish opportunity to make it impossible for it to be believed even by my enemies. The thing that made my blood boil was that any one should suppose that an artificial and false increase of a small flat percentage in rating in civil service examinations was anywhere nearly an adequate reward for our men, — either proper in kind or sufficient in amount. I say that our Commonwealth should do so much more for them, should make their reward so much more worthy both in dignity and propriety, and in amount, that any such reward as that would sink into absolute insignificance. [Applause.]

The amendment moved by Mr. Curtiss of Hingham was rejected.

The amendment moved by Mr. Adams of Quincy was rejected.

The amendment moved by Mr. Leonard of Boston was rejected, by a vote of 36 to 72.

The amendment moved by Mr. Pillsbury of Wellesley was rejected, by a vote of 45 to 76.

The resolution (No. 408) was rejected Friday, August 9, 1918, by a vote of 36 to 98.

LV.

STATE BUDGET.

Messrs. Ralph L. Theller of New Bedford, James M. Codman, Jr., of Brookline, Raymond P. Dellinger of Wakefield, George F. Willett of Norwood and David I. Walsh of Fitchburg presented resolutions numbered, respectively, 57, 275, 276, 277 and 280. The committee on State Finance reported, July 16, 1917, the following new draft (No. 325) (Messrs. Ferrey of Pittsfield, Lowe of Fitchburg, Dellinger of Wakefield, Theller of New Bedford and Finn of Chelsea dissenting from so much of the resolution as allows the General Court to increase or add items):

Resolved, That it is expedient to amend the Constitution by the adoption of the following article of amendment: —

ARTICLE OF AMENDMENT.

All money received on account of the Commonwealth from any source whatsoever shall be paid into the treasury of the Commonwealth and no money shall be paid out unless specifically authorized by the General Court. Within three weeks after the convening of the General Court the Governor shall recommend to the General Court a budget for the ensuing year including the proposed expenditures of the Commonwealth and the taxes, revenues or loans by which such expenditures shall be defrayed, this budget to be arranged in such detail as the General Court may by law prescribe or in default thereof as the Governor may determine. The General Court may increase, decrease, add or omit items in the budget. All appropriations based upon the budget to be paid from taxes or revenue shall be incorporated in a single bill to be designated the general appropriation bill. The Governor may at any time recommend to the General Court supplementary budgets which shall be subject to the same procedure by the General Court as the original budget. The Governor shall have the right in person or by representative to discuss any appropriation bill before either House of the General Court. The General Court shall not enact any other bill carrying an appropriation before final action on the general appropriation bill. Separate bills carrying appropriations may thereafter be enacted by a majority vote of all the members of each House of the General Court determined by yeas and nays if said bills are each for a single object and provide the specific means for defraying such appropriations.

The Governor may disapprove of any items or parts of items in a bill or resolve appropriating money. Such bill or resolve shall upon his signing the same become law as to the items and parts of items approved. As to the items or parts of items disapproved the procedure shall be the same as for bills which he has disapproved as a whole.

The resolution was considered Wednesday, July 10, 1918.

Mr. Raymond P. Dellinger of Wakefield moved that the resolution be amended by striking out, in line 16, the word "increase," and the word ", add".

This amendment was withdrawn.

Mr. Henry Parkman of Boston moved that the resolution be amended by striking out, in line 10, the word "ensuing", and inserting in place thereof the words "current fiscal".

This amendment was adopted.

The same gentleman moved that the resolution be amended by inserting after the word "bill", in line 27, the words ", except upon recommendation of the Governor".

This amendment was withdrawn.

Mr. Clarence W. Hobbs, Jr., of Worcester moved that the resolution be amended by striking out, in line 7, the words "unless specifically authorized by the General Court", and inserting in place thereof the words "except under authority of law"; by inserting after the word "bill", in line 27, the words ", except bills carrying appropriations for the salaries and other expenditures of the General Court"; and by inserting after the word "court", in line 30, the word "present and voting thereon".

This amendment was withdrawn.

Mr. Joseph F. O'Connell of Boston moved that the resolution be amended by striking out, in line 8, the words "Within three weeks", and inserting in place thereof the words "Not later than two months".

This amendment was rejected, by a vote of 19 to 82.

Mr. Nathan P. Avery of Holyoke moved that the resolution be amended by inserting after the word "bill", in line 27, the words ": provided, however, that, after the expiration of the fiscal year and until the passage of the general appropriation bill, liabilities payable out of a regular appropriation to be contained therein may be incurred to an amount not exceeding one-third of the total of such appropriation for the preceding year".

This amendment was withdrawn.

The resolution (No. 325) was ordered to a third reading Thursday, July 11.

It was read a third time Thursday, August 1.

Mr. Henry Parkman of Boston moved that the resolution be amended by substituting the following new draft (No. 411):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Within three weeks after the convening of the General Court the Governor shall recommend to the General Court a budget of all proposed expenditures of the Commonwealth for the fiscal year, including those already provided by law, and of all taxes, revenues, loans or other means by which such expenditures shall be defrayed, this budget to be based on estimates and arranged in such detail as the General Court may by law prescribe or in default thereof, as the Governor may determine. All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill to be designated the general appropriation bill. The General Court may increase, decrease, add, or omit items in the budget. The Governor may at any time recommend to the General Court supplementary budgets which shall be subject to the same procedure as the original budget. The Governor shall have the right to discuss any appropriation bill before either branch of the General Court. The General Court may provide for its salaries, mileage and expenses, and for necessary expendi-

tures in anticipation of appropriations, but before final action on the general appropriation bill, shall not enact any other bill carrying an appropriation except on recommendation of the Governor. Separate bills carrying appropriations may thereafter be enacted by a majority vote of all the members of each House of the General Court determined by yeas and nays if said bills are each for a single object and provide the specific means for defraying such appropriations.

The Governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of the bill as he approves shall upon his signing the same become law as to the items and parts of items approved, but as to each item disapproved or reduced he shall return the same with his recommendations or objections thereto in writing to the Senate or the House of Representatives in whichsoever the bill originated and the procedure shall be the same as in the case of a bill disapproved as a whole. Any item not returned by the Governor within five days after it shall have been presented to him shall have the force of law unless the General Court by adjournment shall prevent such return, in which case it shall not be law.

Mr. Charles L. Underhill of Somerville moved that the amendment moved by Mr. Parkman be amended by striking out, in lines 19, 20 and 21, the words "The Governor shall have the right to discuss any appropriation bill before either branch of the General Court."

This amendment was adopted.

Mr. Martin M. Lomasney of Boston moved that the amendment moved by Mr. Parkman be amended by inserting at the beginning of the article of amendment the following:

All money received on account of the Commonwealth from any source whatsoever shall be paid into the treasury of the Commonwealth, and no money, excepting money received and held for district boards created for special purposes, shall be paid out unless specifically authorized by the General Court.

This amendment was adopted.

Mr. Raymond P. Dellinger of Wakefield moved that the amendment moved by Mr. Parkman be amended by striking out, in lines 15 and 16, the words "increase, decrease, add or omit items in the budget", and inserting in place thereof the words "decrease or omit items in the budget, but shall not increase or add items thereto except by vote taken by yeas and nays".

This amendment was rejected, by a vote of 50 to 73.

Mr. George B. Churchill of Amherst moved that the amendment moved by Mr. Parkman be amended by striking out, in line 5, the word "of", where it first occurs, and inserting in place thereof the words "which shall contain"; by striking out, in line 25, the words "bill carrying an appropriation", and inserting in place thereof the words "appropriation bill"; and by striking out, in lines 26 and 27, the words "bills carrying appropriations", and inserting in place thereof the words "appropriation bills".

These amendments were adopted.

Mr. Frank E. Lyman of Easthampton moved that the amendment moved by Mr. Parkman be amended by striking out lines 3 to 31, inclusive.

This amendment was withdrawn.

Mr. Nathan P. Avery of Holyoke moved that the amendment moved by Mr. Parkman be amended by striking out lines 3 to 45, inclusive, and inserting in place thereof the following:

The General Court shall establish a State budget system. The Governor shall have authority to veto items or parts of items of loan or appropriation bills.

This amendment was rejected, by a call of the yeas and nays, by a vote of 72 to 89.

Mr. Clarence W. Hobbs, Jr., of Worcester moved that the amendment moved by Mr. Parkman be amended by striking out, in lines 27 to 30, inclusive, the words "by a majority vote of all the members of each House of the General Court determined by yeas and nays if said bills are each for a single object and", and inserting in place thereof the words "if said bills".

This amendment was adopted, by a vote of 78 to 42.

The new draft moved as an amendment by Mr. Parkman, as amended (see No. 416) was adopted Friday, August 2 and was placed in the Orders of the Day, the question being on passing it to be engrossed.

The resolution was passed to be engrossed Wednesday, August 14, in the following form as changed by the committee on Form and Phraseology (No. 420):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

SECTION 1. *Collection of Revenue.* All money received on account of the Commonwealth from any source whatsoever shall be paid into the treasury thereof.

SECTION 2. *The Budget.* Within three weeks after the convening of the General Court the Governor shall recommend to the General Court a budget which shall contain a statement of all proposed expenditures of the Commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form as the General Court may by law prescribe, or, in default thereof, as the Governor shall determine. For the purpose of preparing his budget, the Governor shall have power to require any board, commission, officer or department to furnish him with any information which he may deem necessary.

SECTION 3. *The General Appropriation Bill.* All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill. The General Court may increase, decrease, add or omit items in the budget. The General Court may provide for its salaries, mileage, and expenses and for necessary expenditures in anticipation of appropriations, but before final action on the general appropriation bill it shall not enact any other appropriation bill except on recommendation of the Governor. The Governor may at any time recommend to the General Court supplementary budgets which shall be subject to the same procedure as the original budget.

SECTION 4. *Special Appropriation Bills.* After final action on the general appropriation bill or on recommendation of the Governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained.

SECTION 5. *Submission to the Governor.* The Governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the House in which the bill originated his reason for such disapproval or reduction, and the procedure

shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within five days after the bill shall have been presented to him, such items shall have the force of law unless the General Court by adjournment shall prevent such transmission, in which case they shall not be law.

The Convention voted, Tuesday, August 20, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 155,738 to 81,302.

THE DEBATE.

Mr. PARKMAN of Boston: This is not a subject for any oratorical display, even if I could offer it. This is a question simply of giving the best judgment of this Convention on a subject which has been considered in this State for a number of years and which tends toward good financial administration in this State.

The question of budget making is not a new one. As I have said, it has been considered here in various forms for some years. This is not the only State that has considered it in some way. Out of the forty-eight States in the Union twenty-three, or nearly half, have taken up the question of the budget in one form or another. Laws have been passed and constitutional amendments have been adopted, as I said, in twenty-three States, — a large number of them in the last few years.

Of course most of you know what a budget means. I cannot define it better than by giving the words of Bulletin No. 2, compiled by the committee on furnishing information:

> A budget may be defined as a plan for financing the government during a definite period, which is prepared and submitted by a responsible executive to a representative body, whose approval and authorization are necessary before the plan may be executed.

There are pretty nearly as many different forms and methods of preparing a State budget as there are States which have adopted it. As I have said, most of the twenty-three States which have adopted some form of budget have adopted it by statute. Only two States, I think, have yet incorporated it into their Constitution.

Now, to refer to another subject, if there was one recess committee which was justified last summer it was the recess committee which considered the preparation of a budget for this State. Their report is contained in House documents No. 17 and No. 1185 of 1918. The committee had as chairman on the part of the House a gentleman with whom a great many of you undoubtedly are familiar, Mr. Joseph E. Warner, who for some years had been chairman of the Ways and Means Committee of the House, and than whom I know none who is more familiar with the financial arrangements of the State. They prepared and submitted to the Legislature a budget for the year 1918, and gentlemen of the Convention who were in the Legislature I think would testify that that report assisted very much in a proper financial arrangement of the money affairs of the State for this last year. That rests entirely on legislative authority. I am going to take the liberty of reading from their last report a few words, as follows:

The Constitutional Convention adjourned, as we know, last summer before taking action on the budget, but its finance committee reported a resolution, Convention document No. 325, which is printed in the appendix to this report. This resolution provides for a budget to be submitted by the Governor, but it leaves full power in the Legislature to increase or decrease items. It also gives to the Governor the right to disapprove items in appropriation bills. Under a budget system, with but few appropriation bills, the executive must have this right to disapprove items. If not, he may be obliged to veto an entire bill merely on account of one item which does not meet his approval. Without this right in the executive no budget system can be wholly successful. A constitutional amendment will be required to bring this about. The committee express the hope that the resolution reported by the finance committee of the Convention, with slight perfecting amendments, will be adopted by that body and ratified by the people.

Thus in the past two years there has been a considerable discussion of the budget system for Massachusetts. It is universally admitted that some system is necessary. All the discussion is directed at the details, not at the underlying necessity. Every budget suggestion in recent years has recognized, first, that we must have a budget, and second, that the Governor must be connected with the preparation of the budget.

I believe that the general principle of the necessity of a budget will approve itself to you without my taking up your time. I merely want to add, with what they say about a slight perfecting amendment in the report of the recess committee, that I wrote about ten days ago to Mr. Warner, asking for suggestions as to perfecting amendments. I received a letter from him yesterday in which he suggested a slight perfecting amendment, which, after I have a chance to consult with other members of my committee, I daresay I may offer at another stage in the discussion. The resolution provides that the Governor shall report a budget within three weeks after the convening of the General Court. The statute passed by the Legislature last winter limited it to two weeks. When this general budget, which is to cover all the appropriations which are required, as I understand, for the general maintenance of the functions of the Commonwealth, is prepared, it will be reported to the Legislature and undoubtedly by the Legislature referred to its committee on Ways and Means. That budget, which will cover almost all the financial transactions for the coming year, the necessary financial estimates, is to be got out of the way, killed or discussed and approved or disapproved before any other appropriations can be taken up. The budget as recommended by the Governor will show, should show, what sums are necessary for maintenance.

Mr. LYMAN of Easthampton: I should like to inquire what the gentleman proposes to do in the case of an emergency appropriation, in view of the fact that this budget may involve some two or three months in going through the General Court.

Mr. PARKMAN: As I understand the question of the gentleman in the fourth division (Mr. Lyman) it is: What is going to happen if this general budget should take up two or three months in discussion. Instead of a multitude of appropriation bills coming in, which undoubtedly do take up a considerable time, there will be this one bill. After that bill is discussed and settled any other appropriation bills can then be taken up, and any other matters can be discussed during the time that this general appropriation bill is perhaps before the committee on Ways and Means or before any other committee to which

the Legislature chooses to send it. Other matters can be discussed during that period, so that the business of the Legislature need not be hindered.

Mr. Lyman: I do not think the gentleman answered my question. My contention was this: That during the past session we had a budget and it was nearly three months before that budget became law. In the meantime an emergency appropriation came up which was absolutely necessary to be put through. Now, under this resolution that could not be done?

Mr. Parkman: As I understand it there are various statutes in the Legislature now so that, — and I hope somebody will correct me if I am wrong, — if appropriations are not passed at once the appropriations of the previous year may be continued along. I would suggest to the gentleman from the fourth division (Mr. Lyman) that that same thing which he fears now might occur with any single appropriation bill. For instance, an appropriation bill to maintain the Westfield Hospital, merely using that as an example, might be held up for two or three months in the Legislature. I have known bills for appropriations for various of the duties of the government to be held up for a long period, and during that time, and I think I am right, appropriations of the previous year were allowed to continue.

Mr. Theller of New Bedford: While we are on this question may I call attention of the member in the fourth division (Mr. Lyman) that lines 19 and 20 of this document provide that the Governor "may at any time recommend to the General Court supplementary budgets." Under those lines I assume that the Governor could recommend a supplementary budget in anticipation of the general budget or the general appropriation bill, and so get through an emergency appropriation if necessary.

Mr. Lyman: I do not understand, from what it says later on in the resolution, that they can pass any appropriation bill until after the budget is out of the way. That is my contention. In the past years we have had one or two cases of emergency appropriation bills put through for various short periods, and under this resolution they would have to be held up.

Mr. Parkman: In answer to the gentleman, I think I told the Convention that there was an amendment which I might offer at a subsequent period, when I had had a chance to submit it to the members of my committee, which I think will cover the suggestion made by the gentleman in the fourth division (Mr. Lyman). I recognize perfectly that there may be an emergency, just as the gentleman from the fourth division suggests and as occurred last year, when certain bills for the relief of dependents, I think it was, were put in early in the session. Now, the amendment which I propose to offer would cover that contingency of emergency and necessary emergency legislation. As I say, I wanted before offering it to submit it to the members of my committee to see if they all agreed on it, and I think that if adopted, and it is a necessity, that would meet, I hope, the question of the gentleman from the fourth division (Mr. Lyman).

Mr. Avery of Holyoke: In most city charters there is a provision that until the budget is passed any board or commission may expend a certain fraction or proportion of its preceding appropriation. Should there not be in this resolution a similar provision?

Mr. PARKMAN: I think, if I remember rightly, that there are statute provisions now in the statutes of Massachusetts which cover just the point which the gentleman raises.

Mr. AVERY: If this should become a part of the Constitution what would become of your statute provisions?

Mr. PARKMAN: I do not think they would conflict. I offer that as an offhand statement, but I do not think they would conflict, because there is nothing in the constitutional provision offered to prevent the statute carrying appropriations along.

Mr. CHURCHILL of Amherst: May I ask the gentleman if he does not think that the words in lines 10 and 11, — "a budget for the ensuing year including the proposed expenditures of the Commonwealth", — do absolutely shut out application to present matters; that is to say, proposed expenditures for the ensuing year must be, of course, for the fiscal year, and would not those words as a matter of fact be subject to the objection raised by the gentleman from Holyoke (Mr. Avery)?

Mr. PARKMAN: If that is the necessary interpretation of those words there certainly should be an amendment offered.

Mr. WALKER of Brookline: As minor suggestions seem to be in order at the present time I should like to suggest one myself. May I preface my remark by saying, however, that I wish to congratulate the committee on State Finance on the excellent constitutional provision they have written for a State budget? It is brief. It is to the point. It does exactly what I think ought to be done. Far from criticising the measure, I think the committee should be congratulated upon the excellence of their work. It harmonizes with the legislation, the excellent legislation, that already has been passed in this Commonwealth along those lines. I happened to notice just now as I was reading the resolution that in the clause just referred to they speak of a budget for the "ensuing" year. It occurs to me that the word there should be "fiscal" year. As a matter of fact, the fiscal year of the Commonwealth begins on December 1st, so that when the budget law is passed it would not be for the "ensuing" year but rather for the current year, and it seems to me the matter will be cured by simply changing the word to "fiscal" year.

Mr. PARKMAN: I am very glad to accept the suggestion of the gentleman from Brookline, who is much more recently conversant with State matters and appropriations than I am.

Mr. BRYANT of Milton: I should like to ask regarding one point on which I am not very clear. If the clause which has been criticized prevents the appropriation of any other amount as long as the budget is pending, — the clause beginning "The General Court shall not enact any other bill", — is that absolutely necessary to the purpose of this amendment, or could the amendment be passed without this clause and still accomplish the purpose of the committee?

Mr. PARKMAN: In budget making, which is supposed as near as possible to comprise the whole financial arrangements for the fiscal year, it has been proved very necessary by experience that the main budget bill, with its statements as to how the expenditures are to be raised, whether by taxation or by loans, — as I say, it has been proved by experience that it is very necessary to get that main budget bill out of the way before any other bills, what we might call private appropria-

tion bills, are taken up. I merely say that as it has proved so by the experience of other States.

Mr. O'CONNELL of Boston: If the gentleman will agree I will make a motion in accordance with his wishes, that we resolve ourselves into Committee of the Whole, for the consideration of this resolution now under discussion.

Mr. WALKER: I trust the Convention will not go into Committee of the Whole on this matter. There is no need of it. We are getting along excellently. Suggestions may be made now, and the resolution may take another reading and then can be perfected. The measure is well drawn. There are only one or two minor amendments which need to be made. In the matter just referred to, I consider that it is important that the Legislature should not pass any appropriation bills until after the general budget has been disposed of. That is the common opinion of those who have studied the question of budget making. But we ought to provide, of course, that in case of an emergency an appropriation may be made. Now, by adding at the end of that clause the words "on recommendation of the Governor", the desired result would be accomplished. If there was a real emergency the Governor could recommend that the necessary appropriation be made. I throw that out, I do not offer that amendment. I believe that the committee can take under consideration the suggestions that are now made or that may be made, and then can bring in a redraft. In that way we will get ahead much quicker than we will if we try to discuss amendments in so large a body as the Committee of the Whole.

Mr. LOWE of Fitchburg: As a member of the Finance Committee I would suggest that instead of going into Committee of the Whole, which takes some time, this matter might be put forward to the third reading, and at that time the amendments can be drawn and considered.

Mr. O'CONNELL: I am rather surprised at my distinguished friend from Brookline (Mr. Walker) urging as a reason for not taking this action proposed at the request of the chairman of the committee, that it will be discussed by too large a body. As a matter of fact, the Committee of the Whole is a smaller body; and again, as a matter of fact, we are carrying on this discussion to-day without a quorum. Under the Committee of the Whole your quorum will be 100. It does seem to me that instead of running the danger of having the question of the absence of a quorum raised it would be much more sensible and much more in accordance with parliamentary procedure that we contemplated when the rules were adopted, to resolve ourselves into Committee of the Whole. There seems to be some prejudice against the Committee of the Whole because of the long delay of last summer, but gentlemen must remember that many parliamentary bodies always act under the Committee of the Whole and it is found to be a most satisfactory and reasonably expeditious way of doing things. I believe that under the guidance of the chairman of the committee, who has the subject pretty well in hand, if we resolve ourselves into the Committee of the Whole we shall get through with this subject much quicker than if somebody raises the point of no quorum and delays us an hour in trying to get one. I trust that the request of the chairman to put this matter into Committee of the Whole may be adopted.

Mr. PARKMAN: With all thanks to the gentleman who has just spoken, I merely want to say, in order that the record may be straightened, that I did not request it, I only suggested that we should go into Committee of the Whole. If the object of the discussion of this resolution, which can be attained largely by question and answer, can be reached in Convention, why, I am perfectly satisfied to go on in that method.

The motion to resolve the Convention into Committee of the Whole was rejected.

Mr. PARKMAN: I only want to say, in answer to the gentleman from Brookline (Mr. Walker), that the words which he had suggested, — "except upon recommendation of the Governor", — so that an emergency appropriation might be brought in in the beginning of the year and discussed before the general budget was discussed, were the very words which I had in my mind, but I had not decided just where the best place in the resolution was to put them in. They were suggested also by Mr. Warner, chairman of the House Ways and Means Committee.

Mr. RICHARDSON of Newton: I should like to ask of the committee, either of the chairman, or of the gentleman from Fitchburg (Mr. Lowe), who appears to be a dissenter in part, if it is the purpose to raise the question which is involved in the dissent of several members of the committee. As I look at the matter at this moment, I should much prefer to vote for this measure with the words "increase" and "add" stricken out of it, as favored by the minority of the committee, and before we vote I hope that we shall have an opportunity to hear that feature of the question discussed at some length. I should like to ask the committee what the status of that dissent is at the present time.

Mr. PARKMAN: I understand that the minority are going to propose that amendment. I do not know exactly when they are going to offer it. I shall not discuss it until it is offered.

Mr. BALCH of Boston: I rise to ask the chairman of the committee for an explanation of one point in this draft. Experience has shown that usually the chief executive, being more directly responsible to the people as a whole, is an instrument of economy, while the legislative branch, under enormous pressure from different parts of the Commonwealth for the expenditure of money, is apt to be the branch of the government which results in the spending of a great deal of money. Now in the city of Boston we have the provision that the mayor makes the budget and sends it in to the city council, which thereafter can reduce or omit items but cannot increase appropriations or add items. I am not clear from the text how the present draft is supposed to operate in that particular. I know that the Governor may disapprove of any items or parts of items in a bill or resolve appropriating money. That provision is contained in lines 33 and 34. It is not clear to me how that would operate in practice. Suppose, for instance, that the Governor had recommended the appropriation of $100,000 for some public work, and that the Legislature swelled that appropriation to a very large figure, — $500,000. The Governor considers it clearly a waste. Now, what can he do? Can he disapprove as to $400,000 and let it stand as to $100,000, or must he disapprove the

whole of that item, as being indivisible, or else accept the entire increase?

Mr. PARKMAN: The question which the gentleman in my rear (Mr. Balch) has offered as to the increasing or decreasing of items, is the one which is covered by the amendments which the minority of the committee are going to offer. Therefore I had not proposed to discuss that until the resolution had gone to a third reading or until those gentlemen had offered their amendments — which has not been done yet. I do not want to discuss the subject until the amendment is offered.

Mr. Dellinger of Wakefield moved that the resolution be amended by striking out, in line 16, the word "increase" and the word "add".

Debate was resumed after the recess.

Mr. DELLINGER of Wakefield: The committee on State Finance reported document No. 325 unanimously with the exception of two words in line 16, those two words being "increase" and "add". There are five members of our committee who believe that the Legislature should not have the power to increase or add items to the budget as submitted by the Governor. We believe that the responsibility for the budget should be placed on one man, and that the proper party to place it on is the executive of our Commonwealth, since he has charge of the enforcement of our laws. We believe that the Governor alone is responsible to all the people; that if the Legislature is allowed to increase or add items the responsibility is too much divided; instead of the responsibility being placed on one person it is placed on the shoulders of 280 men throughout the State. We believe that the Governor should have the budget prepared by the heads of departments under him, and that he himself should be made responsible for it when it is sent to the Legislature. He alone, I believe I am correct in saying, has the power to order the heads of the department before him and to control, compel them to produce data concerning their departments, — or he has more power than any one else to control their actions.

The majority of the States in the Union until recent years have not had a budget system. During the last three years there have been thirteen States which have adopted some kind of a budget, and the tendency is to adopt the executive budget, making the Governor responsible. There is only one State at the present time, I believe, and that is Maryland, which has made it a part of the Constitution, and it has been working only a short time. I have a letter here from one of the officers of that State saying that it had worked but a short time, but that the opinion of all was that it was a great step forward. The majority of the expert witnesses before our committee were in favor of placing the sole responsibility on the Governor and not giving the power to the Legislature to increase or add items. I have a letter here from President Lowell of Harvard University which says in part:

The great objection to allowing the Legislature to increase the items in the budget proposed by the Governor is that it practically leaves things just as they are now.

In Minnesota only last year the Governor's budget was about $19,000,000. The Legislature of that State is allowed to increase and add items. They added to this budget more than four millions of dollars. The best budget systems in the world are in Europe. The

best one, possibly, is that of England, and under the system which has been in vogue there for many years the sole responsibility is on the minister who submits the budget. Parliament cannot increase or add, but it can decrease or omit items.

We already have made provision in this resolution reported by the committee giving the Legislature the power by a separate bill, after the budget bill has been passed, to make certain appropriations only by a majority vote of all the members of each House, but one condition is that they must provide in that bill the means whereby this appropriation is to be paid. This gives the Legislature enough power over the Governor.

A commission of three was appointed by President Taft a few years ago to prepare and report on a budget system for the United States. The commission consisted of Dr. Cleveland of New York, Dr. Goodnow of Baltimore and Harvey S. Chase of Boston. After three years careful study they recommended to Congress that a budget be adopted for the Federal Government, and in that report was a recommendation that Congress should not have the power to increase or add items to the budget. If we allow our Legislature to increase or add items to the executive budget then we, in effect, destroy the fundamental principle of an executive budget.

Only at the last session, our Legislature, by chapter 244, worked out a budget system for Massachusetts. They of course retained the power to increase and add items in the bill, because they thought a true executive budget would take away some of their power.

I think possibly reading a few words of Mr. Chase, a member of the commission appointed by President Taft, would get before the Convention in fewer words than I can say, my main contention. In speaking of the executive budget especially as it referred to Massachusetts, he said: (From an Address before Boston City Club, Jan. 25, 1917, in Bulletin of Boston City Club, vol. 11, p. 233.)

> In order that it may be clearly stated just what I mean, I would say that an amendment to the Constitution of Massachusetts, which is intended to provide for a proper installation of a budget system, must require that the budget shall be prepared under the authority of the executive, that is, of the Governor; that it shall be submitted by the Governor with full responsibility to the Legislature; that the Legislature shall act upon the budget as proposed by the Governor, but shall act with restricted authority; that is to say, it shall have authority under the amendment to the Constitution to reduce any item of the budget but not to increase any item or to transfer an amount from one item to another of the budget. This means that the Governor will be held to strict accountability for the preparation of his financial plan for the State, in the preparation of which he will be supported and assisted by whatever means are necessary, so that a reasonable plan may be submitted in proper form at the proper time. Thereupon the Legislature shall consider this financial plan, item by item, and take such action on each item as seems wise to it, and finally that appropriation shall be actually passed by the Legislature, after due consideration of the items in its committees, to whatever extent is necessary and reasonable. The fundamental feature of the effective budget is the laying of the responsibility for the submission of the budget upon the executive, not upon the Legislature and not upon a commission composed partly of members of the Legislature. Any such distribution of responsibility, partly on one and partly on the other branch, would completely destroy any advantage which we are now expecting to gain from budgetary procedure. A commission made up partly of the executive, particularly if the Governor is not made the absolute head of such a commission, and partly of members of the Legislature, such as is recommended in the report of the Chamber of Commerce, would forestall a failure of the movement from the very start.

As I have said, practically every expert who appeared before the committee on State Finance was in favor of not giving the Legislature power to increase or to add items. Recently I received from the Massachusetts Board of Trade, which is composed of the boards of trade of forty or fifty cities and towns of this Commonwealth and from affiliated organizations, a letter endorsing the position taken by the five dissenting members. I believe if you gentlemen will consider the matter carefully and study the best budget systems of this country and of Europe, that you will agree with us that the Legislature should not have power to increase or add items.

Mr. THELLER of New Bedford: I was very glad to hear the member from Brookline (Mr. Walker) endorse the work of the committee on Finance. I want to ask the Convention to look at the five original documents that were submitted for a State budget system and compare them with document No. 325 reported by the committee. They will see that in the place of 69 or 70 lines, or 170, as found in those original documents, the committee on State Finance was able to boil down the propositions into one of 39 lines. They had before them a very difficult problem, and that problem is the problem of State finance and the State financial administration. It is so complicated and so ramified by the disposition and accounting of money appropriated for various departments that unless the matter is studied intently it is almost impossible to get out a comprehensive scheme for a budget system or for any other system of financial administration in the Commonwealth. And so, though there may be in this document which is offered to the Convention some slight defects, I believe that this is the best proposition that can be offered considering the difficulties that the committee had to meet.

To summarize it, it simply provides this: That all money received by the Commonwealth shall be paid into the treasury and none shall be paid out without appropriation. I will come to that point later, I hope, and show that there is now money paid out of the Commonwealth's treasury without appropriations.

Within three weeks after the convening of the Legislature the Governor shall submit a budget, — and a budget means simply a plan of expenditure correlated with a plan of anticipated revenue, — in such detail as the Legislature by law may prescribe; and he shall offer his recommendations with that plan. The resolution then provides that the Legislature may revise it, may increase or decrease or may add or omit items. It then provides that each member of the Legislature still may have the right which he has now to offer a separate appropriation bill so that that right is not taken away from the Legislature; and the Governor, — because there may be mistakes or omissions in the budget, — may offer a supplementary budget bill. And finally it provides that this budget bill shall have priority in discussion and no other appropriation bill shall be enacted until this is disposed of. All those things, really, when analyzed, are matters of legislation. The one thing in this budget proposal for which an amendment to the Constitution is absolutely necessary is the power given in the last sentence to the Governor to approve or disapprove of the separate items in the budget. That is absolutely essential.

Now in the United States there has been a great deal of agitation over the budget and it all has been within the last fifteen years. The

chairman of the committee has pointed out that twenty-three States have adopted the budget system. There has been agitation in Massachusetts. In 1916 the Commission on Efficiency and Economy made a report on State finance and also made a report on the budget system, recommending it. A joint recess committee of the Legislature met last summer and finally recommended budget legislation to the Legislature which has just adjourned. They filed two reports with the Legislature, a preliminary budget plan and a final report, and they united with the Commission on Economy and Efficiency in recommending a budget. There was substituted for that commission the Supervisor of Administration, and he recommended it to the Convention committee. It was recommended to the committee on Finance by some able publicists, among them President Lowell, Mr. Cleveland, an authority on this subject, and others. It is in operation in the Commonwealth now. The statute of 1913, chapter 719, provides that all cities except Boston shall put into operation the budget system. And I want to point out here that the Commonwealth lays down the law for the city councils that they shall not increase the recommendations of the mayor, and I want to point out further that the segregated budget, so called, of the city of Boston provides the same thing. In other words, the cities of the Commonwealth have had the budget system imposed upon them, and in that system is incorporated what is recommended by the dissenting members of this committee.

In the twenty-three States that have adopted the budget system only one has put it into its Constitution, and that is the State of Maryland. I believe the State of West Virginia and the State of California are going to vote in the fall of this year upon amendments to their respective Constitutions providing for budget systems. All those things go to point to this fact, that the budget system is going to be adopted generally in the United States and if the recommendation of President Taft ever is carried out it is going to be, — it must be, — adopted by the Federal Government.

If anybody has taken opportunity to look into the reports of the Commission on Efficiency and Economy and the report of the special committee last year, he will find that prior to the enacting of this system by the last Legislature there was a most troubled system of getting at what the revenue of the Commonwealth was, what the tax was going to be and what was to be raised for loans and for interest on the loans, and all the necessary appropriations for the departments. I have not served in the Legislature, so I am not an authority on the procedure with which it went at its appropriations, but I do know this, that the State raises about $11,000,000 in taxes each year, it receives about $18,000,000 from revenues and with what cash it has on hand in the treasury it disburses the expenses of the State, and in this manner: When the Legislature convenes it receives the report of the Auditor, which has been prepared from the recommendations of each department, and then the Legislature begins to appropriate money in February and continues through June. It passes a hundred or more appropriation bills, — 132, I think, in 1917; and 116 appropriation bills in 1915. It passes all those bills after they are looked over in the committee on Ways and Means and appropriates a huge sum of money without at any time knowing the total amount appropriated and without having any facts before it showing the anticipated revenue

of the Commonwealth. That is the system which was in operation prior to this year, 1918.

When the Auditor publishes those recommendations he does not review them; he takes the estimates of the heads of departments and those estimates which are prepared by the heads of the departments are of course partisan estimates. They are made up by the people who want the money, and not only do they offer them to the Auditor who puts them in his report but they sometimes go to a member of the Legislature and get him to initiate a separate appropriation bill for their particular department. The estimates are divided in two documents, House Document No. 1 and House Document No. 2, and sometimes the heads of departments put in a recommendation for so much money, say for school teachers in their particular institution, on the expectation that their recommendation in the other House document for a new school will be forthcoming. The result is that these documents are so inter-related that when the House committee on Ways and Means discusses one it does not know that an estimate in one is contingent upon receiving an appropriation in the other. More than that, at the same time that the Ways and Means Committee is revising or talking about these estimates, individual members are offering separate appropriation bills. It can be seen at a glance under such a system it is almost impossible to tabulate for a fiscal year the anticipated expenditures. No one knows what they are to be. At the same time the committee on Ways and Means does not know how much revenue is coming in from the separate departments or how much of a State tax there must be to meet appropriations. Conditions are infinitely worse than that and I should not like to take the time of the Convention to explain them. But I will say this: There are certain appropriations now which I may call standing appropriations. There is money coming into the Commonwealth of which the committee on Ways and Means each year knows absolutely nothing. There is money expended by departments which is not appropriated by the Legislature at all. For instance, in the Boston Port Fund there is money which comes from wharfage and lighterage charges to the Port Commission, if that is its correct name, and that is expended by them without any appropriation. There is money that comes in to the Massachusetts Highway Commission which is expended in the same way, under statutory authority for highways and their repair, but which is not turned into the general fund of the treasury of the Commonwealth at all. The various systems of accounting for that money, — I do not say that money is wasted or lost, — but the various systems of accounting for that money are such that it is almost impossible even by going through the financial documents of the Commonwealth to find out what any single department actually expends in a single year.

I wish that I had time to quote certain figures and I hope the Convention will excuse me if I do take that time, because the problem is decidedly serious.

In 1914 the State received $7,131,000 from certain revenues, which amount was expended without appropriation.

In 1914 the Massachusetts Highway Commission, which I have mentioned, received and expended $965,873 without appropriation. The result of such procedure is that each year the various departments

are enabled to expend a sum exceeding $2,000,000 in excess of the appropriations made by the Legislature.

Now you see the necessity for the first sentence in the budget amendment:

> All money received on account of the Commonwealth from any source whatsoever shall be paid into the treasury of the Commonwealth and no money shall be paid out unless specifically authorized by the General Court.

When you allow a department to expend money which it receives from license fees, and so on, or from any other source, you do not get any idea of what that department costs and you are following an altogether wrong method because it may receive more or less than is necessary to carry it on properly.

That is the situation in which the State financial system is at this time. Summing it up in a word, it merely means this: That there is absolutely no correlation between what we are going to expend and what we receive and what we are going to raise by taxation. In that statement is expressed the need for a budget system.

I am one of the dissenters and after a study of this question as to whether the Legislature should be allowed to increase items of expenditure as recommended by the Governor, I want to say this: That if you are ready to adopt a budget system of the best type you want to make the function of the Governor not one which is merely advisory. The gentleman on my left (Mr. Dellinger) has explained that the English system is a true type of executive budget, and if we are going to adopt a budget system at all let us have a true executive budget where you can fix the responsibility for expenditures.

Mr. AVERY of Holyoke: I should like to ask if the veto power of the Governor is a merely advisory power.

Mr. THELLER: The point which the gentleman raises as to whether or not it is sufficient in document No. 325 to have the Governor veto items when they come up to him, was raised in the committee. The answer to it is this: That that is not a sufficient way of securing an executive budget, because the veto power means that the individual members will go to the Governor and try to secure what they want for their particular district and we shall go back to the system where in some States, if not in this, there is log-rolling. For instance, Mr. A. says to Mr. B.: "Vote for my measure and help me get some money for my district, and I will vote for yours." The difficulty with the veto is that it comes too late. The executive budget system puts the responsibility upon the Governor in the beginning and there is no true executive budget system anywhere unless the responsibility is fixed. The only European countries that have had trouble with their budget systems are those countries where responsibility is not fixed upon the proper officers, — as the exchequer in England.

Mr. CREED of Boston: I will ask the gentleman if the provision which denies to the representatives of the people the right to increase and add to the items in the budget is not assuming that we always will have a high-class Governor in this Commonwealth?

Mr. THELLER: It is very difficult to answer a question of that kind. I am not basing my argument for an executive budget on the assumption that we always will have a good Governor. Certainly the State of Maryland did not put such a provision into its Constitution on that assumption. The character of the British ministers does not

seem to affect the executive budget there. You cannot answer a question like that. I do not believe anybody should be elected Governor unless he knows something about finance and is able to prepare a budget. But at any rate officers of the Commonwealth could be provided to give him figures and facts concerning the departments, so that we could have a general estimate and plan.

In regard to the second suggestion in the gentleman's question, the theory used to be that the Legislature, as the Parliament of England, held control of the purse-strings, therefore that function properly should remain there. And that theory is correct, but practice has changed it. It is because 240 men get together and seek to get money for their respective districts that we have extravagance and extravagant appropriations. It is the Governor who tries to keep down expenditures today, and not the Legislature.

Mr. George of Haverhill: I should like to ask the delegate from New Bedford if he will give us any instance in the last eight years where the Governor has tried to keep down the expenditures of the State, and state what those instances are.

Mr. Theller: I do not believe I could give a single instance of that nor point to a particular bill vetoed by a Governor, but I know that certain Governors have endeavored to cut the tax rate or at least to prevent unnecessary expenditures, and I believe one of these ex-Governors sits or formerly sat in this Convention.

Now, in regard to the power of the Legislature to increase items. If you allow the Legislature this power, if you allow it to add to what the Governor recommends, you will find yourself in this position, it seems to me: That all the recommendations of the Governor will be pigeonholed in some cases and the Legislature will go about making up its own budget, or making up its own list of appropriations, without regard to the anticipated revenue which the Governor has estimated and laid before it. In other words, you go back to the old system. You really do not have any function in the Governor except an advisory function.

The other thing with regard to the right of the Legislature to increase items is this. There is not any need for it. If you look at this amendment, you will see it provides that members thereafter may offer appropriation bills. It requires only that the yeas and nays be taken upon that measure. When you allow the Legislature, — any man in the Legislature, — to offer a bill after the budget, to initiate legislation for spending money afterwards, you are not taking away any rights that he has, nor any right of the people to pass upon the finances, because they revise the budget and they have the right to initiate financial legislation, if the yeas and nays be taken.

Another thing is this: That if you fix responsibility upon the Governor you open the whole subject for debate and for public oversight. The public will know who is responsible for increased expenses, or the recommendations for increased expenses. The Governor must take the responsibility. The Legislature will be free from that responsibility, at any rate. But you would have an issue raised, which might be the issue in a proper political campaign, — an issue on finance, which we seldom, if ever, have.

Another thing in favor of this amendment which has been offered by the gentleman in the same division (Mr. Dellinger) is this: It often

has been argued that the representatives of all the people should be the ones to appropriate the money. Well, under the budget system they do. But you say: "Well, the Governor makes the recommendations, which are final here, except so far as decreasing them." That is true. But let me point this out. The Governor is really the State wide representative, and the budget is a financial scheme for the whole State, so that the representative of the people as a whole prepares the budget, and the Legislature becomes the critic of it. If you make the Legislature the constructor of the budget it will not criticize it. If you make the Governor the constructor, and allow the Legislature to be the critic, you may be able to save money. Certainly it has not been the experience of the State or of the Federal government that it is possible to save money, to carry out a financial plan of any kind, if you allow full privilege to add to appropriations, introduce appropriation bills, and entirely destroy the relation between your anticipated revenue and your expenditure.

I want to say this in closing. The dissenters to this document who dissent with regard to that particular word "increase," do not want their dissent in any way to stand in the way of the adoption of a budget system for the Commonwealth of Massachusetts. But from the knowledge that they obtained in the committee, and from the recommendations of publicists and financiers, and from the experience of this State itself with the municipal budgets, we have come to the conclusion that if we are going to adopt a budget system we ought to adopt a proper executive system, because that is the only one that really has worked to secure economies. We did not offer any amendment in the committee. We believed that this was so important a thing, so vitally going to the whole principle of the executive budget, that we would lay the matter before the Convention and let the Convention decide this matter. It is because of that feeling, because of our study of the finances in this State, and because of our study of the budget systems in various States, including England and some of the European countries, that we have come to the final conclusion that it ought to be laid before the Convention, and the Convention itself decide on that important matter. But if it is not acceptable to you, I urge you by all means to pass the budget system as recommended by the committee, because that will be a long, long step in the right direction of the administration of the finances of this Commonwealth. [Applause.]

Mr. PARKMAN of Boston: I simply want at this time to offer two perfecting amendments. The first, in line 10, to strike out the word "ensuing," and insert the words "current fiscal," so that it shall be a budget for the current fiscal year. Then in line 27, after the word "bill," to insert the words "except upon recommendation of the Governor," so that the question of the necessity of passing an emergency bill before the general appropriation bill is out of the way may be provided for. I will not say at this time, but later perhaps, what I have to say on the amendment proposed by the gentleman.

Mr. COE of Worcester: With the general proposition of the budget system no fault can be found and it ought to be adopted. There are matters of detail there, however, which call for pretty serious attention. One of the most important is the authority of the Legislature to increase appropriations. I, for one, am not one of those who believe that the Legislature of Massachusetts has sought to do the

wrong thing when the right thing was possible; and I am one of those who believe that we are not likely always to have a Governor who will not make mistakes. If he makes mistakes it ought to be in the power of the legislative body to correct those mistakes, and here is the opportunity, by increasing any recommendation that he may make in regard to an appropriation. He has the power of veto if his recommendation is increased, and any proposition which will receive the affirmative votes of two-thirds of each branch of the Legislature must have some merit in it, or it could not receive those votes.

Reference has been made to the experience of other countries. We do not need to go there. We have it right here in Massachusetts. The original budget system was introduced in a city of Massachusetts, and has been in force there for nearly a quarter of a century. The city council has authority to increase any recommendation of the mayor, and in that nearly quarter of a century not once has the city council seen fit to override the recommendation of the chief executive. The municipal indebtedness act of 1913, which has been referred to by the gentleman from New Bedford (Mr. Theller) gives the city council authority to override the recommendations of the mayor. The gentleman from New Bedford shakes his head. Here is the provision of the act:

> The city council may reduce or reject any item, but, without the approval of the mayor, shall not increase any item.

He has the approval and has the veto, and that is the safeguard, — the legislative power.

Mr. Theller: I am reading from the Act of 1913 that particular sentence which the gentleman did not finish:

> The city council may reduce or reject any item, but, without the approval of the mayor, shall not increase any item in nor the total of its budget, nor add any item thereto.

Mr. Coe: I think the gentleman is in perfect accord with what I read. What he has read certainly gives the city council power to increase an item or the total, but the bill, the budget, must go back to the mayor for his approval before it can take effect and before it can be transmitted to the assessors for the assessment of taxes; and if he does not approve it it either becomes a law by his failure to veto it, or he vetoes it. There is where his approval is exercised. And if it is safe to allow city councils or other governing bodies of cities to exercise that power, and they may exercise it under the Act of 1913, I think it is perfectly safe to allow the General Court to have the same privilege, because, as far as I am able to observe, your General Court always will have in it a majority of representatives elected from the cities.

Mr. Hobbs: I desire to offer certain amendments to the matter under consideration, but previous to offering those amendments I wish to say a word upon the main matter under discussion.

This matter of a State budget is a matter that of course has engrossed the attention not only of this Convention but of many other legislative and parliamentary bodies, and is a proposition that, on the whole, has merit in it. Even after hearing the discussion on this matter I am not inclined to believe that it does exactly what some of the proponents claim that it will. The proposition before us does not

provide, for instance, that all appropriations shall be contained in the same measure. It does not provide that all of the fiscal transactions of the Commonwealth shall be contained in a single head, and approved by the Governor in a single lump. Power still is left in the General Court to pass appropriation bills outside of the budget. Therefore the same opportunity still will exist under this amendment, if passed, that now exists, of passing a number of special appropriation bills after the budget is acted upon. In that respect it furnishes very little check to the practice on the part of the Legislature of spending money recklessly, to which the gentleman from New Bedford (Mr. Theller) has adverted so severely.

A word as to that. I think that it can be stated fairly that in the last eight years or so the main impulse for economy has not come from the executive chamber. Most of the Governors, — and perhaps this is not confined to that period of eight years, — most of the Governors have inserted in their inaugural a recommendation for strict economy. Then they have gone on and recommended projects which, if carried out, would involve the expenditure of millions of dollars, and left the Legislature the task either of finding the money or of rejecting the propositions. It is a very easy thing, we may say, for instance, to recommend old age pensions, and a Governor may recommend them and gain much praise for his liberality. But when it comes to spending the money, it is the General Court which does the taxing and the General Court which gets the responsibility and the unpopularity, for carrying that measure into effect. I take it the main virtue of the budget system is that it makes the Governor show his hand, and show, when he makes a recommendation for expenditure, where the money is to come from. That, it seems to me, is the main virtue of the budget system, and it is the thing that would make me inclined to vote for the proposition. We have had too much of the politics to which I have referred, of executives without responsibility for raising the money recommending lavish schemes for expenditures and urging them as claims for popularity. That is by no means confined to the State. It is a not uncommon feature of the inaugural speech of a mayor. If the budget system in any respect will enforce upon the Governor the duty of showing how the money is to be raised to finance the propositions that he advances, it is worth putting into our Constitution.

As to the extravagance of the Legislature, it is very easy to exaggerate that. It has been my experience in the General Court that the committee on Ways and Means of both House and Senate give a very severe examination to all measures coming before them, and one that on the whole is quite as severe a test as is likely to be gained by submitting these matters to the Governor, — by requiring the approval of the Governor to the budget.

You must reflect that under this amendment the Governor is working under a time limit. He is elected in November. He must prepare his budget between that time and three weeks after the convening of the General Court; that is to say, in a little more than two months. If he is experienced in the affairs of the Commonwealth, doubtless with the help of the Auditor and the Supervisor of Administration he can prepare a budget that will abridge materially the work of the General Court. But suppose a new man is coming in. Suppose you

have a man coming in who is not familiar with the workings of the State government. He has got to get into this all new. He either has got to take the word of the Auditor, the heads of departments and the Supervisor of Administration, for all matters contained in his budget, or else he has got to make a very imperfect personal investigation of these matters.

Mr. PARKMAN: I merely want to suggest to the gentleman from Worcester, when he says that the Governor has not got time to prepare the budget, that the very Legislature last winter of which the gentleman was a member passed a budget bill in which they said that the Governor should recommend the budget the second Wednesday in January, and we suggest only the third week.

Mr. HOBBS: I am not saying that it is not proper that it be done. The Governor doubtless will be able to do something, but his verdict in this matter will be by no means a final verdict. The point that I was desirous of making was, not that he could not prepare a budget, but that it necessarily did not improve very much the consideration which the committee on Ways and Means now gave to matters of State finance. I am willing to agree that there is a virtue in a State budget, and in that respect I do not differ at all with the chairman of the committee, and such words as I have to say I hope he will take in some respects as friendly criticism and not hostile. The General Court now gives these matters a fairly severe consideration, and the subject of log-rolling I think is more present in the minds of those outside the General Court than of those in it. That such a practice does exist is unquestioned. That it attains huge dimensions I think is very questionable. There are always a large number of small appropriation bills that somebody wants for a special purpose, and it is not at all impossible that they may have to resort to some discreet bargaining in order to get them by. But those tradings usually go on outside the House committee on Ways and Means, and take the form, as a rule, of a fight against the reports of the committee.

Mr. SAWYER of Ware: I should like to ask the gentleman, who is a long-time member of the General Court, as to how he interprets these lines 28–29, about which he now is speaking, that special appropriation bills "may thereafter be enacted by a majority vote of all the members of each House of the General Court determined by yeas and nays." Does that mean a Joint Convention of both branches, or a majority of the total membership, or a majority of those who are present, or what is the committee's interpretation of those lines?

Mr. HOBBS: Not being responsible for the resolution I cannot say. I should say that the intention of the committee was probably for a vote in each branch separately. That is the interpretation that I should make of the language as it stands.

Mr. PARKMAN: That is the intention of the committee.

Mr. HOBBS: I think it is fair on this question of a budget to say that the tendency of this measure is not at all comparable to the English budget system, because in Parliament the distinction that we draw between the executive and the administrative does not exist. The executive officers there are members of Parliament, and should they fail to carry their budget they unquestionably would go out of office. In our State the executive and the legislative are kept sedulously apart, and an increase in the power of the executive means a

little more than a similar increase in the power of the executive in England, where the two branches, the executive and the legislative, work as one. Here, if you increase the power of the executive, you in some ways diminish the power of the legislative. Doubtless that is a tendency that under present conditions is becoming inevitable; doubtless in the future the executive will occupy a place of increasingly greater and greater importance. But I sincerely hope that at this time the Convention will not go to the extent of doing as the dissenting members of the committee do, and allow the executive to say, with the voice of God: "Hitherto shalt thou come but no further." I think power still should be lodged in the General Court to make such appropriations as they conceive the Commonwealth needs. As I take it, the proposition that is drafted and before us does that. I hope that the Convention will go no further.

I will now ask for a reading of the amendments that I have offered.

Mr. Hobbs moved to amend by striking out, in line 7, the words "unless specifically authorized by the General Court," and inserting in place thereof the words "except under authority of law," so as to read: "All money received on account of the Commonwealth from any source whatever shall be paid into the treasury of the Commonwealth and no money shall be paid out except under authority of law."

The same gentleman moved to amend by inserting after the word "bill," in line 27, the words "except bills carrying appropriations for the salaries and other expenditures of the General Court."; also by inserting after the word "Court", in line 30, the words "present and voting thereon," so as to read: "Separate bills carrying appropriations may thereafter be enacted by a majority vote of all the members of each House of the General Court present and voting thereon determined by yeas and nays", etc.

Mr. Hobbs: These three amendments I will discuss separately. The first amendment aims at a matter which I already have discussed with some members of the committee. The tendency of those words, "unless specifically authorized by the General Court", it seems to me, would have a very harmful effect. The budget, in the ordinary course of events, could not be disposed of intelligently for a matter of weeks, if not of months, after it was received. It is a long document. It would take a considerable time even to print it. Much time was lost at the beginning of this session in the printing of the document. If the Legislature is to give fair consideration to the matter, unless it is going to take the recommendations of the Governor blindly, it is going to take the committee on Ways and Means a fair time to consider it, and it is going to take some time for it to go through the ordinary stages of the two branches.

During that time what is to become of the business of the State? At present our appropriations are made up to December 1st. During the interval between that time and the assembling of the General Court the State government goes on under a general provision allowing them to continue on a basis of the appropriations of the preceding year.

Now, I take it, unless I am greatly mistaken, that if those words, "unless specifically authorized by the General Court," go into effect, no money could be spent except under a specific appropriation; and that, if I understood the argument of the gentleman from New Bedford (Mr. Theller), was what he intended should be done. Now, a

practice so obviously convenient and necessary as the practice that I have outlined it seems to me should not be stopped. There is also a practice authorized by law now which authorizes the expenditure of certain money without appropriation. Such money as the salary of the Governor, the salaries of the Justices of the Supreme Judicial Court, expenditures from the school fund, and the return of taxes levied contrary to law, — all those matters can be paid without appropriation. It seems to me that the advantage of making payments without waiting for the slow routine of legislative procedure in such matters as these is one that might be continued profitably, particularly in the matter of returning taxes. It seems to me that the matter should be left with a certain degree of elasticity, otherwise you have your Legislature tied hand and foot with a hard necessity of disposing of all these matters, no matter how necessary they are nor how much they may need to be treated in another way, in a single lump.

Therefore I should hope that my first amendment would be adopted; and I may say that at least one of the members of the committee was inclined to agree with me, unless he has been convinced to the contrary by my speech now.

As to the second amendment, the amendment exempting from the requirement that no appropriation bill shall be enacted prior to the passage of the general budget bill the appropriations for the salary and expenses of the General Court, I think that is a matter which properly might commend itself to this Convention. As the proposition stands, — and I think this is admitted, — the General Court would have to wait three weeks for the budget to come in, then several weeks, if not months, before they could take proper intelligent action on the matter, before they could vote for an appropriation to cover their own salaries, unless the Governor was so generous as to include it in that budget bill.

When I spoke of this to one member of the committee, he said: "Why, that is the very idea, — to make the Legislature hurry up and pass it." Of course that is true to a degree. At the same time it seems to me that a spur of that sort is unworthy of the Commonwealth of Massachusetts; that they ought not to try, by an artificial means of that sort, to force the Legislature into hasty consideration of a subject which demands, if any subject does, mature deliberation.

Furthermore, it seems to me that the General Court should be left unhampered by the executive in the appropriation of such moneys as it needs to carry on its own affairs. The General Court was esteemed by the framers of our Constitution to be a branch coequal with the executive, and of equal authority. It was considered that in the deliberations of the General Court the voice of the people did speak to a certain extent, and therefore it properly might be of equal importance with the executive, and able to assert a proper and legitimate authority independent of the executive. It seems to me, if you tie them up to the executive in the matter of waiting for him to formulate his budget appropriations, and then wait until they have been considered and put out of the way before they can go ahead and do anything, that you are handicapping seriously the work of the General Court, not to mention the inconvenience that members would undergo in waiting all those dreary weeks without any salary.

As to the third amendment, that is an amendment which may be

merely of a perfecting nature, according to the intention of the committee. There is a distinction between the words "majority vote of all the members," and "majority vote of all the members present and voting thereon." I think for the sake of definiteness we should understand which of the two is meant, and it seems to me that a majority of the members present and voting thereon is, on the whole, a more satisfactory rule to follow than requiring an absolute majority of all the members.

Those three amendments I would suggest. It seems to me they ought to be made. Other amendments I am not sufficiently conversant with the subject to suggest. Certainly this is a matter we should look to in detail. It is a very important matter. It affects the whole financial policy of the Commonwealth. And while I am content to agree with the committee that there is a possibility of great good in it, I do not want to see a proposition adopted that is going to hamper seriously the hands of the General Court and to degrade it into an advisory council to the Governor and unable to do anything more than to say "Yes" or "No" to what he suggests. For that reason I sincerely hope that the amendment offered by the gentleman from Wakefield (Mr. Dellinger) will not prevail, and that the amendments that I have offered will prevail.

Mr. Lowe of Fitchburg: I desire to take but a few moments of the time of the Convention, and I do it to endorse the position of the members of the committee who object to allowing the Legislature to increase and add to the appropriations made in the executive budget. The matter was brought clearly before the committee, and, as I have studied the matter since, I am convinced that this is one of the most important questions before the Convention. Now, that is not original, nor it is not the first time that it has been said; but the importance of this matter rests upon the fact that the prosperity, the content and the happiness of the people depend upon reasonable taxation; the expenditures of the State determine the taxes imposed; therefore the best system of controlling the expenditures is the best system to control taxation. People will contribute willingly to a careful, economical, efficient government, but very unwillingly to a careless and wasteful government.

It has been found necessary to have a controlling system of finance, and the best system in operation at the present time, in my opinion, is the executive budget system. The whole reason, force and value of the budget system is to fix responsibility. If you scatter the responsibility between the Governor, the House and the Senate, consisting at the present time of 280 people, you have removed all direct personal responsibility.

In my opinion, the executive who is responsible for the acts of the spending officers should have control of the appropriations to be spent. The executive may require that a petition for appropriations be accompanied by all the information necessary for wise conclusions. He represents, as has been said, all the people in the State, and the executive is free from the local pressure and from the tactics which develop in the Legislature. I simply want to register in favor of the budget system, and in opposition to allowing the Legislature to increase the appropriations.

Mr. Churchill of Amherst: With the purpose expressed by the

members of the committee, both those who have offered us the present measure and those who, in one particular, have dissented from it, I am in hearty accord. I suppose if there is any subject connected with our legislative system in which I have been interested long before I had any opportunity to see it directly in operation, this is that subject. I happen to be just at present a member of the Massachusetts Legislature, but I should like to say that I have absolutely no prejudice whatever for the system because it is legislative rather than executive. I have but one desire and one idea with regard to the budget, and that is the desire and idea which has been expressed by both sides; and I can say, I think with perfect sincerity and I believe with actual truth, that my own experience in the Legislature has not warped in any respect whatever my attitude with regard to a budget. The one thing that I personally hope to see, and it is that which the members of this committee and I believe of this Convention hope to see, is an efficient budget system which will check the waste, and which will put the financial administration of the State upon a thoroughly sound basis.

There are certain defects in our present management that show themselves to every one of us, and I suppose that those defects which have attracted the greatest attention are the defects which have appeared actually in the legislative management. It is because of that that I believe we naturally and instinctively are tempted to feel that the only proper road for overcoming the waste and mismanagement of finances is to cut off anything like legislative control. That feeling naturally makes us adverse to allowing to enter into our minds the question as to whether, after all, there is not something necessary in the way of adequate check on the part of the Legislature.

As I see this situation, after these years of experience, — of experience upon the Ways and Means Committee, which has given me some slight insight into the financial business of the Commonwealth, — it has become perfectly clear to me that if we adopt the amendment which has been offered, and take away from our Legislature, because we want to take away from it the power to do certain bad things, the power to check mistakes and errors on the part of others, that we shall be checking one thing that is bad and opening the door to another thing of the same nature; and that the only truly efficient budget system, and system of financial management, is a system which will give us checks as far as possible, adequate checks as far as possible, on all sides. We want to prevent waste, we want to prevent log-rolling, the special bills, the tit-for-tat kind of work in the Legislature, and we want to center responsibility. Those are the two arguments, and they are good arguments as far as they go.

But I do not believe that any man can have had even a single year's experience in this place without realizing what is to be put upon the Governor's shoulders, for which he is to assume responsibility, in an executive budget; and that inevitably others than himself will have a shaping and guiding hand in the budget of the Commonwealth. It cannot be avoided. It is beyond the mental and physical and temporal power of a Governor himself to know the details, all the details, of our budget. There will be certain great lines of expenditure, certain large fields, with regard to which he will have a clear view in general, and a clear policy, but if you will take the estimates of the

different departments in this State, with the millions of money that they expend, and see what is necessary in order to have any judgment at all as to the wisdom, the ground, for item after item, you will know, with a single looking over of that list of estimates, that no Governor, and no one man, whoever he may be, can possibly know with regard to these items whether that is wise expenditure, or whether even it may not conceal a tremendous amount of waste. Any man who has once served on the Ways and Means Committee in either branch knows that that is so. And the first thing I want to say, that I would like to be able to bring home to this assembly, is that you cannot have too much supervision nor too much check upon all the items of State expenditure.

In the second place, upon whom will our Governor have to depend in the preparation of his budget? Upon whom will he have to depend, not for the major policies expressed in appropriations, but for the details of the management of our great departments and institutions? He will have, first, as the Ways and Means Committee of the House now have them, the estimates offered by the departments, their requests, their desires. How are they to be checked? They cannot be checked in detail by the Governor. It is a physical impossibility. He will have to rely upon subordinates to do a large part of that work for him. That is inevitable. All this work for the general appropriation bill will have to be done in a very few months. It is not possible until into the fall for the departments to offer their estimates for the succeeding fiscal year, and within a short time of the opening of the Legislature the executive budget will have to be submitted. Within a few months, three months at the outside, all these countless details, not merely for current maintenance, because this is not a current maintenance budget simply, but for all the expenditures, advances, development and improvement along these lines as well, — all those items must be prepared and submitted.

Now, we have heard a great deal of log-rolling in the Legislature, and the tit-for-tat business; and, without intending to criticize any department in this great building, or any man, every man who is familiar with this institution knows that there is just as much of human nature, — let me put it in that broadest way, — in our bureaus and departments as in our Legislature.

Upon one or two departments specifically would the Governor have to depend for their judgment as to the wisdom and righteousness of the various items. Now, assume the best we can expect, assume the utmost integrity of purpose on the part of these individuals, it still will remain true that it will be the judgment of a few individuals. A few men will be well-disposed toward certain men in certain departments and toward the work of certain departments, and with the work of certain other departments they inevitably will be less acquainted and less in sympathy, and we all know that that is a fact. What it comes down to in the case of many of our great lines of action for the people in this State is that eventually, because the appropriations to carry out the policies of the State will be proposed by a few individuals, some of those policies will be treated with sympathy, and appropriations large enough will be offered, and in certain other lines policies will not be sympathized with and appropriations sufficient will not be authorized. That is a fact. It is an inevitable

situation. In other words, in an executive budget as it actually is worked out, as it actually must be worked out, the budget is going to be open to the same kind of objection, and it needs the same kind of scrutiny that a legislative budget needs, and what we need is a system of checks and balances as complete as possible.

Let us not forget, in our desire to keep the Legislature from doing the things of waste and inexpediency that they do do, that it is of value to us, if we can check that on their part, to use them also as a check to like things upon the part of others. An executive budget which is truly an executive budget, simply under the absolute practicable conditions inevitably will need checking, just like a legislative budget. I will not say so much, but it will need it. It will need scrutiny and check all along the line. And who is going to give it? The government cannot. A single individual in that time with his other duties cannot. It is still further true that if we say we make the Governor responsible, and we check his responsibility by the fact that he is elected, it still remains true that where the Governor's responsibility becomes apparent to the people with regard to certain large items carrying out certain large policies, millions of money will be appropriated in detailed items and there will not be ten men in the Commonwealth who will know anything about the wisdom of those items. A Governor, a Supervisor of Administration, an Auditor, any department may offer detailed items which no one, absolutely no one, could have the adequate power to scrutinize if the Legislature had not that power. With the utmost honesty of purpose there will be these differences of sentiment as regards policy eventuating in the appropriation. There will be mistakes, there will be lack of knowledge.

There is another thought that may seem to a good many of you of comparatively slight importance. I will admit that the practical situation ought to be brought to our attention first. A theoretical situation may be governed by the other with a sense that we are doing the expedient thing, but is there not really a practical as well as a sound ground for what the delegate from Worcester just said with regard to the coördinative powers of our Governor and our Legislature? It is true that we pass a good deal of legislation that carries no appropriation, but in the long run is it not true that the development of the work of our government as an agent for bringing to the people what government can do for them, as an agent in carrying out the wishes of the people in the expenditure of the people's own money in the development of the State's work, its work for the people, — is it not true that as a matter of theory of all representative government our Legislature really should have that power? It should not have it completely, we set over all legislation a Governor who may veto; but if you give us an executive budget with the sole responsibility in the hands of the Governor, are you not, by the very nature of the fact that appropriations govern the carrying out of policies, thereby directly and deliberately saying: "We give to our Governor the expression of the people's will with regard to the development of our State?"

What legislation is to be left unaffected by appropriations? Think for a moment how the development of any of the great governmental work of this State, our great institutions, our great departments, depends for the carrying out of a policy which has grown year by year

through the State with the people's assent and the people's will, upon appropriations. Let me take an example. We have had in the last few years the creation of departments to carry out certain great social ideas, such departments as the Industrial Accident Board, Board of Labor and Industry, the Workmen's Compensation Act and its carrying out in the hands of certain departments. Is it not right, — let me put it the other way, — is it not really wrong to take away not only expressing a policy but actually working out that policy, from the Legislature? It should be balanced and checked, if necessary, by the Governor's veto, but will you take away from the Legislature the actual power to press into action, into perfection, the development of all these great social aims? How much more money we are expending today than was expended fifty years ago. Has it been wise expenditure, all of it? Has it been contrary to the will of the people? Is it not true of our State, as it is true of every family today, that the father and mother of that family think it their duty to do things for their children today that cost a lot of money which the father and mother of fifty years ago did not feel it necessary to expend for their children? Is not that equally true of our State? What feeling have we, gentlemen, of the relation of a Legislature to the people of that Legislature's State that will leave the Legislature absolutely impotent to do anything more than to say: "Be it resolved that such and such a thing shall be done," and leave the carrying out of that to the appropriation made, we may say, by one man?

I have stated that broadly and in an extreme form. But I stand absolutely on the validity of the idea which I have expressed. What we really need to do is to have both these agencies at work, both accepting a certain amount of responsibility and each acting as a check on the other. Then you are giving to each of them the place that they were meant to occupy and that they ought to occupy. Will you, because there are defects in a system, do away with all system? And that is really to a large extent what you are doing when you take away the really effective legislation from the Legislature. I believe that if we give to our Governor not merely the power to veto items, but give the Legislature the power to take the executive budget and increase those items, if it likes, and then give the Governor the power to veto not merely the items but the increase as made by the Legislature, we shall have a check then which, if not complete, is as complete as we can have, and a double check, the check from both sides. If it be true that the Governor could exercise an absolute check upon the Legislature, if we must purchase that at the price of having no check at all from the Legislature upon the executive budget, it is perfectly clear to me that we ought to take a slightly lesser check on the part of the Governor in order to add to the other.

So I hope that this Convention will add to this, and I believe that the committee will be glad to do it, — at least, I hope so, — a provision that the increase may be vetoed, so that the Governor is not in a position of saying: "Well, if I veto this increase I veto the whole thing", but may veto the whole item if he likes or the increase which the Legislature has made over his item.

Mr. Lowe: It is already there.

Mr. Churchill: If it is already there, — I myself have not seen that clearly, — but if it is already there it explains exactly what I mean.

I believe that we shall be doing the wise thing on all sides, and that we shall be covering a place which, perhaps not next year, after the adoption of this budget, will seem to us a grave hole, but in course of time is bound under any human government to develop the same kind of defect that to-day we are trying to overcome. Let us check from both sides as fully as possible. That is a good budget system.

Mr. PARKMAN: As to the suggestion about vetoing an increase of items, the committee considered that the Governor could disapprove of any item or part of item, which would cover the question.

Mr. CHURCHILL: I have had that called to my attention, and if it is perfectly clear that that refers to the general appropriation bill first mentioned, as well as to the later separate bills carrying appropriations, then that one is covered. That is to say, if the reference is to the general appropriation bill as well as the special bills passed later, then "parts of items" clearly covers a veto of an increase. If that is the intent and meaning of the measure and is clear, then the point is covered. I was not sure about that.

Mr. PARKMAN: I want to state, so as to read it into the record, that the intention of the committee by these lines: "the Governor may disapprove of any items or parts of items in a bill or resolve appropriating money", tending to cover increases, or to any bill appropriating money, therefore would apply to the general appropriation bill or to the special appropriation bill.

Mr. CHURCHILL: Then that exactly covers the thing that ought to be, in my opinion, in the resolution, and the wording should remain there and not be taken away.

Mr. CREAMER of Lynn: I wish to ask the delegate from Amherst (Mr. Churchill) when he speaks of the necessity and the wisdom of a check upon the executive budget, if he does not think the right to reduce items in the executive budget a very efficient check on the executive.

Mr. CHURCHILL: My answer to that I thought I had made clear in what I have said. If I may have one minute more I will try to answer more clearly than before. We need a check, gentlemen, in two directions. Our check must not be simply reducing. This is not a business in which we simply are trying to cut down our expenses to the lowest possible point. We could throw out a great deal of the business that we now have. We could throw out a great many of the departments that the State has added on an insistent demand. What we need is not merely to cut down wasteful expenditure, but to gain every cent that we can in that way, and by increasing our revenue, in order to have sufficient money for the State's ends. Anybody who takes the point of view that we do not need wisdom in development, in advance, as well as wisdom in cutting down and limiting, to my mind takes an absolutely impossible view.

Mr. CREAMER: I never have been able to understand that a right to increase an appropriation was a check upon the making of that appropriation. If you are going to run the business of a State on a business basis you must put responsibility somewhere. It seems to me that a man elected as the executive head of a Commonwealth should have the right to lay out a financial policy for that Commonwealth. If he does not provide money enough in the views of some people for the proper carrying on of the conduct of the business of some de-

partment, he comes up for reëlection annually. It is easy to get at him. The people of the State as a whole can get at him. The people of the State as a whole cannot get at a legislator. For that reason it seems to me very wise not to permit a legislator or a Legislature to have any part in increasing an appropriation. It seems to me their part should be confined to reducing it. That is a check. The gentleman from Amherst (Mr. Churchill) speaks about the necessity of a check. That is a check. The right to increase an appropriation is not a check; it is just the opposite of a check.

Mr. O'Connell of Boston moved to amend Document No. 325 by striking out, in line 8, the words "within three weeks", and inserting in place thereof the words "not later than two months".

Mr. O'Connell: In the pamphlet giving us information concerning the budget system which we have received from the committee authorized to furnish us full information, we find very briefly stated many of the principal objections to our system of to-day, and they are summarized very briefly: First, the lack of adequate supervision of estimates; second, the lack of any provision for a comprehensive financial plan or budget and the consequent difficulty of the Ways and Means Committee in considering financial measures piecemeal throughout the session; third, the entire absence of executive responsibility, the Governor having no connection with the preparation of estimates, and his authority and responsibility being limited to approval or disapproval of appropriation measures after enactment, and the lack of constitutional authority in the Governor to veto or reduce items in appropriation measures. Now, in this proposed measure that has come from the committee it is proposed and expected that all these ills will be obviated and overcome and cured within three weeks after the Legislature has convened. Is it reasonable, gentlemen? There is no doubt we need some kind of a change in our laws that will insure a scientific consideration of the manner in which our money is spent, and I think we all are of one mind, that we ought to bring out of this Convention something that will satisfy everybody that money ought to be spent in a more orderly and more effective manner. But here is the situation: We have an annual election. A Governor is elected the first week in November and usually after a very strenuous campaign in this Commonwealth. He necessarily must rest, human nature requires it, for three or four weeks. He then has the problem of his inaugural address. This brings him practically up to the first of January and the convening of the Legislature. And then what confronts him under this proposed change? A duty in three weeks to familiarize himself with everything in this Commonwealth and the necessity of knowing exactly how much money every department needs, and thus to approve over his own signature the now usual annual expenditure of twenty-two millions of dollars for the annual expenses of running this State. Is it a reasonable proposition for us to urge that within three weeks he should do this?

Mr. Theller of New Bedford: I should like to point out to the gentleman that the administrative work in preparing the budget, even according to the act, Chapter 244 of the Acts of 1918, commences before October 15, and that all the administrative work is in the

hands of the Governor or of the Governor-elect shortly after December 25. The secretarial work has been done.

Mr. O'Connell: I will assume even December 25 for the Governor-elect. Now, I will agree that with a continuing Governor, one who is serving his second, third, fourth or fifth term, the three weeks may be adequate, but for a new man, who has come in without legislative experience, if you will, such as we have had many times as our Governor, or a man without executive experience in the office, if you will, as we have had, — no one such man can do the work that we are laying out for him and do it as it should be done.

We have passed resolution No. 312, which permits the Legislature to adjourn, and we have sent it to a third reading. If the second reading is any test of what we are going to do at the third we are going to submit it to the people. It will permit the Legislature to adjourn in order to discuss things adequately and to do them comprehensively. Why be inconsistent? If you are going to give the Legislature the right to adjourn for thirty days at any time within sixty days after they convene, in the name of reason why impose upon the executive the duty of knowing everything within three weeks after the Legislature convenes? The two things are not consistent and they are not orderly. I submit that in all judgment, in all wisdom, in all decency, we ought to do as other States have done and make a date reasonably later. If he can do it within the three weeks, all well and good. My amendment calls that it should be done in not later than two months after the Legislature convenes. Two months in my mind gives him a fair chance to find out from the different departmental heads with whom he is becoming acquainted the necessity.

The gentleman from Amherst (Mr. Churchill) has pointed out the danger of log-rolling between departments, and I agree with him from my experience. The danger of log-rolling between the different departments in this Commonwealth is far more insidious and far more dangerous, as far as the people are concerned, and far more conducive to extravagance, than any log-rolling in the Legislature that is done under the spotlight of the press and hostile criticism on the floor of this House. A State commission of one kind easily can arrange and connive with a commission of another kind for the selfish advantage of each, and loss to the State. The Metropolitan Park Commission may have something in common with the Metropolitan Water and Sewerage Board, and the two of them working together can dovetail their appropriations so that none of us may be able to discover the extravagance until it is all over and the money spent. The Attorney-General's office may coöperate with some department for the enforcement of some particular law, and proposed appropriations may be put over on an inexperienced executive, as to the significance of which he may have no idea, if he must do it all within the three weeks.

And so, gentlemen, indicating briefly the possibilities for log-rolling of that kind that may be unfair to the Governor and to the executive, I submit that with a new Governor in mind we ought to give him at least ample time to consider fairly the problems before him, and I hope the committee may find it possible to adopt my suggestion. I believe it is in line with their own, and I believe it covers the purpose.

Mr. Avery of Holyoke moved that the resolution be amended by inserting after the word "bill", in line 27, the following: "*provided, however*, that after

the expiration of the fiscal year and until the passage of the general appropriation bill liabilities payable out of the regular appropriation to be contained therein may be incurred to an amount not exceeding one-third of the total of such appropriation for the preceding year."

Mr. AVERY: I simply offered that. Perhaps it may be in the direction which the speaker who last spoke has just set forth. I believe that with a constitutional amendment under this proposed form, there would be difficulty about carrying on the appropriations unless there is some clause like that in it. I do not want to prolong the debate. I should like to say just a word.

For six years I worked with the board of aldermen under a charter which said that they could not increase the appropriations of the budget. I would rather work with a board of aldermen which had the power to increase the appropriations, and take my chances with a veto. I think it would keep the city in closer touch with the people. And if I were a Governor I would rather work with a Legislature that had a right to increase appropriations than work with a Legislature that had almost no power at all except a veto power on the Governor.

We are supposed to have three branches of government, and this resolution, with the right denied the Legislature to increase appropriations, practically gives you two departments, with a third department occupying an absolutely anomalous position, and that is not what the founders of this State wanted or planned, and it is not what we want. I should like to see the Congress of the United States give away its right to increase appropriations on any executive budget, and I should like to see the people of the United States respect it if it ever did! This budget plan may be all right with the power on the part of the Legislature to do as it pleases with the budget, the Governor to have the veto power on the items of the same.

Debate was resumed Thursday, July 11.

Mr. AVERY of Holyoke: In conference with the member in the first division (Mr. Parkman) in charge of the report of the committee, and for the purpose of hastening progress, I would ask unanimous consent at this time to withdraw the amendment offered by me.

Mr. HOBBS of Worcester: For a similar reason and at the request of the chairman of the committee, who states that his committee desire to consider the amendments in session of the committee, I ask unanimous consent to withdraw my amendment also.

Mr. DELLINGER of Wakefield: I desire to ask unanimous consent to withdraw the amendment printed under my name, with the understanding that it will be offered at the next reading.

Mr. PARKMAN of Boston: I thank the two gentlemen in the second division for withdrawing their amendments at this time. It is the result of a conference with them this morning, and with the understanding that unless the committee can produce, as we hope to produce, amendments which will cover the suggestions made by them, they will offer them at the next stage of the measure. Therefore, believing that the Convention has taken the time for consideration of the report of the committee which it desires, without going further into the merits of the question, I simply am going to suggest action at this time on the amendments which have not been withdrawn.

The first one is the amendment offered by Mr. O'Connell of Boston,

that an amendment should be made that the budget should be offered not later than two months, whereas the committee's suggestion is that it should be presented by the Governor within three weeks, of the meeting of the Legislature. Now, it is very essential for the prompt carrying on of the business of the Commonwealth that the budget should be presented at as early a date as possible, and therefore to have the Legislature wait two months before the budget was presented would be too long a time.

Mr. O'CONNELL of Boston: Does the gentleman bear in mind that my amendment reads "not later than two months", giving the Governor the opportunity, if he wishes, to expedite it, and if he is able to expedite it, to put it in sooner?

Mr. PARKMAN: I recognize fully the wording of the gentleman. I always have noticed in business, however, and in legislative procedure, that when the words "not later" were used in anything the utmost limit was taken. If there is a late limit the time is all used up. The practical result would be that the budget would not be offered, even by a Governor with all the desire to do so, because others might delay him, except at the end of two months, and therefore would be too late for the proper action of the Legislature.

Mr. O'CONNELL: May I ask the gentleman this? As I understand, one of the principal reasons for urging the budget is to have executive responsibility. Does the gentleman maintain or take the position that a new man coming into the Governor's chair, having had no State House experience, could, with any degree of fairness to the Legislature or to himself, sufficiently familiarize himself in the period of three weeks with a budget for the Legislature of this Commonwealth which would justify the Legislature in paying much respect to his recommendation?

Mr. PARKMAN: I am perfectly ready to admit, and did admit in answer to some questions, that a new Governor, — I hope a new Governor would have some familiarity at least with the procedure on State matters before he was elected, — would not have as long a time as he might desire if he had to submit the budget within three weeks. If the gentleman will look, however, at the compilation by the committee on compiling data, he will see that in almost all the States where a budget is to be submitted it generally is submitted at the opening of the Legislature. In most cases it must be within two weeks of the commencement of the session. In Maryland it is 20 days. In the case of an incoming Governor in Maryland they give him 30 days at the outside. That is only in the case of an incoming Governor. The suggestion of the gentleman in the second division (Mr. O'Connell) is only in the case of a new Governor, but it must be remembered, as I have said before, that it is important for the good business of the State, and every gentleman who ever has been in the Legislature will appreciate it, especially those who were there last year, that the budget should be submitted at as early a date as possible. It is not as if the Governor, even the new Governor, had to prepare the budget by himself. The budget is being prepared, under the statute which was passed last winter by the Legislature and which can be amended if necessary, by the Supervisor of Administration and by the Auditor, in order that the Governor may have ample opportunity to see it and revise it even before he takes office. And it must be

remembered, also, even though a new Governor may be somewhat tired after the first Tuesday in November, when he is elected, yet he has some time, at any rate, before he actually is inaugurated, when he can see what has been prepared for him by the Supervisor of Administration and the Auditor.

Mr. O'Connell: The gentleman has stated that several States have a shorter time, but may I call his attention to the fact that those States are all States where they have biennial, triennial or quadrennial elections, and also to the fact that New York, which has rather an excellent system, uses almost those same words contained in my amendment? When I wrote the amendment I did not realize it, but New York makes it not later than March 15. I do not know whether the gentleman had that in mind when speaking on the question.

Mr. Parkman: I have stated, and the Convention must exercise its judgment, the reasons why the committee believe that the budget should be submitted at the time that they have stated in their report, for the benefit of the State, for the benefit of the Legislature, who have got to take some time to act upon it, and for the benefit of the citizens of the State, who will be examining it before it finally is acted upon. I shall be glad if the Convention will adopt the amendment offered by me in striking out, in line 10, the word "ensuing", and inserting the words "current fiscal". Mr. Dellinger of Wakefield has withdrawn his amendment at this time. I am sorry that his amendment is withdrawn at this time, because I think it goes to the vital question of the budget. I think we have got to decide it. Therefore, all amendments having been withdrawn at the present time with the understanding, — and I thank the Convention for evidently desiring to adopt the main suggestion of the committee, — with the intention, as I understand it, of perfecting the budget amendment, a desire which the committee join in, we shall endeavor to report them on the next stage, or to suggest them on the next stage, in careful language, to such effect that they will appeal to every one.

May I suggest to the Convention that I should like at this time to withdraw the last amendment offered by me, at the bottom of page 1? Can I withdraw that at this time? I should like to do so.

The amendment moved by Mr. O'Connell of Boston was rejected, by a vote of 19 to 82.

The amendment moved by Mr. Parkman of Boston, — striking out, in line 10, the word "ensuing", and inserting in place thereof the words "current fiscal", — was adopted.

The resolution, as amended, was ordered to a third reading.

The resolution (No. 325) was read a third time Thursday, August 1.

Mr. Parkman of Boston: I move at this time as a substitute for the resolution before the Convention the one printed in document No. 411.

I do not propose at this time to weary the Convention with any extended discussion of the budget system, because I assume, from the fact that the Convention finally passed the resolution to a third reading on July 11, that the general principle was approved of by the Convention. At that time there were amendments offered by several gentlemen, who kindly withdrew the same upon the promise which I made that those amendments, together with suggestions which other members of the Convention had made without necessarily incorporating them

into amendments, but which they had made with the idea of improving the measure, would be carefully considered to see whether they could be adopted or not. Therefore, as a result of that I have offered this substitute, No. 411, which has met many of the questions and suggestions which have been raised by members of the Convention; but I think it due to the Convention to state just what those differences and changes are. By looking at the original document, No. 325, and comparing it with No. 411, those who are interested in the details will see the changes that have been made. I will refer to them briefly, however.

Lines 4 to 7, which provided that all money received on account of the Commonwealth from any source whatsoever should be paid into the treasury of the Commonwealth, and no money should be paid out unless specifically authorized by the General Court, have been stricken out. It was a good general proposition, but when it came to be studied carefully we found that there were so many exceptions, so many trust funds, so many other funds, like the retirement fund and the registration fund, that it would be necessary to except, that we did not believe it was desirable in a constitutional amendment to incorporate them as exceptions, and therefore with much regret, in the new draft, No. 411, those four lines have been stricken out. The new draft therefore begins simply with the proposition that within three weeks the Governor shall submit a budget.

We have added some words. The original draft was: "Shall recommend to the General Court the budget for the ensuing year, including the proposed expenditures." We have added the words: "including those already provided by law", to meet the case where the Legislature, as in many cases it does, provides for a plan extending over a series of years. For instance, in the act regarding the Amherst Agricultural College in 1913 the Legislature provided for a plan for five years, stating the amount that should be appropriated each year. Of course that resolve by the Legislature is not an appropriation, but that suggestion and plan which were passed in 1913 have been carried out each year, and each year the Legislature has provided an appropriation which the Legislature said was desirable five years previously, or three or four years previously. Therefore we have included the words "including those already provided by law." And that covers a number of other cases which I will not go into, but which those who are familiar with the procedure of the Ways and Means Committee will appreciate when I speak of them as the P. B. L. Document. The omission of the first four lines, therefore, I think will do away with the amendment offered by Mr. Hobbs of Worcester, — to insert, in line 7, the words "except under authority of law".

The committee originally recommended that the Governor or a representative nominated by him should have the right to discuss any appropriation bill before either branch of the General Court. We have struck out the word "representative" and suggest that only the Governor shall have the right to appear. I understand that an amendment is likely to be offered on that question, and I should rather discuss that proposition when that amendment is offered.

Mr. Underhill of Somerville: I should like to ask the gentleman if the committee is insistent upon that feature of the resolution.

Mr. Parkman: As I said at that time, I do not know whether an amendment is to be offered striking it out, — I understand that one

is to be offered striking that out, — and I should like to discuss that question when that amendment is offered, if I can, rather than this minute.

We have inserted in line 21 the words: "The General Court may provide for its salaries, mileage and expenses", — and to meet the suggestion made by the gentleman from Holyoke in the second division (Mr. Avery) we have inserted also the words "and for necessary expenditures in anticipation of appropriations." As you gentlemen know, it is provided now that until the general appropriation bill or the appropriation bill for any department is passed by the Legislature there is practically a standing law, or one passed by every Legislature, that each department may continue its business at the rate of the appropriation passed for the preceding year. Therefore we have included the words that the General Court may provide for necessary expenditures in anticipation of appropriations, and after consultation with the gentleman from Holyoke (Mr. Avery) I understand that is acceptable to him.

In line 25 we have added the words: "except on recommendation of the Governor." That is to provide for any necessary emergency bill which might require to be passed before the general appropriation bill.

We have provided also, in line 32, the words "or reduce", so that the Governor "may disapprove or reduce items or parts of items in any bill appropriating money". And we have added at the end of clause 5 the following:

> Any item not returned by the Governor within five days after it shall have been presented to him shall have the force of law unless the General Court by adjournment shall prevent such return, in which case it shall not be law.

Those additions seem to be necessary in order to conform with the different parts of the present Constitution as it at present exists, namely, Article I of the Amendments, and Article II of Section I of Chapter I, on "The Legislative Power". Therefore, with the changes which were made which I have endeavored to explain, it is practically in the shape in which it was passed by the Convention two weeks ago.

Mr. LOMASNEY: The member says that four lines have been dropped from the original draft about money paid into the Commonwealth, and which are as follows:

> All money received on account of the Commonwealth from any source whatsoever shall be paid into the treasury of the Commonwealth and no money shall be paid out unless specifically authorized by the General Court.

Now, sir, my question is this: Why should money that is collected by a department of the government, — and when I speak of departments I do not mean the Metropolitan Park Commission or the Metropolitan Water and Sewerage Board, — I ask, sir, why should money that is collected from lands sold, as, for instance, take the million dollars that the Commonwealth has just received from the United States Government for land over on the flats, — why should not that money go into the treasury of the Commonwealth and not go out of the treasury until the Legislature said so? Because if you do not make that requirement in such a case as this, you will allow the boards that disburse that money to spend it any way they please. Why should any such power as that be allowed to a State board or

commission, when we have just put through the amendment limiting that power so as to give the Legislature the control of expenditures?

Mr. PARKMAN: As I stated to the Convention, the committee did strike out those first four lines. I desired not to strike those out, but as the gentleman from ward 5 (Mr. Lomasney) has suggested, with the income from the metropolitan park activities and other activities of the Commonwealth which the Legislature already has said should not go into the funds of the treasury, there were so many exceptions which would have had to be specified as exceptions, and we have worked over that part of the measure more than any other part of it, that it seemed to us impossible to keep it in the resolution. Remember, this is a constitutional amendment. And I want to say further, in reply to the gentleman from ward 5, the Legislature already has advanced a great step in the way of covering money from various activities into the treasury of the Commonwealth. Witness chapter 277 of the General Laws of 1917; and I believe, as I have said, that it would be impossible to frame this act without putting in so many exceptions that it would not have looked well; that the Legislatures in the future, by the necessity of the case and by the desire of all legislators to get all money into the treasury so that they can handle the appropriation, will extend that act, chapter 277 of 1917, so that the desire of the gentleman from ward 5 (Mr. Lomasney) eventually will be brought about.

Mr. LOMASNEY: I do not want to interfere with the purposes of the committee, but the only way to be sure of limiting that power is to put the words of restriction in the resolution now. You then can exempt commissions such as the Metropolitan Park Commission and the Metropolitan Water and Sewerage Board if you desire. They will not collect as much money in twenty years as the Commonwealth has just collected from the United States Government for the land over on the flats. Look at the amount of money that came into the treasury in that case. Are you going to let it go out without careful inquiry? Who furnished the money to fill in those lands? How was it done? By money appropriated by the Legislature. Now this large sum comes into the treasury of the State and then you let three or four men spend it without any authority from the representatives of the people. Why should that money, which the people all over the State contributed for that purpose, be paid out without some restriction as to its use? The Legislature has just realized that situation and has provided that such money must all be paid into the treasury of the State. I say let all money obtained in this way come into the treasury of the State. Then when we have it in there, I do not believe it should be paid out until the Legislature says that it may be. If you do not make this point clear, these different boards will try a hundred and one ways to divert it. Take up the report of any one board and upon inspection you will see mentioned there a debt of a million here and a million there; in all some three or four hundred more debts. And to settle definitely the exact condition of each department, the Legislature provided that all money should be paid into the State treasury; and that it should not go out until the Legislature said so, and when this was done, the Commonwealth had some control over it in that event.

Now it seems to me if you are to go into such detail in this matter

as you have here, you should not miss the important part of it and that is, to have all revenue go into its proper place, to wit, the treasury of the Commonwealth; and then the Legislature will have control over it until it goes out. Because with all due regard to the gentlemen heading these boards, if there are two or three millions of dollars available and there are no restrictions as to their disbursements, one always can advance reasonable arguments for spending them quickly; but if these boards have to have hearings before committees of the Legislature, and present plans for its approval for spending this money, all sections of the Commonwealth will be protected. I hope we shall not strike out those words. I think that these words are the meat of the proposal. And they have been taken out. Every one knows that. Is it not of more consequence to have that restriction inserted in the measure than it is to have the Governor come in and talk to the Legislature, breaking down the separation of our legislative, executive and judicial systems?

Then the other point, limiting the Legislature, stopping it from appropriating money till the Governor says "Go ahead". Why should the Governor have that control over the Legislature? It seems to me that this is too important and serious a control for any Governor to have over the Legislature.

If the amendment is going through, I move we restore those four lines and let us provide for these exceptions, because we can provide for the exceptions very easily. We will save millions to the Commonwealth by leaving those words in the resolution. The Legislature will have supervisory powers over this money in that event; and such supervision it will not have if these words are taken out.

Mr. Hobbs of Worcester: I want to say some words with regard to the amendment the gentleman has just moved, but I wish before doing that to ask one question of the gentleman from Boston (Mr. Parkman) relative to one part of the resolution, the sentence beginning at line 26 in his draft:

> Separate bills carrying appropriations may thereafter be enacted by a majority vote of all the members of each House of the General Court, etc.

I wish to ask if it was the intention of the committee that all appropriation bills should cover only one single subject, and that the practice that the Legislature now has of passing appropriation bills covering expenses provided for by a number of different bills would not be allowed thereafter, and as to whether anything particular is to be gained by providing that you shall have ten bills going through the Legislature whereas now one single appropriation bill covers the matter.

Mr. Parkman: In answer to the gentleman from Worcester (Mr. Hobbs) I would say that I asked the Convention to bear in mind that the general appropriation bill which is provided for is supposed to cover all the annual expenses of the departments of the Commonwealth plus whatever recommendations the Governor may make as to additions, and the probability is that there will not be a great many appropriations after the general appropriation bill is passed. It was specifically the opinion of the committee that each appropriation bill should stand on its merits and that there should not be lumped together a lot of appropriations for different objects. Does that answer the gentleman?

Mr. Hobbs: I should like to ask one further question, and that is as to whether those words "provide the specific means for defraying such appropriation" mean more than a statement as to whether the appropriation is made out of the general revenue of the Commonwealth, or whether it is intended that the bill shall provide for some means of taxation for raising money.

Mr. Parkman: The intention of the committee with those words was that after the general appropriation bill is passed, which, as I said, is supposed to cover all the activities of the Commonwealth, if any members desire appropriations for special objects it should be brought home to each member that if he wants an appropriation for $100,000 for some subject or other he has got to specify in his bill whether that amount is going to be raised by taxes or by loan. I think that answers the question. That is the intention of the committee with respect to the words "provide the specific means"; that is to say, how it should be done. There are only two means that I know of for raising money for expenses or appropriations; that is, by taxes or by loans, and if a member wishes specific appropriations for some object he should specify how that money is to be raised.

Mr. Hobbs: It seems to me, in view of the answers of the gentleman from Boston, that this sentence makes it necessary to pass a great many more appropriation bills than we do now. I think there is some confusion in the mind of the gentleman, as I think there is a confusion in a great many minds as to the distinction between a resolve authorizing an expenditure and an appropriation to provide the money which the resolve authorizes to be spent. The method by which the money shall be raised might properly be placed in the resolve, but as to tacking such a provision on an appropriation bill I think it would be a mistake. We carry the matters in those two ways, keeping the appropriation bill free from any details as to what the money is to be spent for except a reference to the resolve which authorizes the expenditure. Now it seems to me there is very little to be gained by making a separate appropriation bill for each resolve that is to be passed. There are a number of such resolves even after you have got your general budget bill through, if the Legislature cares to go ahead and pass resolves for special expenditures, — and I cannot conceive under any budget scheme that can be devised how the Governor can anticipate the needs of the Commonwealth with sufficient adequacy to avoid the need of special bills involving expenditure of money. Therefore I do not see just what we are gaining by having one appropriation bill to match each resolve for a special appropriation. It seems to me that it would be more appropriate to provide that separate bills involving the expenditure of money should provide means by which the appropriation should be raised, rather than to annex it to the appropriation bill. I hope to have time to prepare an amendment relative to that section.

Now I want to say a word as to the amendment that I understood the gentleman from a different part of Boston (Mr. Lomasney) moved. He desires to reinstate in the resolution four lines to which I have suggested an amendment. Those four lines render it necessary to cover into the treasury of the Commonwealth all money received from whatsoever source. It seems to me that that is a mistake, at least in some instances. The machinery of appropriation is a clumsy ma-

chinery. It involves the waiting until the General Court is in session. If you provide that all money shall go right into the treasury of the Commonwealth and not thereafter go out until it is appropriated, what is the result? It means that all money that you derive from interest on the securities in your sinking fund, for instance, must go into the treasury. It means that all money you receive from securities that mature must go into the treasury. Doubtless the General Court will appropriate those as it was intended that they should be appropriated, that is, for the regular purposes of the sinking fund. But under the language of this measure it means that there must be a delay until the Legislature comes together and gets its machinery in gear in order to put through an appropriation before you can reinvest that money. It seems to me that that is a mistake. We have a number of special trust funds that are under practically the same conditions. They carry a number of securities, and under a binding provision such as those four lines it would be necessary to do the same thing, — to cover the money into the treasury of the Commonwealth and wait until the Legislature comes together before you can pay it out.

I do not deny the force of what he says, if it is true. I am not at all certain that such is the fact, that a large sum of money that is once paid into the Commonwealth is thereafter at the mercy of any commission. If it is so the Legislature ought to look into it. But I do not believe in correcting it by annexing a condition that infallibly will be a handicap on the Commonwealth in the investment of these moneys that come in from securities and a constant source of loss through the waiting for the Legislature to come together and go through the appropriation machinery. It was for that reason among others that I suggested an amendment, and it does seem to me that it ought to be within the power of the Legislature so to provide by law for the segregation of such funds as these and of other portions of the revenue as well, to be applied to particular purposes and particular purposes alone as they come in; and within wise discretion, unless utilized in a reckless manner, such a policy will be productive of great good and can be productive of very little harm. I therefore hope that the language that the gentleman from ward 5 desires to insert will not be inserted, because I am quite confident that it will do more harm than it will do good.

Mr. Underhill of Somerville: I move an amendment to strike out, in lines 19, 20 and 21, the words "The Governor shall have the right to discuss any appropriation bill before either branch of the General Court."

I am not sure, if the various questions involved in this resolution were divided and voted upon separately, that a point of order would not lie against this proposition, because the Convention has decided in no uncertain way, — practically, I was going to say, unanimously, — against the innovation of allowing the Governor, the executive, to come before the legislative branch and work his will and his way, through the press or through the powers of his oratory, for some particular pet project. I do not believe in the innovation. I believe in keeping the executive and legislative branches as separate as we can keep them, and I do not believe that the Governor is entitled to any such advantage as this would give him in appropriation bills for a pet scheme.

Mr. Walsh of Fitchburg: I should like to ask the gentleman in the third division if the Governor has not now the right to appear in person and read a message to the Legislature upon any pending matter.

Mr. Underhill: The gentleman ought to know whether that is so or not; I confess my ignorance. But, sir, as long as he has asked me the question let me give an illustration of what might happen. The gentleman while he occupied the office in the other corner of the building was very much interested in a State University. Now, sir, he may be right, — I am not arguing that question, — but there are a lot of us who thought that a State University was not a necessity in Massachusetts, with all its opportunities for education. But, sir, if that gentleman had had the privilege of coming before the Legislature at that time, with his power of oratory, his personal magnetism and his persuasiveness he could have influenced the Legislature, if not by his eloquence, by the influence which would have been exerted through the press because of the unusual occurrence, and probably we would have spent millions of dollars for a State University.

Mr. Walsh: I am sure the gentleman does not intend to misquote my attitude on public questions. I never have favored a State University. I have favored and argued for a free State correspondence school, which some people call "University Extension Education." I never have declared for a State University. The purpose of my question was to show sympathy for the position which the gentleman has taken and rather to favor his amendment, because there is no need of the Governor having the right to come before the Legislature if he can send a message or appear in person with a message to discuss any political policy that he chooses. I am friendly disposed toward the suggestion of the gentleman from Somerville. I wanted to bring out that fact.

Mr. Underhill: I am sure that no other than a friendly construction could be placed upon my remarks, either. The gentleman certainly has gained some fame because of his championship of the measure which I mentioned, and it was not criticism of him; but it was simply to show what immense power might come from a good source, or if we had a Governor of different characteristics, how much power he might wield for evil. And so, sir, I trust that when the time comes to vote upon this measure the Convention will be of the same mind that it has shown previously and vote to strike this section out of the resolution.

Mr. Walsh: I wanted to ask the gentleman in the first division (Mr. Parkman) a question. I understood, when he pointed out to us the various changes made in the new draft, that some of the lines took care of a condition which sometimes arises when one Legislature seeks to bind future Legislatures to make certain appropriations, and he cited the case of the Amherst Agricultural College appropriation. Will he be kind enough to tell me the lines in this draft that cover that situation?

Mr. Parkman: Lines 6 and 7, the words "including those already provided by law".

Mr. Walsh: May I further ask the gentleman in the first division if he or his committee believes in permitting or establishing a policy of allowing one Legislature or one administration to bind future Legislatures or future administrations to make certain appropriations?

Mr. Parkman: I do not understand that any Legislature can bind a succeeding Legislature to make an appropriation. The point is right here: The Legislature passes a resolve covering a series of years, providing a plan for appropriations, saying what they think the development of that institution may require in a series of years. But as was done in the case that I cited in 1913, the case of the Massachusetts Agricultural College at Amherst, that does not bind a succeeding Legislature. The succeeding Legislature can repeal that resolve and each succeeding Legislature may appropriate money to meet what the preceding Legislature may have thought by resolve was advisable to do. They are not bound to appropriate it, neither is the succeeding Legislature bound by the preceding Legislature's action.

Mr. Walsh: One further question. Does the gentleman in the first division know that as a matter of fact future administrations and Legislatures have been and are bound by preceding legislation, such as the highway legislation, which provided for the issuing of bonds, a million dollars each year for ten years, and no Legislature or no executive could prevent that appropriation being made and used each year for ten years?

Mr. Parkman: I am not familiar with the case which the gentleman in the second division refers to. I suppose, when there is a bond issue, that is rather different from an annual appropriation. As an example which the Convention are perfectly familiar with because it entered largely into the debates last year, the legislation which provided $100,000 a year each year for the Massachusetts Institute of Technology. That was a plan adopted by the Legislature because they thought it was desirable to intimate at any rate that that was their idea and that that should be a continuing appropriation. But as I said before, I believe it depends on each Legislature to make the appropriation, and each Legislature if it sees fit to do so can repeal such previous action by the Legislature.

Mr. Washburn of Worcester: Does the gentleman believe that a Legislature cannot bind the Commonwealth by its vote to appropriations for a series of years? The gentleman undertook to state the arrangement between the Commonwealth and the Massachusetts Institute of Technology, and I understood him to say that the Legislature indicated a purpose to continue the appropriation of $100,000 for a series of years, yet any Legislature that saw fit could discontinue that appropriation.

Mr. Parkman: I may have, — I think I probably did, — misstate that. Of course we all remember the discussions last year. Where there is any contractual relation entered into the Legislature can bind the succeeding Legislature. I think I did misstate the circumstances or provisions of the appropriation for the Massachusetts Institute of Technology. That is merely a side show; I used it for an example.

Mr. Dellinger of Wakefield moved to amend the amendment moved by Mr. Parkman by striking out, in lines 15 and 16, the words "increase, decrease, add or omit items in the budget", and inserting in place thereof the words "decrease or omit items in the budget, but shall not increase or add items thereto except by a vote taken by the yeas and nays."

Mr. Dellinger: In respect to document No. 411 I agree with the chairman of the committee as to all parts of the resolution, except that

I feel that the first four lines of the original draft should be restored and have reserved my right to move such an amendment at a later stage; also in lines 14, 15 and 16 of this document No. 411, I have moved to strike out, as the Secretary has read, the words "the General Court may increase, decrease, add or omit items in the budget" and to insert "the General Court may decrease or omit items in the budget, but shall not increase or add items thereto except by a vote by the yeas and nays." It is not because of any distrust of the Legislature that I move this amendment, but it is simply to perfect this budget in the best way possible, to make it a real executive budget, which it will be if the first four lines of the original resolution are restored, as moved by the delegate in the third division (Mr. Lomasney), and also if certain words are stricken out and others inserted as I have moved.

Out State debt, as you probably know, is about $87,000,000. The indebtedness *per capita* in Massachusetts is larger than that in any other State in the Union. It is now, I believe, between $25 and $30 *per capita* if we include the metropolitan debt. In presenting to the people an amendment to the Constitution providing for a budget we should be extremely careful to give them the best budget system possible, and we will be doing this if we place the responsibility on the Governor to prepare the budget, submit it to the Legislature, and not allow the Legislature to increase or add items except by placing themselves on record when doing so.

Mr. DOUGLASS of Boston: I should like to ask the gentleman a question on the very last point of his argument. Suppose the Legislature did act on the budget and the Governor exercised his right of veto, would there not then, necessarily, have to be a yea and nay vote and the bill practically mean nothing?

Mr. DELLINGER: That is true; the Governor would have a right to veto items added to the budget bill; but by so doing he would be given a chance for playing politics and for trading with the Legislature; and if we allow the Legislature to increase and add items from the very first, then we take away the responsibility from the Governor that should be placed on his shoulders. The Governor can well say: "I will only submit a plan. I will not submit a real budget, but I will submit a plan," and divide the responsibility with the Legislature; while if the Legislature is allowed to increase or add items only by a call of the yeas and nays, then the responsibility will be much more on the Governor to prepare a correct budget, and also the responsibility will be placed on certain members of the Legislature. We shall know just who is to blame for increasing or adding items to the budget. The best budget systems in this country, and the one mentioned before, the one in England, probably the best budget system in the world, do not allow Parliament, or the lawmaking bodies in this country, to increase or add items. I believe that we should have such a budget system in this State, but a goodly number of the members of this Convention seemed to be opposed to going that far. Therefore my amendment, — which is about half as strong as my original amendment, the one I offered at the other stage.

As I already have stated, the majority of the experts before our committee were in favor of not allowing the Legislature to increase or add items. Three men, possibly the three best budget experts in this country, — Dr. Cleveland of New York, Dr. Goodnow of Baltimore

and Harvey S. Chase of Boston, — were appointed by President Taft to study and prepare a budget system for the United States. After three years of careful study they made recommendations to President Taft, and one of them was not to give legislative power to increase or add recommendations. In talking with Dr. Cleveland and Mr. Chase about our own need of a budget system here in Massachusetts, they felt about like this: That if we allowed the Legislature to increase or add items we might just as well leave things as they are at the present time.

On the other reading of the resolution I read a part of a letter from President Lowell of Harvard University, who expressed practically the same opinion. We have received letters from the boards of trade of about 50 towns and cities of this Commonwealth advocating a similar amendment to the one which I have offered. I believe if you gentlemen will consider that the responsibility in regard to the State's money should be placed on one head, that you will agree with me and will vote for the amendment that I have offered. Since I decided to offer this new amendment I have talked with eleven members of our committee of 15. Nine of them are in favor of my amendment as it now stands. Only three are opposed to it. And in talking to some of the leading conservatives as well as the radicals of this Convention, two-thirds of them have expressed an opinion that an amendment of this kind should be adopted.

Mr. Churchill of Amherst moved to amend the amendment moved by Mr. Parkman by striking out, in line 5, the word "of", where it first occurs, and inserting in place thereof the words "which shall contain", so as to read:

Within three weeks after the convening of the General Court the Governor shall recommend to the General Court a budget which shall contain all proposed expenditures of the Commonwealth, etc.;

Also by striking out, in line 25, the words "bill carrying an appropriation", and inserting in place thereof the words "appropriation bill"; and by striking out, in lines 26 and 27, the words "bills carrying appropriations", and inserting in place thereof the words "appropriation bills".

Mr. Churchill: I offer these amendments as perfecting amendments to the language. I am taking it for granted that I understand the intent of the committee and I hope that the committee will feel disposed to accept these amendments.

May I say just one word in explanation. In lines 4, 5 and 6, the substitute reads: "The Governor shall recommend to the General Court a budget of all proposed expenditures of the Commonwealth for the fiscal year," etc. The members of this Convention doubtless have clearly in mind the fact that a budget is not an appropriation bill. A budget, as we know, is a plan which contains not merely proposals for appropriations but which presents the basis, — a good budget presents all that is necessary for a basis of a consideration of the proposals for specific appropriations for the fiscal year.

Now I understand it to be the intent of the committee not by any means to shut out the Governor or the Legislature from considering a plan which may run over a number of years, but it does intend that the appropriation bill shall be confined to the exact expenditures of the fiscal year. One of our difficulties in the Legislature in the matter of financial bills, as I am sure every one who has had experience there will agree, is that we constantly are compelled to act upon bills for a

specific thing without having sufficient knowledge of the whole situation: a bill for a department, a bill for an institution, a bill indeed for an idea, without having really sufficient knowledge of what is covered by that department, what plans it is pursuing, what plans it has for the future, — what part, in other words, the specific appropriation is intended to play in the larger plan that we all need to know before we have intelligence sufficient to act upon the specific appropriation. My first amendment is offered simply with the desire to make it plain that this budget plan may contain expressions from the Governor of plans which go beyond the fiscal year, though the appropriation bill and the expenditures recommended are confined to the fiscal year. And my other two amendments simply are devoted to making clearer the distinction between the appropriation bills and resolves authorizing appropriations. The words "bill carrying an appropriation", it seems to me, may be interpreted possibly to cover also an act or resolve, as it usually is, authorizing an appropriation, which, as the chairman of the committee has carefully explained, does not bind succeeding Legislatures, — simply expresses the attitude of a given Legislature and does not bind succeeding Legislatures unless a bond issue is made or unless the resolve for an appropriation carries a contract for consideration received.

Now it ought to be within the province of the Governor to recommend such a resolve, or of the Legislature if it chooses, — it very rarely does in these days, — to pass a resolve authorizing an appropriation as an indication of a general plan. In other words, it often will be the case that unless a man is willing to commit himself to a general plan for a number of years he will not be willing to vote for a given specific appropriation. These amendments, therefore, are devoted simply to making absolutely clear, as I see it, the intent of the committee, and I am going to ask the chairman, if that is so, if he will not accept these amendments.

Mr. PARKMAN: Replying to the suggestion of the gentleman from Amherst, I believe I am ready to accept the amendments suggested by him.

Mr. O'CONNELL of Boston: I should like to ask the former Governor (Mr. Walsh) a question if I can get his attention. In line 3 of the resolution as now proposed we find the words:

> Within three weeks after the convening of the General Court the Governor shall recommend to the General Court a budget, etc.

I should like to ask him if he thinks it is wise to limit the Governor to three weeks in which to do this work.

Mr. WALSH: I think the time named is very short. I do think that it is possible for a Governor to furnish a budget within three weeks. After a Governor is elected, a Governor-elect as well as a Governor who is in office, it is the custom to ask and invite opinions and views for his inaugural message from all heads of departments in the State government. He usually has six weeks or two months for collecting this information. At that time he can ask for the suggestions about appropriations for their departments and be able at the time he is inaugurated to have pretty fixed views about what appropriations he can and should recommend. I think if the Governor had more time it would be to his and to the State's advantage, but I do

think it is possible for him within three weeks' time after inauguration to send a budget to the Legislature.

Mr. Lyman of Easthampton moved to amend the amendment moved by Mr. Parkman by striking out lines 3 to 31, inclusive.

The debate was resumed Friday, August 2.

Mr. Avery of Holyoke moved to amend the amendment moved by Mr. Parkman by striking out the article of amendment and inserting in place thereof the following:

The General Court shall establish a State budget system, which shall include the power by the Governor to veto items or parts of items of appropriation bills.

Mr. AVERY: I do not care to speak at any length on that, but we have had an illustration in this State budget debate of how difficult it is to draw up legislation and put it into the Constitution. There are only a few States that have the thing in their Constitutions anyway; they leave it to the Legislature. If you say that the General Court shall establish a State budget system, giving the Governor power to veto items or parts of items of appropriation bills, you have said all that this Convention ought to say; and if you are trying to go further you are going on from one question to another, because we cannot agree on just the way that this thing should be drafted. I offer that simple resolution as a way out of the difficulty.

Mr. PARKMAN: It is a little bit hard to answer that all of a sudden. I should have been glad if the gentleman from Holyoke (Mr. Avery), whom I recognize as interested in this matter, could have presented this at an earlier stage of the proceedings. I do believe, however, that we can go in a constitutional amendment a little farther than the gentleman desires. And I do believe that with proper discussion this morning, though there is difference of opinion which I recognize perfectly well in the Convention, that we can arrive at a conclusion which will make a proper constitutional amendment and reach certain questions, such as those suggested by the gentleman from ward 5 (Mr. Lomasney) and the gentleman from Brookline (Mr. Walker), which are not covered by the suggestion of the gentleman from Holyoke (Mr. Avery).

Mr. GEORGE of Haverhill: I dislike very much to take issue with some of my fellow-members in this Convention. I appreciate the fact that they are striving to do certain things which may be and are supposed to be an improvement upon present methods. Therefore, if I should say anything that does not coincide with their views it is not at all personal, because I have the highest regard for the gentleman from Boston in the first division (Mr. Parkman), who has charge of this proposal, and the other gentlemen who are associated with him. But when I see men who have occupied high positions in the Commonwealth and have spent money right and left and have not availed themselves of this opportunity to stop the things they complain of, come in here and insist upon giving us advice as to what we ought to do at the present moment, I look upon their statements with suspicion.

What you propose to do here is to put a system of bookkeeping into our Constitution; and if perchance three years from now we find that some expert accountant has discovered that we need a new system of bookkeeping, then it will take two years to take the matter

through the Legislature and before the people in order to change our system of bookkeeping. This is a practical objection. I know of a gentleman, one of the largest business men in greater Boston, who has carried on a very successful business, who was prevailed upon by one of these certified accountants, — you know there is a difference between accountants, some have been certified, some have not been, but this was a certified accountant, — to change his system of bookkeeping. This accountant told the old man that he had been doing business wrong for a great many years, and that he did not know where he stood financially, and all that. The old gentleman had a system that at the end of thirty days he knew just where he stood, perfectly. He was greatly impressed, however, with this certified accountant, and he adopted his system. After a year's trial he found it cost him $10,000 a year to maintain it, and whenever he wanted to know how he stood financially he had to send for an expert to tell him. Finally he discharged the expert and changed the system back to his old system, where he himself understood it without employing an expert, and he saved the $10,000 a year. Suppose the Commonwealth gets into that position after trying one of these new systems, and wants to change, then you have got to have a constitutional amendment and will have to go before the people and explain that our system of bookkeeping is wrong and we must have a new system. Meantime everything is disarranged, you have lost all forms of comparison, and the general public do not know so much as they did before, — and they know very little now about the finances of the State, because nobody wants them to know.

I am one of those who believe that the Auditor of the Commonwealth ought to be independent. He is elected by the people, and it should be his business to so put the statement of expenditures in such form that the newspapers would be glad to print it and the people would be glad to read it, and there is no difficulty with the people of Massachusetts when they know how things are being done.

I want to call attention to the fact how people differ on these questions. You and I remember, only a few years ago, when the tariff was quite an important question, before the breaking out of the war on the other side, that we had very many brilliant men who claimed that our system of passing a tariff law was wrong, that we ought not to pass a tariff law *in toto*, but that we ought to pass it paragraph by paragraph. Some men made campaigns for office upon that seemingly strange issue. It did not make much difference what office they were running for, however; they wanted an issue, and that was an issue, that a tariff bill ought to be considered and voted upon item by item. Some of those same men say, notwithstanding the fact that the Massachusetts Legislature for more than a hundred years has passed appropriation bills in like manner item by item, where everybody in the Legislature could thoroughly understand and discuss each item without being involved in any other question, that that system is wrong, what we now want is a budget, such as was reported last year out of the Ways and Means Committee, with forty-five pages, with 500 different items, aggregating in amount $27,464,000, and that the Legislature should pass that all in bulk with three or four days' consideration and understand it better than they could if it were brought in in a hundred different bills. I am not going to say which system

is right. Common sense will teach people in time which is right. You could call it a budget system or any other system, but I do not believe the Legislature can take 500 items in a bill comprising 45 pages, aggregating $27,000,000, and consider it so intelligently in three or four days or a week as they can if it is reported in a hundred different bills with six months to consider them.

They say this, like everything that is new, is a panacea for all of our financial evils. I do not object to the present State budget. I say, leave it to the Legislature, and if the Legislature wants to pass all of these appropriation bills as one bill I have no objection. But I do not like the idea of putting this Commonwealth in a straight-jacket, so that if they want to change their system it will require two years to amend the Constitution.

Now, let me give you an illustration of how some of these things work. In the first place let me ask: What kind of man do you expect to elect for Governor? Is he expected to have the ability to take the estimates that are submitted to him the first week in January or the last week in December, covering over 500 different items, aggregating $27,000,000 and then report intelligently within three weeks to the Legislature? I assert that that is an impossibility; it cannot be done; and no Governor that we ever elected could do such a thing. On the other hand, we are not liable to elect a Governor who would attempt to do such a thing. For instance, in 1911 that was made an issue. We had at that time elected a business man for Governor. He had inherited a big plant in Jamaica Plain, and he regarded himself a big business man, — that is, he admitted it. He was a learned man. I know he was a learned man, because he was in Congress at the time, and after he was elected Governor he thought he could hold both jobs. He found that he could not do that. Then he thought when he became Governor he could appoint his successor in Congress. That is additional evidence of intelligence. He could not do that. Then he thought that he could elect a United States Senator. Well, he did not do that. Finally he thought he ought to have a budget system and a Board of Economy and Efficiency to assist him. The Legislature passed a law to authorize the Auditor to use this very system that we are about to adopt, by sending the annual estimates to the Governor and Council the latter part of December. I think it was in the year 1912 that this well-equipped business Governor was to supervise the financial operations of our State appropriations.

Mr. Brown of Brockton: Did the Governor ask for it, or did the Legislature think they had him and put it over on him? My best memory is that the Legislature put it over that Governor and thought they had the best of him.

Mr. George: I do not know whether the Governor had the Legislature or the Legislature had the Governor. If the Legislature had the Governor they did not have much. But I say this: That the Governor advocated a Board of Economy and Efficiency, — to consider what? To consider the budget. He made it an issue, and he took it before the people, and we finally created the Board of Economy and Efficiency, and the expenses of our State government increased from $14,269,000 in 1911 to $20,312,000 in 1915. I do not know what the increase would have been if we had not had the Board of Economy and Efficiency, but that was a fairly good increase under the new

system. The upshot of it was that House document No. 1 was referred to the Governor. He employed several certified accountants, and they drew several thousand dollars from the State treasury. He kept appropriation bills back, as he did not know what to do with them. He never had had any experience. A man might be a very successful man in managing a blower factory or running a cotton factory; but this one did not know anything about the State departments, so he employed other men, at an expense of $30,000 or $40,000, with no other result than to delay legislation. Finally, after a two years' trial, the law was repealed. Now we are asked to make this same system a part of our Constitution.

No Governor can have time in three weeks to analyze the immense business of this Commonwealth. What recommendations can he make? The average man elected Governor knows very little about State affairs unless he has had public experience. We have periods when we elect men with no experience as Governor. Next year we will have a Governor who has had a large public experience, and he is going into the executive department thoroughly equipped to perform the duties of that great office intelligently and, as I believe, courageously. As a matter of fact, — and I am not casting any reflections on the Governor, — there are three or four members on the Ways and Means Committee every year, old members, of experience, who know ten times as much about the State government as the average Governor does; and yet we do not want to refer that, as we have for a hundred years, to this committee on Ways and Means, consisting of experienced men, who know these things, but we are going to send it up to a Governor who never did any business, who never had any business. He may have been a literary man, he may have been a lawyer, he may have been a business man who had one line of business; but I calculate that if a man has got a business that he runs away from and leaves for two years and never goes near it, as one of our Governors said he did a few years ago, it does not look as if he was of much consequence around home. One of those men is going to be the man to whom we are going to say: "We are going to put it right up to you." He is going to turn right around and throw it into the Legislature; that is what he is going to do, because he cannot do anything different.

I should like to ask any one here if he thinks that a budget system any time in the last five or eight years would have made the slightest difference in our expenditures. Our total State expenses in 1906 were $9,000,000. In 1910 they went up to $13,000,000. In those five years we had expended $59,000,000, — in five years, — to run this State. In 1911, after we began to introduce some of these new systems, — the Board of Economy and Efficiency and the budget system, so called, — our expenses increased. From 1911 to 1915 we expended $85,000,000 as against $59,000,000. Well, now, does anybody here think for a moment that this budget system would have had the slightest influence on that situation? Not the slightest.

I believe the Governor should have the right to veto items in an appropriation bill, and if you want to give the Governor that right, if you adopt the last paragraph in this proposal you will have accomplished your purpose.

Certainly you do not intend to say that the Governor of Massachu-

setts is going to run into the Legislature every day or two and discuss with the Legislature an appropriation bill. Why, that is an absurdity. He ought not to do it. He ought not to be allowed to do it. If he was allowed to do it he would only do it for political purposes, that is all. Somebody would want him to go in and advocate a certain appropriation, and if he thought there were any votes in it he would go in and advocate it; if he thought that there were any votes to go in and oppose it he would go in and oppose it. But I reckon, if we observe the events that have taken place in the last five, eight or ten years, that the man who can spend the most money is regarded as the most popular fellow, and therefore I do not look to see with this radical change any decided gain.

I think that the amendment of the gentleman from Easthampton (Mr. Lyman) ought to be adopted. I do not think that we ought to have a mandatory law to compel the Governor to receive this budget and to transmit it to the Legislature, because he cannot do it in three weeks to any advantage to the State, and what is the use of attempting to do it if it is an impossibility?

Now, then, I do not know as there is any particular difference between the amendment offered by the gentleman from Holyoke (Mr. Avery) and the gentleman from Easthampton (Mr. Lyman). I say that both of them give the Governor a chance to veto. Now, what can the Governor do in that case? The Governor can veto any item in an appropriation bill, and then it requires a two-thirds vote of the Legislature to pass it over his veto. Is not that a check? That is a check.

Then there is this idea of delaying public business. Let me tell you where this delay would come in. The Governor finds that the departments, every one of them, are established by law. What is he going to do? Is he going to say: "Here is the savings bank department. I don't think that we need that, therefore we won't need any appropriation"? The savings bank department is going right on until the Legislature repeals the law that created it. Of course it is. It is going to run the State in debt, and why should it not be paid for it? Ninety per cent of the items that are in the budget are fixed by law, and the Governor does not have anything to say about them, — nor anybody else, practically. They say that one Legislature cannot bind another. Of course one Legislature can bind another. The Legislature creates a department, and that department stays there until some future Legislature repeals the law. Therefore the State is bound to support that department. Now, where are they going to begin to shut off these departments? Are they going to say that they are going to cut out the State Department of Health, the Commission on Waterways and Public Lands, the State police? No, they are not going to do it, because I tell you as a practical proposition they are fixed by law and the Legislature of course is going to appropriate the money.

I hope that we shall pass the proposal here to give the Governor the right to veto items in appropriation bills, and if we do that we have covered the situation fairly well.

Mr. Lowe of Fitchburg: Most of what has just been said by the gentleman in this division is an argument that the State needs a budget system. The State has compelled the cities and towns to

adopt budget systems, and one of the statements made before the committee was that since the adoption of the budget system in the city of Boston the debt of the city of Boston has been reduced 4 per cent, and that during that same ten-year period the increase in the debt of the State has been something like 112 per cent.

The gentleman who has just taken his seat (Mr. George) refers to the inability of the Governor to master these questions. I know from experience that a well organized system would be helpful to a Governor in mastering these questions, and I think that the responsibility of the financing of the State should rest upon the Governor.

After listening to the matters that were presented to the committee I became thoroughly convinced that there were three important matters that should be a part of this resolution. The first is that the Governor should be responsible, and that the Legislature should be able to put the responsibility upon the Governor. The second, to my mind, and rather more important than the first, is the fact that thousands of dollars are being expended in this State without appropriations. I think that the money in the treasury of the State should be appropriated before it is expended. And finally, and still more important, the Governor should have the right to veto items and parts of items. I would fix the responsibility upon the Governor. I would not allow any expenditure of public money without appropriations. I would permit the Governor to veto items and parts of items. It is not necessary for me to argue these three positions. In my opinion they are sound and all should be a part of the resolution controlling a budget system. I hope the amendment offered by the gentleman from Holyoke will not be adopted, but that the resolution offered by the committee will prevail.

Mr. Washburn of Worcester: If I may, I should like to ask the chairman of the committee a question. The question is this: What constitutional power is lacking now to enable the Legislature to adopt a budget system substantially like that proposed in the resolution submitted by the committee?

Mr. Parkman: In answer to the gentleman from Worcester (Mr. Washburn), we do not understand that the Legislature has the power to compel the Governor to submit a budget. They can ask him to do it, but they cannot compel him.

Mr. Washburn of Worcester: And I suppose the chairman of the committee would add also that the Governor now has no constitutional power to veto items in appropriation bills.

Mr. Parkman: In answer to that, the Governor has no constitutional power to veto any items or to reduce an item; he has power only to veto a bill as a whole.

Mr. Washburn of Worcester: I am glad to have my impression confirmed, because my understanding of the matter is that those are the only two points which need to be covered by additional constitutional authority.

Mr. Newton of Everett: We were unable to hear the answer of the gentleman of the committee. Will you kindly repeat the answer to your questions?

Mr. Washburn of Worcester: I asked the chairman of the committee in what respects constitutional authority is lacking now to enable the Legislature to adopt a budget system substantially like

that now submitted, and if I understood the answer of the chairman correctly it was that there *is* lacking now constitutional power to compel the Governor to submit estimates, and he also agrees with me that there *is* lacking now constitutional power to enable the Governor to veto items in appropriation bills.

I am in entire sympathy with the establishment of a budget system. I believe that the responsibility of the Governor should be increased. I believe that the Governor should have constitutional authority to veto items in appropriation bills. The doubt that I have in regard to this pending measure is whether it is a safe thing to engraft upon the Constitution what is practically a legislative enactment, dealing with details.

Mr. PARKMAN of Boston: May I suggest to the gentleman from Worcester (Mr. Washburn) that the reason for putting it into the Constitution is because the legislative enactment of a bill can be repealed at any minute? Therefore, if it is the desire of the people of Massachusetts to have a permanent budget system, it must be adopted through some constitutional amendment.

Mr. WASHBURN of Worcester: The chairman of the committee, in a very pointed and direct manner, has called the attention of the Convention to what I regard as the fundamental weakness in the act which he has submitted, and it is this: I do not know what experience others may have had, but I have found that, however carefully drawn a plan may be for the administration of the finances of a corporation or a society, experience suggests many changes. My doubt as to the wisdom of engrafting this measure upon the Constitution is that when it is in operation, changes of a desirable nature inevitably will be suggested and then the Legislature will be hampered by the rigid limitations of a constitutional amendment.

Mr. SAWYER of Ware: I should like to ask the gentleman whether, if we adopt the amendment of the gentleman from Holyoke (Mr. Avery), we do not then have a proposition that is elastic enough to meet his objection, and yet cover all of the requirements that he desires.

Mr. WASHBURN of Worcester: I welcome the aid of my friend from Ware, and before I finish my remarks I think he will find his question fully answered.

Now, in confirmation of the suggestion I have made, I want to remind you that, as this matter was presented to the Convention the other day in Convention document No. 325, it contained this provision:

> All money received on account of the Commonwealth from any source whatsoever shall be paid into the treasury of the Commonwealth, and no money shall be paid out unless specifically authorized by the General Court.

In the draft of the committee resolution presented to us yesterday, that section was omitted, and, in response to the query of my friend in the third division (Mr. Lomasney), the chairman of the committee said that he regretted its omission but that it was necessary, because, if it were left in the resolution, so many exceptions would have to be specified that the resolution would be made too cumbersome to put into the Constitution. At least that was his answer as I understood it. And that is an illustration of the objection that I have to the resolution in its present form.

When I came in here this morning with these views, I had begun

to sharpen my pencil preparatory to an attempt to draft a brief form of amendment to the Constitution which should give the Legislature authority which it may not possess now and which should not impose upon the Legislature details that, in the future, might rise up to plague it. Just as I was about to put my pencil to paper for what I know would have been a vain effort, my friend from Holyoke (Mr. Avery) came to the rescue and sent an amendment to the desk which, in a general way, meets the views that I hold. I do not for a moment suggest, nor would he, that it cannot be improved; indeed, I think it requires redrafting, but my conviction is that while we should establish a budget system, while we should recognize the fundamental principle upon which it is framed, while we should give all possible praise to the painstaking work of the committee in investigating this matter, it will be a very much wiser disposition of the matter to make some general amendment, leaving it to the Legislature to work out the details.

Mr. THELLER of New Bedford: I want to say to the Convention that the great endeavor of the committee on State Finance in drafting the original document No. 325, and in redrafting it in the form of document No. 411, was to eliminate, so far as possible, everything of a legislative character that was incorporated in each of the measures providing for a budget system which were introduced by individuals. If you will compare either of these documents with the proposals offered by the individual members last year, you will see that the number of lines has been cut down from 180 or 166 to 39 in document No. 325, and 45 in document No. 411.

The second paragraph of document No. 411 is absolutely necessary as an amendment to the Constitution, and contains no more procedure than is contained in the present Constitution with regard to the veto of bills, except that it makes provision for the veto of items of bills.

The first paragraph of the article of amendment, No. 411, provides, in the simplest form, that the Governor shall recommend a budget of all proposed expenditures, and then simply enumerates those provided by law, and the taxes, revenues and loans by which they should be defrayed, and so on. It proposes nothing in a legislative way except that it gives him authority, in fact, compels him to propose, — what? A unified and comprehensive plan of expenditure for the Commonwealth, something which the Commonwealth never has had.

The report of the committee on the State budget in the last legislative year says that, in the previous year, there were 116 separate appropriation bills. The bills requiring appropriations are passed through the Legislature in whatever order they may be prepared by the various committees. What does the Legislature know at any time of how much revenue comes into the Commonwealth, or is coming in at the time when they are appropriating or really providing for the expenditure of that money?

The argument of the gentleman from Worcester (Mr. Washburn) is that by a simple amendment, without prescribing things prescribed in paragraph 1 of document No. 411, we should get a budget system by legislative enactment. The Legislature attempted that very thing last year. In chapter 244 of the Acts of 1918, the General Court passed a budget bill, and then, based on that budget bill, the General Court

itself introduced a budget. Now, if that had worked successfully, there would be no reason for a constitutional amendment except with regard to the veto of items, and except with regard to giving the power to the Governor or compelling the Governor to introduce the budget.

If the gentlemen will examine the legislative budget proposed by the Legislature in 1918 and passed, they will not find that all the appropriations as required by paragraph 1 of document No. 411, and all the proposed expenses, were included in the budget at all. I hold in my hand six separate appropriation bills, many of which belonged in the budget of 1918 but were not put there. In other words, it was absolutely impossible, in the first year under legislative procedure, as a legislative proposition, for them to put into the budget all the proposed expenditures for 1918, because they were not compelled to.

Thus is shown the need of a constitutional amendment prescribing this small amount of detail which is prescribed in document No. 411. Document No. 411 practically permits the Legislature to make additional rules, or regulations, or procedure for the budget. All that it does is to compel the Governor to propose a plan of financial expenditure.

The gentleman from Haverhill in the fourth division (Mr. George) says that it is impossible to do that; that it is much easier and much better to take every bill as it comes along and discuss it thoroughly and pass it. Now, that is exactly what the budget system wants to get away from. The gentleman makes this mistake. No appropriation has an absolute value; it has a relative value only. It bears a relation to some other appropriation or some other expenditure of the Commonwealth; and when you pass bill after bill, bill after bill, without knowing until June what the tax rate is going to be, when you keep on passing appropriations without in any way knowing your estimate of revenue, when you do not propose any financial plan at all, say, for the year 1919, taking into consideration the war and that the taxes of the Federal government are going to be greater, — you are not proceeding in any logical way, nor in accordance with any financial plan whatsoever.

So that the budget system, if it were introduced into the Commonwealth, would permit the Governor to present to the Legislature which is to appropriate the money a plan in which it may be proposed that this year we must save something on new construction because of the heavy taxes that fall on us from the Federal government. He will propose a balance sheet which shows the anticipated revenue for this year is so much from all sources, and our proposed expenditures are so much. Now, that does not take anything away from the General Court at all. That, simply, is the administration coming before the representatives of the people who are to appropriate the money, and saying: "My administration, of which I have supervision, is of the opinion that we can run the government for so much money during the next year. Will the representatives of the people appropriate that much money?" And when that is referred to the proper committees, and discussed, the Legislature, under the budget system, fulfils its ancient prerogative of appropriating money, and it does it in accordance with a plan and not with the hit-or-miss method which has obtained in previous years.

If the Governors of the Commonwealth have recognized the need of a budget system and said so in their inaugurals, and if the Legislature has made an attempt, — and a very good attempt, — to put it into operation in the Commonwealth; if twenty-three of the forty-eight States have adopted a budget system, and two have found it necessary to put it into their Constitutions; if, aside from American finance at all, all the modern European governments have a budget system, — what argument remains which is effective against the proposal to put into operation by a constitutional amendment a budget system in the Commonwealth of Massachusetts?

The constitutional amendment proposed leaves practically everything to the Legislature, with this exception: That, because of the separation of powers under the old Constitution, by reason of which a Governor and Legislature cannot interfere with each other, theoretically, — on account of that, we have to have the requirement that the Governor shall submit it to the Legislature. The committee has made the other suggestion, that the Governor appear before the Legislature in his discretion and discuss the appropriation bill. Now, I do not want the Convention to be prejudiced against the appearance of the Governor in connection with the budget, because it already has voted down permission to the Governor to appear before the Legislature on other matters.

Mr. Washburn of Middleborough: I should like to ask the gentleman a question just at this point, inasmuch as he is a member of the committee which prepared and submitted this amendment. The few States that have adopted a constitutional budget in contradistinction to a statutory budget, besides conferring upon the Governor the privilege or right of appearing before the Legislature to discuss the budget, also have placed upon him the duty of appearing when requested by either branch. I assume that the committee discussed or considered this; and I should like to ask him what reasons it had for rejecting such a provision. In other words, in conferring a right, why did they not also impose a duty?

Mr. Theller: If I remember correctly, the question in the form put by the gentleman from Middleborough did not arise before the committee. We did not want to compel or make it a duty of the chief executive, first, for the reason that, unless he had some assistance, he might not be able to answer questions upon detailed points in the budget. We did provide originally in document No. 325 that the Governor, by himself or by representative, might appear before the Legislature, and the representative might be questioned. But we have stricken out the representative because, to put it in plain words, we were afraid the Governor, who should be responsible for the budget, would make some minor officer the "goat" of something that he had in the budget, — something that the Governor had put in the budget. For that reason there was included in the proposed scheme only this: That the Governor may come before the Legislature.

I want to call attention to this fact again, that this really bears no relation to the proposition offered by the gentleman from Boston in the first division (Mr. Parkman). It is similar to it, but it does not give any unqualified permission for the Governor to come in and dictate to the Legislature, nor is there any danger of it.

But if you are going to give the Governor the power to draw up any

comprehensive plan of financial support of the institutions of the Commonwealth for a year, and if all those departments and the appropriations for those departments bear a relation to one another, as I have tried to point out, — if this is an executive budget, if the Governor is to be responsible for it, why should he not come in here and defend it before the people or the representatives of the people who are going to appropriate the money that he asks to run the government? I do not see that the objections made to the appearance of the Governor before the Legislature with regard to general matters of legislation apply at all to this particular proposition, because you are introducing an executive budget; you are trying to fix responsibility; and every time that you put your finger upon the man who makes the proposals and make him justify them, you simply are putting another safeguard around them, and you are doing also a thing which we eventually are going to do, — remove part of the separation of powers and make it a coöperation of powers in departments.

If the Governor proposes a financial plan, let him defend it. Let the Legislature criticize it, and let the Legislature ask questions with regard to it. For that reason, I still am of the opinion that, in this particular case, it is possible to accept the proposal in the amendment that the Governor may appear before the Legislature, while you reject it so far as his appearance before the Legislature to advocate matters of general legislation is concerned.

I welcomed, yesterday, the amendment offered by the gentleman from Boston (Mr. Lomasney). As a member of the committee, although I eventually yielded, I was sorry to see the first two sentences removed from document No. 325. On the face of it, it seems that nothing should stand in the way of those two propositions. All money should be paid into the treasury of the Commonwealth, and none should be paid out without appropriations; and that is the flat way in which it was expressed in the original document. That is the way it ought to be expressed, and that is the principle which ought to be laid down. But, when the gentleman offered his amendment, he put in an exception with regard to district boards. Why? Because he had to; and if the gentleman will look into the matter he will find that he would have to put in exceptions covering certain special funds in the Commonwealth, in all numbering something like 52, and, if he included metropolitan district funds, over 200.

Now, the budget system is not a mere method of accounting, as the gentleman from Haverhill (Mr. George) would have you believe. It is the basis upon which a good scientific system of accounting may be established, but it does not endeavor to legislate in a system of accounting.

In the report made by the Commission on Economy and Efficiency, in 1916, which has been criticized by the gentleman from Haverhill, it was brought out carefully that a large amount of money was expended every year without appropriation, and that a large amount of money is in these special funds.

Mr. George of Haverhill: I should like to have the gentleman explain to the members of this Convention how the Auditor can draw a warrant and the Treasurer pay a bill that is not authorized by the General Court.

Mr. Theller: I did not say that an expenditure was made un-

authorized by the General Court. I said without being appropriated by the General Court, — and there is the distinction. For instance, to make myself perfectly clear, there are 26 statutes in this Commonwealth which authorize payments of money, but they authorize them in this way, and this is what I mean by unappropriated:

Chapter 165 of the Revised Laws, referring to the Board of Bar Examiners, after prescribing their duties, states:

> The members shall receive from the fees received under the provisions of the following section such compensation as the Justices of the Supreme Judicial Court, or a majority of them, may allow.

In other words, all the money that is received in fees by that particular board is spent by them without appropriation but by authority. In other words, if you do not appropriate each year, if that money is not turned into the treasury and appropriated out, you cannot have a financial scheme because you never know the total of the revenue received by the Commonwealth, and you never know, except by going through a voluminous mass of reports, the amount of money expended by any one department. Now that is what the budget system is to correct, and nothing else.

Take another thing, — the very proposition which the gentleman from Boston (Mr. Lomasney) exempts in his amendment. By chapter 464 of the Acts of 1901, all the money that is received by the Metropolitan Park Commission is to be paid into the treasury and held by the Treasurer in a fund known as the Metropolitan Parks Expense Fund, and the Commission may expend that fund and any proceeds from it. In other words, there is another expenditure by authority, but not by appropriation. And that system has been condemned time and again in this State, and nothing is done to correct it, except that the Legislature tackled the problem last year.

What I am trying to point out is that when the gentleman from Boston (Mr. Lomasney) offers an amendment, he has to put in an exception, because there are about 26 of these funds that are spent without appropriation. Therefore you cannot say in a general sentence: "No money shall be spent without appropriation." It is impossible to do that, because you have to put in so many exceptions. But there was an attempt made to solve the whole problem, and that was done in 1917. The Legislature learned from this Commission on Economy and Efficiency, and it learned from its recess committee, that there was a great sum of money being expended in this Commonwealth by boards and departments without appropriation. I do not mean that they are doing anything wrong, because they are doing it under authority. What I mean is that it is impossible to get any financial plan so long as you let each one run his own institution as he likes, so far as the financial plan is concerned.

But, in 1917, by chapter 277, the Legislature tried to cure the whole evil, just as we tried to cure it in this amendment. Now, let us see what they did. They said that all revenue payable into the treasury from any source, practically, — I am reading in general language, — except revenue, — now, notice the exceptions, — from or on account of metropolitan boards and activities, — and that is the only one the gentleman from Boston (Mr. Lomasney) has in his amendment, — revenue for meeting the principal of or interest on contingent debt, revenue from investments of sinking funds, revenue now placed by

law in the Land Registration Assurance Fund, and all revenue from trust funds, including the Massachusetts School Fund, the contributions of State employees to their retirement fund, and the contributions of public school teachers to their retirement fund, — all those exceptions, all money except those moneys, shall be placed in the treasury and put in the general fund. In other words, in the first sentence in this law they had to put in all those exceptions.

Now, we do not have to put all those into the amendment we have offered, but we have to put in one or two, or three. The gentleman from Boston (Mr. Lomasney) has put in one, — the Metropolitan Parks Fund; but why should not we say that all money received from the sinking funds, that is, the proceeds of investments in sinking funds, and trust funds, and those for particular purposes, should be kept separate?

Take the other part of that bill. That Act of 1917 provided, too, that all money should be appropriated by the Legislature; and then when they tried to pass that bill up here every department that was interested came up here and put pressure on the Legislature to exclude them from the operation of that law. They said: "We want to spend this money right; we want to spend it ourselves; it should not be appropriated by the Legislature. We, the Highway Commission, receive so much from license fees. By the authority of the law, we are authorized to expend it on the State highways. Do not take that right away from us." Or, a certain institution raises a lot of vegetables, — the Bridgewater Farm, for instance. They say: "We make that money by raising vegetables. We ought to have the right to use it." And then some year they come up here and ask for an appropriation. They do not get it, but they simply say: "We have a fund in the treasury from selling vegetables over a number of years; that has not been turned into the general fund; we can expend that, and we do not care whether you give us an appropriation or not." Now, that is an illustration of the system by which the finances are handled.

Now, under the general Act of 1917, the Legislature tried to cut out methods of that kind. It provided, in the first section of this act, that all money shall be paid into the treasury of the Commonwealth; and then, in the second section, it said:

> No money shall be paid from the treasury of the Commonwealth without a warrant from the Governor drawn in accordance with an appropriation in some act or resolve, —

Except, — now here come the exceptions, —

> but the principal and interest on all public debts shall be paid when due without any warrant, and the revenue received from fees and fines under the provisions —

Giving the chapter of the automobile law, —

> and the revenue now paid by law into special funds and expended by the Commission on Waterways and Public Lands shall be appropriated by the General Court for the purposes defined in existing laws, notwithstanding any provision in said laws authorizing the expenditure thereof without such appropriation; *provided, however*, that no appropriation shall be required for the payment of principal or income of funds held in trust by the Commonwealth, nor of sinking funds to meet maturing bonds.

No appropriation is required in those cases. Notice that the gentleman from Boston (Mr. Lomasney) did not except that, and yet that is quite as important as the special department that he does except.

Why is it important? For this reason: The Legislature adjourns in June. There are bonds falling due in October. They have got to be met. There may be an interest payment required upon them; but the Legislature did not appropriate any money for them. So the Treasurer is authorized, as he should be, to take money, and to pay the bonds. If you do not allow that, this exception to our general proposition, the credit of the Commonwealth is injured. Now, that is plain. The financial obligations have got to be met.

Going on with these exceptions, the act says:

nor of sinking funds to meet maturing bonds, nor of treasury notes issued for temporary loans authorized by statute, nor of corporation and other taxes collected by the Commonwealth for distribution to cities and towns, nor for the investment of such funds as the Treasurer and Receiver-General is authorized by law to invest, nor for payments authorized by law out of the several prison industries funds, nor for repayments required by section sixty-eight of chapter fourteen of the Revised Laws.

In other words, here are all the exceptions that had to be put in that law when the Legislature tried to provide by legislation exactly what we tried to provide by the sentences we had to discard.

Mr. Avery of Holyoke: I should like to ask unanimous consent to substitute the following for the amendment which I have put in. The wording is slightly different:

The General Court shall establish a State budget system. The Governor shall have authority to veto items or parts of items of loan or appropriation bills.

Mr. Walker of Brookline: I imagine that this Convention really wants, if possible, to provide a proper budget system for the Commonwealth of Massachusetts. I imagine an overwhelming majority of the members of this Convention want to do it. I think the people of the Commonwealth want us to do it. This matter has been agitated more or less, and I yet have failed to find a citizen of the Commonwealth who does not say that he is in favor of the budget system, — the executive budget, — and does not hope that the Convention will work out some system.

Now, let us get together on this matter. Let us not make a mistake by talking on side issues, — one man with one idea, another man with another idea; let us not make the mistake of getting the thought into our minds that the proposed resolution establishes a complicated system, or that to establish a budget system is a difficult thing to do. It is not complicated, and it is not difficult to do. It is very simple if we go at it in the right spirit and think the problem out.

Let me say, in the first place, in regard to the amendment that appears under my name in the calendar, that it is not my amendment. One of the members of the committee asked me to put it in that it might be printed, and I was glad to do it. I have studied it since, more or less, and I do not think it will do.

That amendment relates to the money of the Commonwealth, its receipt into the treasury and its payment out of the treasury. That is a separate problem. It really is not an essential part of the budget system. Now, if we cannot agree on that particular feature, let us do as the committee did, — throw up our hands and not deal with it. Let the Legislature deal with it. That is a possibility. I understand that the committee and a number of gentlemen here who are very good financiers are at work on that matter now. Let them work it out; there is time enough; and then we will put it in or not, depend-

ing upon whether they succeed in working out a particular provision the main purpose of which shall be that all moneys received on account of the Commonwealth shall be paid into the treasury of the Commonwealth, and that no money shall be paid out except by appropriation, with such exceptions, like the sinking funds, etc., as must be made. As I say, that is the problem, and we have been talking about that a good deal. It is not essential, and we must not lose sight of the fact that it is not essential and, by mixing up this matter with the main proposition, kill the whole thing.

If the new proposition submitted by the committee on Finance is substituted now, it will have to go back to the committee on Form and Phraseology. That will give us several days to think out any further amendments, and when it comes back into the Convention we can offer such amendments as have been worked out.

My proposition to you now, at this time, is to substitute the new proposition submitted by the committee on Finance and let it go to the committee on Form and Phraseology.

I want to say that the amendment of the gentleman from Boston (Mr. Lomasney) is very good. I do not think it meets the situation exactly, for reasons that I will explain to the Convention; but, nevertheless, I am in sympathy with the idea of the gentleman from Boston. He is intending to do just the right thing. We both agree on that proposition. The chairman of the committee on Finance agrees to it. The gentleman from Brookline in the fourth division (Mr. Codman) agrees to it. The gentleman from Boston in the first division (Mr. Parkman) agrees to it. We all wish to accomplish the same thing, if it is practicable; so let us not fuss over it now.

Let me say now a word about document No. 411. Let me ask you to take No. 411; I am going to suggest one or two simple changes, and I will tell you why. In the first place, I think it is wise to cut out the words in lines 19 to 21:

> The Governor shall have the right to discuss any appropriation bill before either branch of the General Court.

There is no reason why the Governor should come in and discuss his financial propositions unless he is permitted to come in and discuss the other propositions which he recommends. Personally, I am in favor of the Governor's coming in, or being permitted to come in, and discuss any matter before the Legislature. I think it would be helpful. But the Convention already has passed on that subject. I fear that the whole resolution will be endangered if we press that matter too far. It is not important. The Governor now may send a message in; he may come in and read his message as often as he wants to; he may explain anything he wants to the Legislature. There are a great many people here who think it unwise to let the Governor take part in legislative discussion. Let us not insist on that point. There is no need of complicating the matter by insisting upon it. I do not object, therefore, to the amendment suggested by the gentleman from Brookline (Mr. Williams) to strike that part out. So much for that.

I believe that we should strike out all after the word "by," in line 27, and put in place thereof the words, "the General Court," so that it shall read: "Separate bills carrying appropriations may thereafter be enacted by the General Court."

To be sure, if that is done, there would be no requirement that each proposition be put in a separate bill; but let us remember that if the Governor has power to veto items in appropriation bills, he can select any one he wants to and veto it. Therefore, there is no very great object in requiring that each item of appropriation be put in a separate bill.

I do not believe in the proposition that the vote required shall be of a majority of all the members of each House of the General Court determined by the yeas and nays on an appropriation bill. I will tell you why. A measure is passed by a majority of the General Court and becomes law. In order to carry out that law, it may be necessary that an appropriation be made. Even though it might be an incidental appropriation or a small appropriation, yet the law could not go into effect unless an appropriation is made. The whole law, therefore, could be killed by simply refusing to make the appropriation; and if we have that clause in, then a majority of the General Court could pass a law, and then a minority of the General Court could kill that law. Now, that is unwise; it is not consistent. I do not object to requiring that the yeas and nays be called. I do not think, however, that it is necessary. But to require a majority of all the members elected to the House and Senate, is wrong in principle.

I want to say, in regard to the general proposition, that it is not complicated; that it is very simple; that it is by far the shortest budget proposition that ever was offered to any Constitutional Convention. The last part of it simply relates to the power of the Governor to veto items, and the first part simply says that the Governor shall submit a budget.

It is said here that the Governor may not know anything about the finances of the Commonwealth. Let me remind you that the budget is made up for the Governor by responsible men who do know about it. The Auditor receives all the estimates from the various departments, and then the budget is made up by the proper authorities and submitted to the Governor. Now it is in shape for the Governor to turn it over to the Legislature. He does not have to know anything about it unless he wants to; and if he has no distinct and clear-cut ideas on the subject, he need not express any; he may submit it to the Legislature as it comes to him. Then if he does, later on, get some ideas, he can submit, by special message, any modification of the budget he wishes to at any time before the matter is acted upon finally. That leaves the Governor free. And then the Governor, having had the benefit of the discussion in the Legislature, having heard what the Ways and Means Committee have to say about items in the budget, can veto any item when the appropriation bill finally gets to him and send it back for reconsideration. That is very simple; it does not place too great a burden on the Governor. But if we had a Governor, like W. Murray Crane, who did know something about finance and wished to go over the items of the budget and make a budget for the Commonwealth, he could do it. If a Governor, acting in an arbitrary way, did not make up a proper budget, any item could be increased by the General Court or reduced by the General Court. It is an extremely helpful thing to the Ways and Means Committee, I assure you, to have a thoroughly prepared budget come before them, one thought out by the officers of the government, sent in by the Governor. The whole matter then is laid before the Ways and Means

Committee at one time and they can study it to advantage. The Ways and Means Committee is not hampered in any way by it, and so much work is done for them that they can act more intelligently.

Now, is it not wise to do that? That is all that this budget requires. It says that the Governor shall make up the budget and submit it to the Legislature, and then that he may veto any item of it when it comes back to him in the form of an appropriation bill. In the meantime, the Legislature may increase or decrease items, as it sees fit.

I trust, therefore, that what will be done in this instance is to adopt the proposition as it is now proposed in No. 411 by the committee on State Finance, and let it go back to the committee on Form and Phraseology. In the meantime we can fix up these minor matters. I would be glad to yield to the gentleman from Boston (Mr. Quincy) because he evidently wants to say something about my suggestions.

Mr. Quincy of Boston: I should like to ask the gentleman from Brookline (Mr. Walker) whether he really intends to strike out, in lines 30 and 31, the words "and provide the specific means for defraying such appropriations." Would not the elimination of those words strike a blow at one of the fundamental reasons for establishing a budget system, namely, to compel an appropriation bill to carry in its own text the means whereby the proposed appropriation is to be defrayed?

Mr. Walker: I presume it would be well to leave those words in. I doubt if the words as they appear are exactly the right ones. If you changed them to read "shall specify the means," then all that the Legislature would be compelled to do is to say that the money appropriated should be paid out of a loan, or that it should be paid out of the general fund that is assessed on the towns and cities in the form of a State tax. In other words, the General Court would say that the money appropriated shall be paid out of the general funds of the Commonwealth, or paid out of a loan, or paid out of some specific fund which might be available. I accept the gentleman's suggestion. I think that the words "shall specify the means for defraying such appropriations," or some such words as those, would be the right ones.

Mr. Clapp of Lexington: I should like to ask the delegate from Brookline (Mr. Walker) a question. He has criticized, it seems to me very justly, the provisions now found in lines 27 to 31. My question is: What does he think of the method of simplifying it which is proposed by the delegate from Worcester (Mr. Hobbs) at the top of page 3 of the calendar, — the amendment moved by the delegate from Worcester? It seems to me to put the matter in a satisfactory manner. I should like to have the opinion of the delegate now speaking.

Mr. Walker: I should like to have the gentleman from Lexington read that for me, if he will.

Mr. Clapp: The delegate from Worcester (Mr. Hobbs) gives notice that he shall move that the resolution be amended by striking out, in lines 27 to 30, inclusive, the words "by a majority vote of all the members of each House of the General Court determined by yeas and nays if said bills are each for a single object and," and inserting in place thereof the words "if said bills," so as to read: "Separate bills carrying appropriations may thereafter be enacted if said bills provide the specific means for defraying such appropriations."

Mr. WALKER: I think that is a very good solution of the problem; I think it is an excellent amendment. Now, I would be glad to answer any questions.

Mr. PARKMAN of Boston: I ought not to speak in behalf of the committee, but I think that is a fair amendment.

Mr. WALKER: That is the right solution, I think. It shows how easily this bill can be perfected. If gentlemen do not wish the Governor to come before the General Court, we can easily take care of that. If we act as has been suggested, then the measure will be left in very good condition. The only thing left for this Convention to consider is whether we want to provide, if possible, some means by which we can compel all the revenues of the Commonwealth to go into the treasury and forbid any of them getting out of the treasury without an appropriation with such exceptions as are necessary.

Therefore, as I say, let us substitute the resolution as suggested by the committee on Finance, with the amendments offered by the gentleman from Worcester, Mr. Hobbs, and with the amendment offered by the gentleman from Brookline, Mr. Williams. Let us make those amendments and then let it go back to the committee on Form and Phraseology.

Mr. LOMASNEY of Boston: I want to say a few words on this subject. I think that the gentleman is absolutely wrong. In document No. 411 the committee abandoned the fundamental feature of their own proposition, that is, the four or five lines in the first part of it, which obliges all money to be paid into the treasury of the Commonwealth. I say, sir, they abandon that in document No. 411.

With all due regard and respect for the committee on Finance, with all respect for the gentleman from Worcester (Mr. Hobbs), the gentleman who has offered the most concrete proposition in this matter is the gentleman from Holyoke (Mr. Avery). That proposition does not meet all phases of the situation. However, if this amendment is adopted, then it is required to go to the committee on Form and Phraseology; then we have a new committee to go over the matter. There is no question but what the committee on Finance have been at sea over it, as they do not know where they are, for they have struck out certain important portions. It seems to me that they have not taken care of the most fundamental proposition of all. You ask: "What is that?" It is that this amendment should provide that bond issues shall not be passed until they receive two-thirds of the votes of both branches of the Legislature. That is what I regard as one of the fundamental principles. You have not required that in this measure at all. You allow them to pass a loan by a majority vote, — millions, perhaps, for the future. You should require a two-thirds vote on loans. Why? Because future generations are going to pay interest on those bonds.

To give a vote of endorsement to resolution No. 411, which is substituted for No. 325, is wrong, because there is struck out from it one of the most fundamental principles of No. 325, and the gentleman's name is in the calendar with an amendment in favor of it, and he had another amendment this morning vitiating his own amendment. The committee on State Finance struggled with this proposition for two years. I say, sir, let us pass Mr. Avery's amendment, let it then go to the committee on Form and Phraseology, and let that committee

be the board to put the amendment in proper shape. Why? Because it will be free from having taken any position on the matter. It has not any likes or dislikes, and it can take the amendment and perfect it. The committee on Finance cannot find fault, because they have had their opportunity. It seems to me that is the best solution of it. The proposition of the gentleman from Holyoke, Mr. Avery, is that "The General Court shall establish a State budget system." It has done that substantially now by law; you cannot get anyone to say that law should be repealed; everything that will be done under that statute hereafter will be to improve and strengthen the budget system rather than take away from it. That is the law now, but this simply says that it shall do it. Then it says: "The Governor shall have authority to veto items or parts of items of loan or appropriation bills."

If, however, we substitute the measure under document No. 411 for that under No. 325, but then send the whole matter to the committee on Form and Phraseology, which will consider the different propositions that we now have before us, we then will be in better shape to meet the whole question.

I submit that is the proper thing to do. I never would vote for No. 411 in its present shape, because it is endorsing one proposition which leaves out the fundamental part of the other. Why should I vote for that? Why should I by my action give it a reading? How can I tell in five years from now what the situation in this State will be? You will say: "You voted for that, did you not? Why did you vote for that which you knew or believed was wrong?" You cannot defend such a proposition. It is unsound. The thing to do is to make a fair compromise, take the proposition of the gentleman from Holyoke, Mr. Avery, then let it go before the committee on Form and Phraseology. Now, I suggest that is the best solution of the proposition. You then can go ahead and arrive at some conclusion, but you now have struck out the fundamental part of the amendment. The practical thing to do is to get all the money into the treasury that is possible and do not let any of it out until it is authorized. If you require on bond issues a two-thirds vote of the House of Representatives, and a two-thirds vote of the Senate, then you will not have loan bills going through so easy; greater care will be used, since it will require a two-thirds vote of the body, in the first place, and the Governor then will get a loan bill that will be a great deal better all through, because if two-thirds pass it the Governor will know in that event that two-thirds can pass it over his veto, and that will tend to make everyone who has to do with it more careful. So I suggest we take the amendment of the gentleman from Holyoke at this time rather than take the proposition as set forth in document No. 411, because it seems to me we are endorsing a thing that should not be done. The committee on Finance never should have stricken from No. 325 those four or five lines in the resolution. If they had not done that, then there would not have been so much criticism of parts of their measure. I hope that the motion will prevail.

Mr. WALKER of Brookline: I have been recognized before and I am going to take just a minute; I presume I ought not to have been recognized, really, this time.

I had supposed the gentleman from Boston (Mr. Lomasney) was in favor of a budget system. I am sorry to say he evidently is not.

Mr. LOMASNEY: I deny that statement. I rise to a question of privilege. I deny the statement absolutely. I am in favor of a budget system.

Mr. WALKER: I withdraw the statement. Evidently the gentleman is not in favor of a requirement in the Constitution for a budget system, but would rather turn the matter over to be dealt with by the Legislature.

It was suggested, I remember, at the time that the I. and R. went through, that it was very unwise for us to shirk our responsibilities and turn the matter over to the Legislature. That is not what we want to do. We want to place the constitutional responsibility upon the Governor to submit a budget every year to the Legislature. We want to give him power to veto items, and we want to provide that the budget shall be dealt with by the Legislature before special appropriation bills are dealt with, and finally we want to provide for this in the Constitution. Of course, we can throw up our hands and say the Legislature shall provide a budget system. They already have provided one after a fashion. It may be amended; killed, wiped out of the way whenever the Legislature changes its mind.

Why, the effort to get a constitutional executive budget established is not being made in Massachusetts alone; it is being made throughout the United States, it is being made by the United States government itself. I do not believe this Convention intends to reject the idea of a constitutional executive budget. Of course, if a majority of the members really should want to do that they will adopt the suggestion made by the gentleman from Holyoke, but I trust they will not do so.

Mr. LUCE of Waltham: I have perhaps some right to take interest of a special nature in this matter by reason of the fact that I chance to have been one of a committee of three of the Boston Chamber of Commerce on the budget, which has contributed something to the previous discussion of this question; and, furthermore, had the opportunity once to serve as chairman of the committee on Ways and Means on the part of the House. Nevertheless, sir, I do not contemplate engaging in any discussion of details, but ask the indulgence of the Convention while I call their attention to certain practical considerations.

Various of our fellow-members appear to have some other occupation to-day. Anyone who would take the trouble to count the gentlemen in this chamber and in the lobby would see that anybody who desired to interpose parliamentary objections to further progress would be able so to do easily. That makes it particularly desirable, if we can, to work out some method of handling the situation that shall give an opportunity between now and Tuesday for the friends and critics of this measure to confer and work out, if possible, a harmonious solution.

There are two ways of doing this. One is to send the present measure to the committee on Form and Phraseology, and the other is to send the substituted measure presented by the gentleman from Holyoke. Now, it does not make a snap's difference which way we do, in my judgment, for in either case we are doing it with the intent and expectation that the committee on Form and Phraseology will

attempt to take up the tangled threads and unravel them, and present us with a perfect or better fabric.

Mr. PARKMAN of Boston: Does the committee on Form and Phraseology have any right to adopt things which the Convention have not adopted? Can they discuss various amendments which may be offered by gentlemen here? Are not their duties confined to putting the propositions which the Convention have adopted into proper shape?

Mr. LUCE: That is the function of the committee on Form and Phraseology undoubtedly, but we have had the good fortune on some occasions in this Convention to profit by the wisdom of that committee, through suggestions going beyond the matter of technique.

It seems to me we shall save time and lead to harmony if we at once get what will be, in practical effect, nothing but an expression of opinion on the part of the gentlemen present as to the various amendments that have been moved, and then send to the committee the measure in such form as it may have after these amendments have been passed upon, rather than proceed by the way of adopting the amendment of the gentleman from Holyoke.

Therefore, sir, I move the previous question, and do it in the hope that the Convention will express its judgment without very much of debate upon these individual proposals made by way of amendment, and then that the whole subject go along and take its natural course.

Mr. MOYNIHAN of Boston: I do not believe any budget system should be adopted by this Commonwealth which does not carry with it the proposition that all moneys that belong to the Commonwealth should go into the treasury of the Commonwealth. There have been men here who have had a great many years of legislative experience in the House of Representatives and in the higher branch of this General Court. I sat last year as a member of the committee on Education, and I received some financial education when that committee sat jointly with the committee on Agriculture. In dealing with some of our institutions in this Commonwealth, why, it was proposed before that committee to allow a certain educational institution in this Commonwealth to receive moneys from the sale of products and not to turn it into the treasury of this Commonwealth. It was proposed also to allow them to spend money without having proper vouchers by the Auditor of this Commonwealth. It has reached a point where it was the decision of the Legislature last year that it was reaching such proportions that something had to be done, and the committee on Ways and Means was appealed to, toward the end of the session. They brought in the establishment of a system of education for women at that institution costing $100,000, when it was adduced before that committee that they had only seven or eight girls at that institution.

Let us see, — and I will close in a moment, — what the proposition is. When our forefathers made the original Constitution they had coördinate departments under that Constitution. They had the Governor, they had the legislative department, and they had the judicial. But they went further, and they said: "You shall elect a Treasurer and Receiver-General, who shall receive the moneys which are due to the Commonwealth." Now, any proposition, to my mind, that does not have in it that portion which is in the amendment offered by the

gentleman from Boston from ward 5 (Mr. Lomasney), that the moneys which accrue to the Commonwealth shall go into the treasury before you attempt to take them out, is a very unwise proposition.

Mr. Dutch of Winchester: I cannot agree with the gentleman from Waltham (Mr. Luce) that it does not make any difference what we do, whether we pass along No. 411 or whether we pass along the proposition of the gentleman from Holyoke (Mr. Avery). I say there is all the difference in the world. We have here an extremely important report from this committee on Finance. They are absolutely all in favor of the proposition, as far as it goes. Some want to go further. They have given it tremendous study. There is not a student of government but backs this proposal to put this budget into your Constitution, as an organic matter.

Now, the argument of the gentleman from Boston in the third division (Mr. Lomasney) absolutely answers itself. He said yesterday and he said to-day that No. 411 was defective because it does not include a constitutional declaration of a perfectly sound policy, — that all money of the State should be paid into the State treasury. He wanted that in the Constitution. He argues against No. 411 because it does not read into the Constitution that provision. In the next breath he says: "Adopt the proposition of the gentleman from Holyoke", which puts nothing into the Constitution as to details, does not put into the Constitution the very proposition he says is fundamental, and does not put anything else into the Constitution, except the provision for a veto of items. It simply says that the Legislature shall establish a budget, and that is what we have got to-day, and that is all there is to it. Every student of government would tell you, from start to finish, that that is not the way to handle this proposition.

It seems to me, for once, I can agree entirely with the gentleman from Brookline in the third division (Mr. Walker), who has had great experience on the Ways and Means Committee, and his suggestion is simply to adopt the amendment of the gentleman from Worcester (Mr. Hobbs), which is agreeable to the committee; and, I take it, the amendment of the gentleman from Somerville or Brookline, cutting out the Governor's appearing in the Legislature, which also is agreeable to the committee; and then pass along No. 411, which is the real proposition. Then, if the gentleman from Boston and the others can phrase the preliminary sentence that he wants, — and he certainly can phrase it if he has a mind to and will take time about it, — let us put that to a vote next time.

Mr. Anderson of Newton: I do not want to mix up in this financial debate, but I want to say that I thoroughly agree with the gentleman who has just taken his seat (Mr. Dutch). It makes a great deal of difference whether we pass this thing over to the committee on Form and Phraseology. It makes a great deal of difference with the preliminary situation as to what that committee reports. If they report on the basis of No. 411, then we have something to stand on, we have something before the Convention. Otherwise it will be a very uncertain thing whether we ever get No. 411 before us again. As the gentleman from Winchester (Mr. Dutch) has said, let us save No. 411; then let the gentleman from Boston in this division (Mr. Lomasney) propose his amendment which he thinks so important, and which we

think so important, and let us adopt it, adding it to No. 411, and then we shall have the matter practically solved.

Mr. Hobbs of Worcester: The moving of the previous question I believe has debarred me from offering the amendment under my name in the calendar, which I understood was practically acceptable to everybody concerned. I would therefore ask unanimous consent that that amendment be considered as having been offered.

The amendment moved by Mr. Hobbs was that the amendment moved by Mr. Parkman be amended by striking out, in lines 27 to 30, inclusive, the words "by a majority vote of all the members of each House of the General Court determined by yeas and nays if said bills are each for a single object and," and inserting in place thereof the words, "if said bills."

Mr. Hobbs: Inasmuch as this matter, in any event, doubtless will come before the Convention again, I am not going to take more than the three minutes that the rules allow me, certainly, in stating my views upon this matter.

The difference between the two propositions depends largely upon what action you take upon the various amendments. If this proposition No. 411 is substituted, and if the portions are stricken out which the gentleman from Brookline (Mr. Walker) thinks should be stricken out, and my amendment adopted, which I understand he also favors, the propositions differ only mainly in that the one favored by the committee expands the idea somewhat and adds some matters which, in a way, are slight checks. If the amendments are adopted which seek to add some other features, those checks become very much more important, and then the proposition would be markedly different.

I favor the granting of additional powers to the Governor to submit a budget and to veto items in an appropriation bill. I do not figure that any great public purpose is served by tying those powers down to such an extent that the Legislature, at every turn, will be held up and prevented from exercising its powers in an elastic and easily understood manner. To tie fetters on the hands of the Legislature seems to many a commendable purpose, but it is the fact that the Legislature has been fettered in the past that has brought out the necessity for this Constitutional Convention. We come here, in the first place, to take away some of the checks that have been put on in the past.

The main question was ordered.

Mr. Quincy of Boston: We all have come to a practical parliamentary situation in our discussion of this matter. I want to make a suggestion which I think I understood the gentleman from Newton in the third division (Mr. Anderson) also to make, and that is this: That it would do no harm at this stage, and may secure the support of certain members, to adopt the amendment moved by the gentleman from Boston in the third division (Mr. Lomasney), which undoubtedly contains a statement of sound financial principle. He tells us that to his mind that is the most important thing to put into this proposed budget constitutional amendment. I do not agree with him on that point. I would be very glad to vote for it either without his proposal or with it. But I suggest that no harm can come from adopting the amendment moved by the gentleman from Boston, which undoubtedly is sound in principle, and sending No. 411 along, together with

the other amendment, to the committee on Form and Phraseology. They then will have time to find out what the practical consequences may be, or whether there will be any serious practical difficulties in embodying in the Constitution the undoubtedly sound principle contained in the amendment of the gentleman from Boston. I therefore hope that that course may be followed.

Just one other word. The gentleman from Worcester (Mr. Washburn), who enjoys the advantage of facing the Convention and of addressing it from the elevated platform which he occupies, who also carries with his utterances the prestige and the weight which properly attach to his long experience both in public affairs and in private business, I think unwittingly has done a great injustice to the committee on Finance in his comments upon this document No. 411. He has given us the impression that it is full of unnecessary detail, which is going to hamper the Legislature. I do not believe that that gentleman can point out any unnecessary detail in this measure, particularly with the amendments which have been suggested. I have read it very carefully. To my mind it is very skilfully drawn, so as to contain only absolutely essential principles of sound budget making.

One of those principles, which the gentleman from Worcester did not refer to, is this: That a budget shall carry in its text, not only the proposed appropriations, but the proposed taxes or other means of meeting those appropriations. That is absolutely a fundamental principle of budget making. You cannot get that done, in my opinion, unless you put it in the constitutional requirement, because we all know by experience that the practice of the Legislature has been to pass a large number of individual appropriation bills, and then consider, after all those have been passed, how the money is going to be raised to meet the appropriations which have been made.

I think, therefore, that the sensible course for this Convention to adopt is to pass the amendment of the gentleman from Boston in the third division (Mr. Lomasney), pass the other amendments which have been offered, and then send it along to the committee on Form and Phraseology, where it will go under the rules. This measure, one of the most important before the Convention, really is necessary if we are going to make such report from the Convention as the people expect from us.

Mr. Churchill of Amherst: One of the advantages of getting into the debate at the very latest stage is that it is not necessary to say a good many things that one may have meant to say. I think the only thing of any real importance, possibly of any value, that I have to say is simply this, which has been said before: We have before us one of the most important problems that has been presented to this Convention. In my opinion, a satisfactory solution of that problem is one of the most desirable things in our Constitution. We have before us two propositions, one of which is that of the committee, with their substitute, and the other is practically the proposition: "Let this Convention abandon, in all respects but one, an attempt to deal with this problem; let us throw up our hands in the attempt to deal with the fundamental problem of a budget, and either say that we are incompetent to do so, — though we have meddled with a great many problems that are by no means so simple, — or let us refuse the task, and hand it over to the Legislature."

Now, perhaps I have more respect for the Legislature than some of the members of the Convention who are urging that we should hand this over to the Legislature. But one thing is pretty clear, is it not? — That we have here a proposition which ought to be molded by a force, a power, an opinion, outside of any body in the government. It should not be molded by a Governor, it should not be molded by a Council, it should not be molded by the Legislature, for this to apply to and govern all these. It should be molded by this body, and supported, if the proposition be a good one, by the people, in order that the respective claims and desires and weaknesses of the different parts of our administration shall be dealt with properly.

The proposition of my friend from Holyoke (Mr. Avery) is that we should pass over to the Legislature the shaping of the form of budget. It is of the utmost importance that we should pass it over to no section of the administration. Let us therefore not, through any sense that we have a number of amendments offered, that the thing apparently is complicated, or from any feeling that we are coming near the end, and this is a controversial matter, and therefore we had better take it easily, — let us not shirk the duty that is before us, but take the time that is necessary to handle this problem ourselves, to the best of our ability, and not give it over to another.

Let us, also, as many speakers already have said, look at the nature of the proposition as it stands, and ask ourselves whether the fundamental lines of this proposition are complicated or not. They are simple. The proposition is a page and a half long, or more; a number of amendments have been offered; but when you look at the proposition you see that its main outlines are perfectly simple, and they are fundamental. I hope that the members of this Convention will advance document No. 411 for further consideration, whether they place or do not place the amendment of my friend from Boston on the document beforehand. That is the way to handle this matter, and not to throw it over, as we pass it up to the committee on Form and Phraseology, by passing up a proposition to them that the Legislature shall do what we ought to do.

Mr. Leonard of Boston: I believe that the Convention at times has been in danger of getting into a wrong atmosphere on this question. As a member of the committee that has had this matter under consideration, I would like it very much if the Convention should have something of the atmosphere that we had in our committee-room. I think when the gentleman from Boston in the third division (Mr. Lomasney) said that the committee had floundered around, that he probably was led a little by the heat of argument in using that expression. I should like to testify to the work and the time and the ability that have been put into this proposition by the gentleman from ward 8, — I mean the new ward 8, — in the first division, the chairman of the committee (Mr. Parkman); and I think if the gentleman from old ward 8 (Mr. Lomasney) had been in consultation with that gentleman, and not been at arm's length with him, they would find themselves more in harmony on this question.

There is another member of the committee who has done a tremendous amount of work, and whose voice I have not heard at all in this Convention, the gentleman from Brookline directly in front of me (Mr. Codman). I wish to say that while we all worked on this proposition,

sometimes in our shirt sleeves, and on subcommittees four or five hours at night, the gentleman from Brookline took a fine grasp of this question, and an able way of presenting his views to the committee, and my service on the committee was of great educational value.

While this proposition of the gentleman from Holyoke (Mr. Avery) may look very alluring to-day, I think if you consider it on a sober second thought it may appear somewhat different. Now, the committee have put in much work on this subject. I have no right at all to speak as far as the committee goes, but I want to say that the chairman of the committee is one of the most reasonable-minded men that you could deal with. If the Convention will pass this I think all these various matters that are being discussed, that have thrown so much heat into this financial proposition, will fade away. I was very much in favor of those three or four lines that the gentleman from ward 5 has moved to substitute. I know that the subcommittee sat on that, and we worked out those four lines and thought we did a very good thing. I think it was nearly midnight when we left that conference. The chairman of the committee came around some time later and said: "I find there are so many exceptions I am afraid we will have to strike out those four lines." I said: "I regret that that has to be done; still, if you have conferred on it with these people, all right; at the same time I think very probably those four lines might be retained."

Now, we want to remove the feeling of strife, of antagonism, because I think we all are agreed upon a State budget. I believe that, if we could thresh out the rest of that and come to a conclusion, we would have an executive budget, and not merely leave it to the Legislature to write that power on the statute-book. I think that the matter should go along, with some indorsement of the work the committee has done, and I assure you they have done faithful work and it has been thoughtful work. There has been no heat in the committee-room. We considered the proposition in every phase of it; we had expressions of opinion from men who had served on the Ways and Means Committee, and we have got the viewpoint of nearly everybody on the proposition, and we have threshed things out. I think we all are reasonable-minded men and if this thing is advanced a stage, we all will come to a broad and fair conclusion.

Mr. Avery of Holyoke: I just want to say a word; I have not spoken on the proposition. It is rather difficult to place some of my friends who have been extolling the Legislature all through the session, who have been talking against writing legislation and putting it into the Constitution, and who now want legislation put into the Constitution that within the first year after its enactment might prove so unbendable that the State would be in dire distress, and the only way help could come would be by an amendment to the Constitution, which might take two years. But if this thing is so wonderful, to have it in the Constitution, why have not most of the States put it in the Constitution instead of in the statutes? That is a fair answer to that question.

Where have the big things of human history gone? They have gone into the short clauses. The Ten Commandments, the two rules of Christ, the Interstate Commerce law, — that clause in the United

States Constitution has permitted all the commercial development of this country as a Nation and it was only a little clause.

Now this clause, which says that the Legislature *shall* [mandatory] establish a State budget system, is not powerless. It is not turning it over to the Legislature. It is putting it into the hands of a body that can take its time to draw a measure, and, if it finds it is wrong, change it and fix it up the next year, and it adds the vital clause in the whole thing, which states that the Governor can veto items or parts of items. That is what they need. The Legislature can provide for an executive budget if it wants to. The Legislature can do anything that these gentlemen have worked on so hard and faithfully. But we have not got before us a measure that anybody can guarantee will work, and we, in this body, ought not to present to the people an arbitrary fixed affair.

Mr. Luce of Waltham: I would ask the gentleman's permission to make simply a statement which might be made as a question of privilege. I was unfortunate in saying that I thought it made no difference as to how this measure went to the committee on Form and Phraseology. What I had in mind was that the votes on the amendments would show so clearly the temper of the Convention that they would guide the committee on Form and Phraseology adequately.

Mr. Parkman of Boston: The main point before this Convention is, as has been stated so clearly by the gentleman from Amherst (Mr. Churchill), whether this Convention is ready to put into the Constitution of Massachusetts their decision that a budget system is good for the Commonwealth of Massachusetts, and not leave it to the decision of each Legislature as to whether there shall be a budget.

The proposition of the gentleman from Holyoke (Mr. Avery), while apparently so good on its face, does have that effect. It leaves it entirely to the Legislature as to whether there shall be any budget system whatsoever. Even if the Legislature, in one year, as they did last year, makes a budget act, they can repeal it at the next session and leave the whole question in the financial muddle in which it hitherto has been.

I want to say right here that I think this amendment as offered goes simply to general principles. It does not go into details, as has been suggested by several gentlemen here. It does not go into the question, at any rate, as has been suggested by the gentleman from Haverhill (Mr. George). It leaves the matter, as we believe, and as we tried to make it, and as we believe we have succeeded in making it, in such a flexible manner that there will be no need, as we hope, of any further changes. We leave a great many of the details to the future action of the Legislature, leaving in the main proposition, that we desire a budget and that the Governor shall prepare that budget.

In support of that proposition I simply want to reiterate the words which I used in opening the debate two weeks ago, the words used by the committee of the Legislature which passed the budget last year and recommended the present budget act. That committee, as I say, was a committee of the Legislature. They did not ask for a legislative budget. They said:

> The committee expresses the hope that the resolution reported by the Finance Committee of the Convention will, with slight perfecting amendments, be adopted by that body and ratified by the people.

Then they go on to say, and put it in italics:

Every budget suggestion in recent years has recognized, first, that we must have a budget; and, second, that the Governor must be connected with the preparation of this budget.

I have endeavored to state, so that the Convention may have clearly before it, the distinction between the measure which was offered by the committee and the suggestion offered by the gentleman from Holyoke (Mr. Avery), which of course I recognize as a suggestion that might appeal to this Convention. But I ask the Convention to keep in mind carefully the difference between a legislative budget, as suggested by the gentleman from Holyoke, which, as I said before, and desire to repeat, may be repealed at any session of the Legislature, and a budget resolution, adopted by the Convention and adopted by the people, which shall connect the Governor with the budget, leaving to the Legislature the details of how that budget shall be prepared.

In the brief time which I have left, I will call attention to the amendments offered by the various gentlemen.

With regard to the amendment offered by the gentleman from ward 5 in the third division (Mr. Lomasney), I want to say this, as I said yesterday in debate, that the general idea was adopted by our committee, and I should have not the slightest objection to having those words reinstated in the resolution which I have offered. He and I agree on the main question that we want a budget. I think he and I agree on the main question that we want a Governor's budget. I further agree on what he brought up, that he wanted loans passed by two-thirds, and that is coming up in another measure which will be offered later.

The amendments offered by the gentleman from Amherst, Mr. Churchill, I think are perfecting amendments, and, as I said yesterday, I do not see any objection to them.

Now, there remains the amendment offered by the gentleman from Wakefield (Mr. Dellinger), with regard to giving power to the Legislature to increase, decrease, add or omit items in the budget, that they can increase or add items only by a vote taken by yeas and nays. The committee in their original draft, and which they keep in their substitute, gave the Legislature full power, not only to reduce items, but to increase and add, because we felt, after a full and free discussion of the matter, that the Legislature should have that power. We believed that there might be omissions, not only omissions in the budget offered by the Governor, so that the Legislature should have the power to add items, but after the discussions which necessarily must occur in the Ways and Means Committee, when the budget was submitted to them, that there might be cases where increases should be granted. The gentlemen who have offered that amendment say that can be done if a vote can be taken by yeas and nays. It does not seem to me, representing a majority of the committee, that that is necessary, because in most cases it simply will be done by a majority vote, and in case there is any real controversy about the increase or addition of an item, any political controversy or any fierce controversy, there will be enough members to call for the yeas and nays. Therefore I hope, as an expression of opinion of the majority of the committee, that the matter may stand just as originally reported, that the Legislature may increase, add or omit items in the budget.

With regard to the amendment offered by Mr. Hobbs of Worcester, I see no general objection to it.

The gentleman from Easthampton (Mr. Lyman), in the last amendment, moves to strike out the whole question of a budget, leaving simply the question of allowing the Governor to veto items. I do not believe that this Convention is ready to shirk their responsibility on this question of a budget. I believe the committee on Form and Phraseology, to whom this resolution is likely to be referred, will be in better shape to express the general feeling of the Convention if document No. 411, with the amendment of the gentleman from ward 5 (Mr. Lomasney), be adopted by this Convention and referred to that committee. [Applause.]

I omitted one thing. That was the amendment offered by Mr. Underhill of Somerville. In order to prevent time taken in voting for that, — I know that the temper of this Convention is that they do not want the Governor to do any talking, though personally I should like to have the Governor before the House, — why, I have no objection to his amendment.

The amendment moved by Mr. Lomasney was adopted.

The first amendment moved by Mr. Churchill was adopted.

The amendment moved by Mr. Dellinger was rejected, by a vote of 50 to 73.

The amendment moved by Mr. Underhill was adopted.

The remaining amendments moved by Mr. Churchill were adopted.

The amendment moved by Mr. Hobbs was adopted, by a vote of 78 to 42.

The amendment moved by Mr. Lyman was withdrawn.

The amendment moved by Mr. Avery was rejected, by a call of the yeas and nays, by a vote of 72 to 89.

The amendment moved by Mr. Parkman, as amended, was adopted, and the new draft (No. 416) was referred to the committee on Form and Phraseology Friday, August 2.

That committee reported, Wednesday, August 14, that the resolution ought to be adopted in a new draft (No. 420); and the new draft was passed to be engrossed the same day.

The Convention voted, Tuesday, August 20, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 155,738 to 81,302.

Mr. James M. Codman, Jr., presented the following resolution (No. 275):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

On or before the day of in each year the Governor shall submit to the General Court a budget of the expenditures of the Commonwealth which he thinks should be incurred during the year and defrayed from taxes or revenue, which budget shall be arranged by departments or subjects and in such detail as the General Court may by law prescribe, or in default of such law as the

Governor may determine. The appropriations for the year which are to be defrayed from taxes or revenue, shall be incorporated in a single bill to be designated as the general appropriation bill for the year; and no further or other appropriations to be met from taxes or revenue shall be made during the year except upon the recommendation in writing of the Governor, or by special bills each confined to a single item and passed by a vote taken by yeas and nays of two-thirds of the members of both branches of the General Court present and voting. The items in the budget as submitted by the Governor and all additional recommendations may be increased, decreased, omitted or added to as the General Court sees fit; and all the items in the general appropriation bill and all additional special bills shall be subject to the provisions of the Constitution respecting the veto power of the Governor over the items in bills and resolves appropriating money.

No bill or resolve of the Senate or House of Representatives shall become a law and have force as such until it shall have been laid before the Governor for his revisal; and if he upon such revision approve thereof he shall signify his approbation by signing the same. If a bill or resolve appropriating money contains more than one item, the Governor may signify his approbation of the entire bill or resolve by signing the same, or he may sign the same and accompany this act with a statement of the items which he disapproves in part or in whole, and in case of items objected to in part, of the amount which he does not object to; and in this case the bill shall be a law as to all items not disapproved and as to the part not disapproved of all items disapproved in part. If the Governor have any objection to the passing of any bill or resolve or to any item in a bill or resolve appropriating money, he shall return the same, together with his objections to such bill, resolve or item in writing to the Senate or House of Representatives in whichsoever the said bill or resolve shall have originated; who shall enter the objections sent down by the Governor at large upon their records and proceed to reconsider the said bill, resolve or item. But if after such reconsideration two-thirds of the Senate or House of Representatives shall, notwithstanding the said objections, agree to pass the said bill, resolve or item, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered and if approved by two-thirds of the members present, the bill, resolve or item shall have the force of a law; but in all such cases the votes of both Houses shall be determined by yeas and nays and the names of the persons voting for or against the said bill, resolve or item shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bills or resolves shall not be returned by the Governor within ten days after it shall have been presented, the same shall have the force of a law.

The General Court shall provide by law for the appointment by the Governor with the advice and consent of the Council of a local finance board. The number, salaries and terms of office of the members of the board shall be fixed by law. It shall be the duty of the board to investigate and from time to time to report to the General Court upon such matters affecting the finances of towns, cities, counties and other political or administrative districts of the Commonwealth as they shall deem proper, or as they may be directed to consider by the General Court. No law shall be passed permitting any town, city, county or other political or administrative district of the Commonwealth to borrow money unless the board shall first have submitted to the General Court its opinion on said law or thirty days shall have elapsed after the board has been requested by a vote of both branches of the General Court to investigate and report upon the proposed law. No money shall be borrowed except such loans as may be issued in anticipation of taxes and are payable within the year by any town, city, county or other political or administrative district of the Commonwealth unless the board has first submitted to the said town, city, county, or other district its opinion on the expediency of borrowing the money in question or sixty days shall have elapsed after the board has been requested by the town, city, county or district to investigate and report upon the expediency of the said loan. Requests for such opinions shall be made, in the case of a town by the selectmen thereof, in the case of a city by the mayor and city council thereof, in the case of a county or other political or administrative district of the Commonwealth by the officials having charge of the financial administration thereof; shall be made in writing; and shall be served upon the board by delivery to its chairman or secretary.

If a report is made by the board to the General Court or to any town, city, county or district within the periods hereinbefore prescribed respecting any law or loan as hereinbefore provided, such law or loan shall be voted either in the form in which it has been presented to the board or in such other form, if any, as the board in its report may have advised.

The committees on State Finance and Municipal Government, sitting jointly, reported that so much thereof as relates to State financial supervision of public loans ought NOT to be adopted.

The resolution was considered Thursday, July 11, 1918.

Mr. PARKMAN of Boston said: As the gentlemen of the Convention see, that was a report of the committees on State Finance and Municipal Government, sitting jointly. There were 30 members on that committee, and 7 of us did not quite agree with the report. I am content. I am not going to do anything further about it.

The resolution was rejected.

LVI.

LOANING THE PUBLIC CREDIT.

Messrs. Henry Parkman of Boston and David Mancovitz of Boston presented resolutions numbered respectively 124, and 278 and 279. The committee on State Finance reported the following new draft July 16, 1917 (No. 326):

RESOLUTION RELATIVE TO LOANING THE CREDIT OF THE COMMONWEALTH AND THE CONTRACTING OF STATE DEBT.

SECTION I. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, or any private association or corporation.

SECTION II. The State may contract debts to repel invasions, suppress insurrections or defend the State or to assist the United States in case of war, and may also contract debt in anticipation of receipts from taxes or other sources, such debt to be paid out of the revenue of the year in which it is created.

SECTION III. In addition to the debts which may be contracted as before provided, the State may contract debts only for purposes which may be recommended by the Governor and assented to by vote of two thirds of the members of each branch of the General Court present and voting, determined by the yeas and nays. The Governor shall recommend to the General Court the term for which any debt shall be contracted.

SECTION IV. Borrowed money shall not be expended for any other purpose than that for which it was borrowed, except for the reduction or discharge of the principal of the debt incurred for it.

The resolution was considered Friday, June 28, 1918, and was recommitted to the committee the same day.

The committee on State Finance reported recommending that the resolution be amended by adding at the end of section 1 the words "privately owned and managed."

This amendment was considered by the Convention Tuesday, August 6, 1918, and was adopted.

Mr. Clarence W. Hobbs, Jr., of Worcester moved that the resolution be amended, in section 2, by striking out, in line 1, the words "contract debts", and in line 4, the words "contract debt"; in section 3, by striking out, in lines 2 and 3, the words "contract debts", and inserting in place thereof, in each instance, the words "borrow money"; and in section 3, by striking out, in lines 3 and 4, the words "recommended by the Governor and "; and by striking out, in line 8, the word "debt", and inserting in place thereof the word "loan".

These amendments were adopted.

The resolution (No. 326), as amended, was ordered to a third reading Tuesday, August 6.

It was read a third time Wednesday, August 14, in the following form, as changed by the committee on Form and Phraseology (No. 419):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

SECTION 1. The credit of the Commonwealth shall not in any manner be given or loaned to or in aid of any individual, or of any private association, or of any corporation which is privately owned and managed.

SECTION 2. The Commonwealth may borrow money to repel invasion, suppress insurrection, defend the Commonwealth, or to assist the United States in case of war, and may also borrow money in anticipation of receipts from taxes or other sources, such loan to be paid out of the revenue of the year in which it is created.

SECTION 3. In addition to the loans which may be contracted as before provided, the Commonwealth may borrow money only by a vote, taken by the yeas and nays, of two-thirds of each House of the General Court present and voting thereon. The Governor shall recommend to the General Court the term for which any loan shall be contracted.

SECTION 4. Borrowed money shall not be expended for any other purpose than that for which it was borrowed or for the reduction or discharge of the principal of the loan.

The new draft (No. 419) was passed to be engrossed Wednesday, August 14, and, without further debate, the Convention voted, Tuesday, August 20, to submit the resolution to the people.

It was ratified and adopted by the people, Tuesday, November 5, 1918, by a vote of 153,972 to 90,233.

THE DEBATE.

Mr. PARKMAN of Boston: If gentlemen of the Convention will take the trouble to look at document No. 326, which is the report of the committee on State Finance, they will see that that deals with two subjects, — first, in section 1, the loaning of the credit of the State to private associations or enterprises. The last three sections refer to a limitation of the State debt.

Since the report of the committee, which was made last summer, — a unanimous report, — conditions have arisen and bills have been passed by the Legislature of Massachusetts, important bills, the ones I refer to being the ones relative to the Boston Elevated Railway Company, the Bay State Street Railway, and the other street railways of the Commonwealth, in all of which allusion is made to assisting in one way or another these corporations. Now, the method is different in the different bills. It cannot be decided quite yet, — it has not been decided quite yet, — whether there is a contractual relation made by these bills between the State and the railways, whether it is public ownership or public control. However, the Commonwealth of Massachusetts has embarked on a certain policy with regard to the street railways, a condition which, as I say, has arisen since the committee reported this bill, and therefore amendments ought to be offered to the first section, so that there shall be no question as to what the result shall be. It has been impossible to frame those amendments in proper method, because it is, as I said, a considerable question whether there remains a contractual relation or just what the situation between these associations and the State is. Therefore I am going to ask the Convention to recommit this bill to the committee on State Finance, in order that proper amendments may be considered and framed to the first section of the bill. I do this after consultation with all the members of our committee on State Finance whom I have been able to reach, and they agree to the same. I believe it will result in shortening the discussion, or I should

not ask it. I therefore move that the matter be recommitted to the committee on State Finance.

Mr. CREED of Boston: I should like to ask the gentleman if he could not allow this to go to another reading and call his committee together in the meantime and be ready with a substitute.

Mr. PARKMAN: In answer to the question of the gentleman from Boston in the first division (Mr. Creed), I am perfectly frank to admit that that can be done. If the Convention in their good pleasure see fit to pass this to a third reading I shall call my committee together and see if proper amendments can be made. I want to be perfectly honest with the Convention.

Mr. BRYANT of Milton: I hope that we shall recommit this bill, so that it may be gotten into the best shape for us to consider. It is an extremely important matter, it appears to me, although I have read it only now for the first time, I admit. I do not think the two readings it will then have will be any too much for us to understand it as redrafted, and for us to consider whether we want to change the organic law of the State. I think the request of the gentleman in charge of the measure is a perfectly reasonable one, I do not think it will result in any delay, and I hope very much that we will recommit at this time and let the thing get into proper shape for our consideration.

Mr. DUTCH of Winchester: I should like to ask the chairman of the committee if the proposed amendments are not merely saving clauses, which in all probability would be non-contentious, and if he is prepared to go on with the merits of the rest of the resolution now.

Mr. PARKMAN: In reply to the gentleman from Winchester (Mr. Dutch) I would say that the probability is that the proposed amendments would be in the nature of saving clauses to protect the present legislation of the State. Just what those amendments should be is being considered at the present time very carefully, because, as I have said, the exact result of the bills passed by the Legislature last winter is not yet quite clear. If the Convention should not see fit to recommit I am prepared to go on with the debate.

Mr. BLACKMUR of Quincy: I trust that Mr. Parkman's motion will prevail, because, if I am not mistaken, should we now pass this to a third reading the resolution will be sent to the committee on Form and Phraseology; and, speaking for the committee, we really do not want it until the proposed amendments have been submitted and we can have an opportunity to consider the whole question at one time.

Mr. THELLER of New Bedford: As a member of the committee on State Finance I should like to say a word with regard to the recommittal of this resolution. It is almost absolutely essential that it be recommitted, for this reason: That the first section of this resolution provides that the credit of the Commonwealth shall not be loaned to any association, corporation or individual. Now, it was perfectly possible to agree upon that phraseology last year; but the Legislature of 1918 passed the Boston Elevated Railway Act, which does lend the credit of the Commonwealth to a corporation. It puts a veto, apparently, on this clause which we are seeking to put into the Constitution. The result is that we are in a situation where we really cannot discuss it intelligently in the Convention, and we have not at present any substitute to offer, because of the complex nature of the Boston Elevated Railway Act. The result is that if we went to work discussing

it now in the second reading we soon should find ourselves in the position where the discussion could not continue until that Act and this clause had been compared and studied carefully. The result is that we shall save time by recommitting this to the committee. The other argument in favor of recommitting it has been ably presented by the gentleman from Milton (Mr. Bryant). This question of the regulation of the State debt, or rather of putting a limit on the State debt, is so large a question that we ought to discuss it and debate it at least in two readings, and for that reason I hope that the request of the chairman of the committee on State Finance will be honored.

Mr. Mancovitz of Boston: As the author of the original resolution covered by section 1 of the present resolution, I desire to ask the chairman of the committee on State Finance (Mr. Parkman) whether or not the committee has discussed the matter privately. Is the committee still of the opinion that it will recommend the fundamentals contained in the resolution, or does the committee intend to report that it is inadvisable to consider the resolution since the action of the General Court last winter?

Mr. Parkman: In response to the gentleman from ward 5 on my left (Mr. Mancovitz) I would say there has been no discussion at all among members of the committee as to the merits of the question. There has been discussion only as to the advisability or the probable necessity of amending the first section sooner or later. Whether or not that should be done, or how it should be done, has not been discussed, but the members of the committee think that they ought to discuss it before presenting it to the Convention.

Mr. Mancovitz: I hate very much to oppose recommitment of this proposition. To me it is a vital proposition. The fundamentals in the proposition are very simple: Shall the people permit the Commonwealth to loan its credit to individuals or corporations? There was no question in the first place by the committee that this was a good, sound proposition, but through the unforeseen conduct of the General Court last winter a condition has arisen which perhaps may make a temporary change; but still I think the proposition is simple enough. Amendments very readily can be offered to preclude from its operation for the present time any contracts entered into by the Commonwealth, and permit the Supreme Judicial Court to pass upon the question whether or not the acts of the General Court last winter were a contract. But we ought to stop in future the Commonwealth from going into private undertakings of this character. I hope the recommittal will not prevail. Let the matter take a reading. Let the gentlemen prepare their amendments so that we can discuss them in the Convention.

The resolution was recommitted to the committee on State Finance.

The committee on State Finance reported recommending that the resolution be amended by adding at the end of section 1 the words "privately owned and managed."

Debate was resumed Tuesday, August 6.

Mr. Hobbs of Worcester: When this matter was up before I think that it was called to the attention of the Convention that the word "debt", which is contained in the third section of this resolution, is a very broad word. Debt means anything from a contract debt to a

bond. It may refer to a simple debt on account. Now, if the language of this resolution goes to the extent that the Commonwealth cannot buy even a paper of pins on account without being authorized by a two-thirds vote of the General Court, that means that you have got to have every one of your appropriation bills verified by a two-thirds vote. It seems to me that this is a most unfortunate result. I had supposed that what the committee was driving at was bonds. If that is so, the proposition is narrower; but that is not what the resolution does. It goes, I think, to the entire extent that I have called to the attention of the Convention, and unless it is narrowed down the resolution ought not to be acted upon. I am not certain if even in that case it ought to be acted upon. I do not approve of these resolutions which aim to tie the hands of the State government in the ordinary affairs of government. The issuing of securities and the contracting of debts is an important and necessary part of the functions of the State, and very few functions of the State can be carried on without it. Now, if you are going to put a tie upon the General Court and upon the Commonwealth by compelling the General Court first to get the specific recommendation of the Governor for the issue, and in the second place to get a two-thirds vote of each branch, you are reducing your Legislature to a point of entire impotence in the matter of issuing bonds. Now, does the Convention consider that that is the wise thing to do? It is effective for the purpose of keeping down debt, but it seems to me it strangles the State from any activity beyond the mere process of expending its normal revenue. I can understand why it is desirable to keep the State debt down, but I do not think that artificial amendments like this for keeping it down are at all desirable. Nor do I think that the State should be held down to the point where, as I said, it cannot incur an ordinary contract debt without the authority of a two-thirds vote of the General Court and the specific recommendation of the Governor.

Mr. PARKMAN of Boston: I am perfectly willing to accept any suggestion of the gentleman from Worcester (Mr. Hobbs) as to the word "debt" in the resolution as offered. It was the intention of the committee to confine that to the question of loans covering a series of years, and the gentleman from Worcester (Mr. Hobbs) understands that just as well as I do.

Mr. HOBBS: Having called this matter to the attention of the committee personally, I feel that perhaps it was up to the committee to report its own resolution rather than to leave the matter as it is.

Mr. PARKMAN: The gentleman says he called the attention of the committee to it personally. I am sorry to say that I have no recollection of the gentleman from Worcester (Mr. Hobbs) having called it to my attention. If he did so I regret the oversight, but I have no recollection of the fact. I shall be very glad to accept any amendment which would mean more specifically what the intention of the committee is, — to cover loans, and not debts for papers of pins, as the gentleman from Worcester (Mr. Hobbs) suggests.

I had not supposed that I should bother this Convention so soon again with a speech on financial questions, and, both for your sake and for my sake, on this warm day I am going to make it just as short as possible. I dare say the members of this Convention will be surprised, just as I was surprised, to know that in all but four States of the

Union, that is, in forty-four out of forty-eight States, there is some sort of constitutional restriction on the contracting of debts or loans by the State. These constitutional restrictions are of varying nature. In some States no debt can be contracted at all, and in those happy States there is no debt whatsoever. In others there is a limit of an exact amount which the State can contract; that is to say, they are allowed to contract debts up to the limit, we will say, of $500,000. That is not a limit which I should think of applying to the Commonwealth of Massachusetts. As I have said, there are varying limits. Now, it is a general proposition, which I think every gentleman of this Convention will agree to without any discussion, that debt, borrowing for the individual, is not a good thing, whatever the necessity may be for it. If it is not a good thing for an individual, it is not a good thing for a community of individuals, such as a city or town or the State, if it can be avoided. Massachusetts to-day, from the statistics, has the largest State debt per capita of any State in the Union except New York, and the New York State debt is so large because of the money borrowed to enlarge the Erie Canal.

Those figures which I had put up there a month or six weeks ago, when I expected that this matter would be reached, show to me and, I think, to other members of the Convention conclusively why it is desirable to put a certain limit on the increase of the State debt. Those figures were prepared for the previous session of the Convention, in 1917. The difference is very slight to-day. You will see by those figures, which begin with the year 1900 and are brought down to the year 1917, that though the population of Massachusetts has increased 39 per cent during that period and the valuation of the State has increased 75 per cent, yet the gross debt has increased 144 per cent, and the net debt, which is the gross debt less the amount in the sinking fund, has increased 105 per cent, or, if we take the authorized loans of last year, the net debt has increased 121 per cent; that is to say, it has increased three times as fast as the population and between 60 and 70 per cent as fast as the valuation. In other words, it has increased out of proportion either to the population or the valuation of the State. And I want to call further to the attention of the gentlemen of the Convention that that gross debt, as it is headed there, is only what is known as the direct State debt. There is another debt, which is a debt of the State just as much as that direct State debt, but which sometimes is called the contingent State debt; that is, the debt issued by the State in behalf of what is known as the metropolitan district and its activities, metropolitan sewerage, metropolitan water and metropolitan parks. The net debt for that purpose amounted last year to more than $54,000,000, the gross being $77,000,000 and the sinking fund $23,000,000, or a net of $54,000,000, two and a half times the net direct debt. That is a debt which, while it is strictly, as I have said, a debt of the Commonwealth, because they are the bonds of the Commonwealth that are issued for the same, is more directly to be paid by the cities and towns of the metropolitan district. As gentlemen are familiar, every year there is an assessment levied on the people of the metropolitan district to pay these loans; but as the people in the metropolitan district are a very large portion of the people of Massachusetts, that burden is on them in addition to the direct State debt. Therefore I think I have shown you fairly,

gentlemen, from the figures, that our debt has been increasing out of proportion to population, out of proportion to valuation.

Therefore the question comes before you, gentlemen, whether there is any fair, reasonable method under the financial conditions of Massachusetts whereby there can be some restriction put on future increases. As I have said before, the limitations in many of the States are various. On looking them all over, practically every State provides for debt to repel invasions, suppress insurrections or help the State to assist the United States in case of war. That is a universal clause in practically all State Constitutions which consider the question of restriction of debt. As I have said, in looking over the various constitutional provisions in the forty-four other States of the Union, there was none which seemed to the committee to be applicable to the case of Massachusetts; and therefore we have provided the only restriction which we think could be applied, and that is requiring that a loan should require a two-thirds vote of the Legislature to pass it. That vote is to be determined by two-thirds of the members of each branch of the General Court present and voting, determined by the yeas and nays, and the Governor shall recommend to the General Court the term, — that is, the length of term, — for which any debt may be contracted.

The amendment, section 1, provides, — and this is a universal thing in almost all State Constitutions, — that the credit of the State shall not in any manner be given or loaned to or in aid of any individual or any private association or corporation. To provide for the recent legislation of the General Court in regard to the Boston Elevated Railway and other street railways, the committee to whom it was recommitted recommend that the words "privately owned and managed" be added to section 1.

Mr. HART of Cambridge: I should like to ask the gentleman whether the phraseology will then be "to any private association or corporation privately owned and managed."

Mr. PARKMAN: That would be the result.

Mr. HART: Does the gentleman think that those words are not redundant, — "private associations privately owned and managed"?

Mr. PARKMAN: The words, I think, refer only to the word "corporation". If there is any redundancy our good committee on Form and Phraseology can take care of it.

Mr. COE of Worcester: I should like to ask the gentleman from Boston (Mr. Parkman) if the second section of this resolution is not drawn for the express purpose of meeting the objection raised by my colleague from Worcester (Mr. Hobbs) which allows the expenditure of money for the purpose of running the State, provided that money is paid out of the receipts for the year.

Mr. PARKMAN: It is well known that cities and towns, and the State itself, at the beginning of the year, before the taxes come in, have to borrow what is known as money in anticipation of taxes, and that provision of section 2 is put in so that that can be done in the ordinary way.

Mr. COE: I am perfectly well aware of the custom in cities and towns which have the privilege of borrowing money in anticipation of their revenue, but it does not seem to me that that is the question here raised. The question here raised, and it was raised by my col-

league from Worcester (Mr. Hobbs), was whether in running the State a State official would have authority to go out and buy even a paper of pins. As I read the second section, it distinctly provides that debts may be contracted provided they are payable out of the revenue for that year, and that section later on provides for debts which are represented by what are usually known as long term bonds.

Mr. PARKMAN: I think probably the last part of section 2 would take care of the case suggested by the gentleman from Worcester in the rear (Mr. Coe). The word "debts" is used throughout the resolution because that is the usual word used in all the State Constitutions which I have seen. It is intended entirely to provide for long time loans. If there is any question on that point, any real question on that point, why, an amendment can be made on the next stage of the resolution.

Mr. Hobbs of Worcester moved that the resolution be amended in section 2, by striking out the words "contract debts" in lines 1 and 4, and substituting the words "borrow money"; in section 3, by striking out, in lines 2 and 3, the words "contract debts", and inserting the words "borrow money"; also by striking out, in lines 3 and 4, the words "recommended by the Governor and"; and by striking out, in line 8, the word "debt", and substituting the word "loan".

Mr. HOBBS: I do not know exactly how much time I have to discuss this matter before the recess, but on a conference with some of the members of the committee on Form and Phraseology the term "borrow money" appears to be less subject to ambiguity than the term "contract debt".

The discussion was resumed after the recess.

Mr. HOBBS: The amendments I have offered fall into two classes. One class includes those that are purely verbal and which I think are not objectionable; the other is more substantive. It is to strike out of the third section the words "recommended by the Governor and". The proposition as drawn requires all loans to be approved by the Governor in advance. In other words, it lodges an absolute power in the Governor to prevent any loan being made. His recommendation is an indispensable prerequisite of the making of any loan under the language of that article.

Now it is a question as to how far you want to go, as to how much authority you want to lodge in the Governor and how much you want to lodge in the Legislature. It does seem to me that you ought to preserve in the representative branch of the State government, — in the Legislature, — some right to put through a loan whether the Governor wants it or not. Even if you strike out those words you have a pretty severe limitation, — the requirement of a two-thirds vote in both branches of the Legislature, — and it does seem to me that if you allow the Governor to block the making of any loan you are lodging a vast obstructive power in his hands which on one occasion or another might be used very harmfully. For that reason I would suggest the adoption of that amendment. It is not a matter, I think, that is vital to the proposition. It is a question of where you want the authority to lie. The committee apparently want the authority to issue any loan to rest with the Governor. I think the Legislature should have at least the right to initiate a proposition of that sort and put it up to the Governor, who still would preserve the

right to veto; and with that humble reservation I feel that the committee might very well accord.

Apart from that, the proposition is, pretty frankly, to tie the hands of the State government in the matter of incurring debt. It is intended to put fetters upon the State government, and I think the intention is clear that the State government, for the purpose of incurring debt, shall ride in fetters for a while, the idea being to keep the debt down. The necessity of such fetters is for the Convention to determine. It probably would be effective to accomplish the results desired. As to the necessity for it I think probably the chairman of the committee is a better judge than I am. The State debt unquestionably has increased markedly of late years. But I would call to your attention that if this proposition goes through it probably will wipe off from the books the standing laws under which grade crossings are now abolished and the laws under which money is borrowed for the construction of armories, and several other standing laws for the issuance of bonds for special purposes. Those acts probably will go by the board if this amendment is adopted.

Mr. Hart of Cambridge: I should like to ask the gentleman whether there is anything in the amendment which would preclude a new set of legislative measures which would cover the points to which he has referred, such as grade crossings; that is, whether the amendment would wipe out not simply the acts but the possibility of replacing them with similar measures.

Mr. Hobbs: I should be under the impression that with the language of this amendment it is intended to have a specific bill in the case of each loan and that a general act of the sort that I have described would no longer be possible. I may be wrong on that point; if so I should be very glad to be corrected. But as to the old acts going by the board I do not think there is any doubt about that. Possibly that is the reason why the amendment is desired.

As to how far this proposition goes, — apart from those few suggestions I have offered, — I could not say. It is couched in broad general terms; and while much criticism doubtless may be raised as to the financial structure that the General Court has built up, it is the very comprehensiveness of that structure that renders a provision of this sort a danger, because no one can foretell all the things that it is going to hit. For that reason I discuss this matter with some hesitation, but I do feel it is a proposition that we ought to consider pretty carefully before we enact it into the organic law, and certainly I feel that we ought to preserve in the General Court the right to initiate the making of a loan and not confine that right to the Governor.

Mr. Theller of New Bedford: I rise to oppose the adoption of this resolution. I was a member of the committee on State Finance and the committee reported this resolution. I was not in sympathy with it and so expressed myself in the committee. The hearing on this resolution did not take more than an hour, and to the best of my recollection nobody appeared in the committee in favor of it. It seems like an axiom that the State debt should be limited, so that it is difficult to argue against it as a proposition of that kind, but I am going to express a few doubts.

The gentleman from Boston (Mr. Parkman) says we ought to limit the State debt because forty-four out of the forty-eight States have

debt limitations. He says also in an argument by analogy that if it is good for an individual to limit his debt and the incurring of debt, it ought to be good for the State. He points to the figures on the board in front of us and says that the debt of the State is increasing by leaps and bounds, and that where the population has increased 39 per cent and the valuation 55 per cent, the gross debt has increased 144 per cent and the net debt has increased 105 per cent. He says further that Massachusetts has one of the greatest State debts of all the States in the Union, and he points to this resolution as a combination of all the good factors in the limitations that the Constitutions of other States put upon the incurring of debt.

In the first place, there is no analogy between the borrowing that an individual does and the borrowing that a State does. The elements that go to make up each of them are so different that analogy is entirely fallacious. It has been pointed out here that the State does not borrow to secure profit, where that is usually the motive that moves the individual.

In the second place, the net per capita debt of Massachusetts is only $8.67, according to the gentleman's own statement, and if you will compute the figures on the board you will find that since 1915 it has increased only a few cents. I assume that the figures on the board are put there to scare us; but if you will figure out the percentage with the figures there, you will see that the actual net debt is less than one-half of one per cent of the estimated valuation in 1917. Well, now, that is not a very heavy mortgage on the resources of the State.

The gentleman explained that debts in other States were limited in a variety of ways. For instance, debt may be incurred for certain specified purposes only in certain States; but in that list of States Louisiana has a per capita net debt of $10.99, or more than Massachusetts. In another list given in this bulletin of States which prohibit debt except for specified purposes unless a referendum to the people is ordered, we find that the net per capita debt of New York is greater than that of Massachusetts, showing that these restrictions are practically ineffective.

Take the States which limit the debts except by a referendum, not specifying any particular purposes. In the list of those States California, with such limitation, has a greater per capita debt than Massachusetts, and so on. The only States that have no limitations are four New England States, Massachusetts, Connecticut, New Hampshire and Vermont. Vermont, without any limitation upon her debt and borrowing capacity, has a per capita debt of $1.02. Massachusetts does not lead that list of States; Connecticut does, with a per capita debt of $9.24.

Now, when the gentleman says that the gross per capita debt, if you may call it so, of Massachusetts is $23, he carefully explained that that included the contingent debt. The contingent debt means the money borrowed for metropolitan park purposes and metropolitan purposes in general. That is not the direct debt of the State. In other States the cities themselves handle the matters which here are handled by the Metropolitan Commissions. So that you cannot come to any correct conclusion when the statement is made that Massachusetts has the highest per capita debt in the Nation, and that

debt is $23 and some cents. That is brought out in this bulletin, from which I may be permitted to read two or three sentences:

> According to the statistics compiled by the United States Bureau of the Census, the highest per capita net debt is in Massachusetts, where there are no constitutional restrictions, the per capita amount being $23.52. This heavy indebtedness is misleading without a word of explanation, for the Commonwealth has undertaken a number of functions which in other States are performed by the cities themselves.

Omitting one sentence —

> If allowance is made for this contingent indebtedness, which in reality belongs to the cities, the per capita net debt for State purposes is only $8.07 instead of $23.52, as recorded in the United States Census Report, thus indicating that it is not the absence of constitutional limitations alone that explains Massachusetts' total net indebtedness.

In conclusion, therefore, let me say this: That those gentlemen who are opposed to the extension of State activities along the lines of housing citizens and the conservation of resources of all kinds would of course vote for a proposition of this kind. But under this limitation it would be practically impossible for the State to undertake those functions which we already have granted leave to the State to undertake, because it would be impossible to raise money for them. Now, the raising money for them would be a good or bad thing according as each individual looks at it. But if some of those enterprises were productive it would be perfectly justifiable to borrow money in order to enter into such an activity and then repay the loan. But this proposed amendment puts an absolute limitation upon it.

To take a practical example: If we wish to establish a State University and we wish to borrow money and make a capital investment in buildings, and we pass such a bill by a majority vote, it would be impossible to raise the money by bonds or to borrow money for that purpose unless the Governor recommended it and unless it were passed by a two-thirds vote later. That is the restriction that is put upon that kind of activity by the State.

Now, whether you gentlemen believe or not that the functions of the State ought to be extended makes no difference. The point is that the tendency is that way, that we are taking up more and more administrative functions and that the State government is becoming a positive agent for the social good, — or for social ill, as some of you may say. The tendency being that way, certainly we should not place such a limit as this or any kind on the incurring of State debt, since it is not necessary when those figures are analyzed and since it would work hardship when this resolution is analyzed.

Finally, let me say this one thing: Take the first paragraph of this measure:

> Section 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, or any private association or corporation privately owned and managed.

— if I remember the amendment correctly. Well, a year ago the committee reported that proposal, had it printed the way it is now in the document book, and practically nothing could be said against it. Why, certainly, we should not hand out credit to an individual or a corporation. And yet this year the Legislature passed the Boston Elevated Railway Act and did that very thing. Why? Because conditions made it necessary.

Now what is the amendment put in here at the present stage but a makeshift, — and a makeshift that we would have to put on the other paragraphs later in order to overcome that flat debt limit?

The experience that some of you gentlemen have had with the cities coming to the Legislature to be allowed to borrow outside the debt limit ought to be one which will give you an opinion upon whether or not you ought to limit the State debt. And if you look in the back of the bulletin you will find the list of limitations and you can read them and see how far the limiting the State debt has been effective. This is practically legislation tying up the Commonwealth; so it seems to me absolutely unnecessary.

The one thing that can be approved of in this proposition seems to me section 4, which says that borrowed money shall be expended only for the purpose for which it was borrowed. Well, that is an elementary principle of finance. That does not need to be put into words at all. Every financial officer ought to know that money borrowed for a specific purpose should be used for that specific purpose or to reduce the debt created by that borrowing. That is unnecessary, and the others, I think, are futile and useless, especially in this day and generation.

Mr. Coe of Worcester: It appears perfectly evident that it is entirely unnecessary for us in Massachusetts to go to other States to know how to manage our financial affairs. To be sure, there is a large debt created. To show for it Massachusetts has much that is to the advantage of every man, woman and child in the Commonwealth. If we see fit to follow the experience of some of the States we shall be found borrowing the money to pay the interest upon the bonds we have issued and to pay the principal of those bonds. And to the credit of Massachusetts it may be said that it is the only State in the Union whose bonds have sold in England, in France and in one empire which I will not mention, on the same terms as the bonds of those Nations have sold, because Massachusetts, when not bound by the bond, has paid both interest and principal in gold.

There is, however, a necessity of some limitation on the amount and the object for which we should borrow money; and as I understand the principle of the resolution which the committee has drawn, it is to separate what are known as short term notes and long term bonds, but in reality there is no difference between the two. They are spelled n-o-t-e in one case and b-o-n-d in another, but they both mean the same thing, — that the credit of the Commonwealth has been pledged to pay the notes or bonds which are issued by the Commonwealth; and the Commonwealth finds it just as necessary to borrow money as the cities find it necessary to borrow money to meet their current expenses.

As I understand the provision and the intent of the committee, it is simply to separate what are known as long term bonds or long term notes from the notes which are issued in anticipation of the revenue from the various cities and towns, which is not paid until December.

Now, in limiting the amount and the objects for which the Commonwealth may borrow money it is not necessary for us to go outside of Massachusetts for illustrations of methods by which we may do business. Under the legislation passed by Massachusetts it has been necessary for cities and towns in past years to borrow money

and to run into debt. Why? Because the men who were charged with the responsibility of managing those cities did not have the courage to meet the issue as it was presented and to raise the money to pay for the improvements which were made and pay it out of the taxes for the year. We have been trying for years to find an automatic system of government. We are as far from it to-day as we ever were and are getting farther and farther from it. What we need is not more legislation. We need men who have the courage to meet the issue in the Legislature; and I am not one of those who believe that the Legislatures have been on the wrong track for years because they have taken advantage of the work that the cities have done and have perfected a method of the management of the cities by which the cities must meet their obligations from year to year, that the extravagant methods of doing business in past years may be avoided. These methods have been extravagant because the governments have been afraid to make the tax levy necessary; and as a result, for every dollar they have secured for public improvements on loans which run for ten years, it has cost the cities of Massachusetts, if we assume a 4 per cent basis, $1.22. For every dollar we have borrowed on a 20-year bond we have paid $1.42, still retaining the 4 per cent basis, and on every dollar we have borrowed on a longer loan, a thirty-year loan, it has cost us $1.62, until to-day there is not a city in Massachusetts but is obliged to use from 25 to 35 per cent of all the money raised by taxation to pay the charges on debts which were incurred anywhere from one to forty years ago. Some of the cities, — one in particular, — had the courage to draw the line. Massachusetts also should draw the line. But I am not one of those who believe the Legislatures always have been wrong. They had their lesson to learn. If the old plan first adopted in 1875 had still been followed there is not a city in Massachusetts but what would have had such a debt to-day that instead of its taking from 25 to 35 per cent of all the money raised by taxation to care for its old debts, it would have been spending in the vicinity of 60 per cent of all the money in that way, and the debt would have gone on increasing.

I am not one of those who believe that the power ought to be taken from the Legislature and placed in the hands of the Governor. The Legislature has authority and it ought to have authority. The judgment of the men who are sent to the Legislature is worth something, or else our Legislature is not worth anything. And putting into the Governor's hands the power to prevent any debt being incurred is going to lead to such confusion that Massachusetts cannot conduct its own affairs and some one else will have to step in and take care of the State's finances. Rather let the State follow the example of the cities, follow the plan adopted by the cities, made compulsory upon the cities of Massachusetts, where if a mayor refuses to recommend an appropriation sufficient to do certain things, the city government, no matter whether it be the bicameral or the commission form, requests the mayor or the commission to do a certain thing, then they have the authority to make an appropriation by a two-thirds vote taken by yeas and nays, and over that the mayor has no power of veto whatever. The money appropriated can be expended for the purpose named, and for that purpose alone, and it is for that reason that I believe the amendment offered by my colleague from Worces-

ter (Mr. Hobbs) in regard to the authority of the Governor should be one of the provisions of the resolution. Also that the resolution as a whole with that amendment, where restrictions are put upon the object for which the State may borrow money, should be adopted that the State may have the same courage that it has compelled the cities to have to compel State departments to meet their expenses as they are incurred, not by loans, but by including the amounts in the tax levy. [Applause.]

Mr. Curtis of Revere: It is a very pleasant sight for one to go into a threshing field and see the threshing of the grain, because it means something; but if one should see nothing but stubble threshed over and over again, as we have here, it gets monotonous in these hot days in August. This matter of the State budget is a very important one and many statistics have been quoted. I have just told my friend of twenty-five years' standing who sits in this division, the eminent shepherd of Saugus, that I should quote him on something he told me the other day as regards lies. He said there were three kinds of lies: Plain, ordinary, every-day lies, accentuated lies (he used a stronger term) and statistics. Well, now, that may be true. We have been regaled with a great many statistics and very important ones. But as far as my knowledge goes of this debate, — and I think I have listened to it on the previous readings, — most of this matter has been threshed over and over again. I am interested for another reason, in what I am about to offer. To-day is the 6th of August and we have just three more working-days this week and four the next week. That will bring us to the 17th of August, and unless we hurry we will go over to the 24th of August. It seems to me we can get through early if gentlemen in this Convention are not too much in love with their own voices. Because it has been said, you know, long ago by a noted poet that —

> It's pleasant to see one's name in print,
> For a book's a book, though there's nothing in't.

And I think sometimes some of the delegates who take up so much time wasting the time of the members of the Convention when we are in war, when there is so much to do, so much before us this fall, — I think it is a shame for us not alone to take up the time of this Convention needlessly but to be an expense for the State.

I am interested, also, from another angle. I do not want all the money of our appropriation to go to the State printer, — and it is going by hundreds and hundreds and thousands of dollars, — on matters that have been talked over and over. I had rather from my own viewpoint save some of it and give it to a more deserving cause, — perhaps to the engineers or some of the hard-working employees of this State House; and for that reason, and to save the time of this Convention and to hurry along these proceedings, I move the previous question. [Applause.]

The main question was ordered.

Mr. Dellinger of Wakefield: Previous to 1842 there was no limitation in the Constitutions of the different States on the State debt. Between 1830 and 1842 different States in assisting the building of highways and canals increased their debts tremendously. Four or five of the middle western States increased their debts from zero to

$44,000,000. In 1842 Rhode Island, I believe, was the first State in the Union to place some limitation on the State debt. Since that time practically every State in the Union has placed some limitation on the State debt. We are one of the last half dozen to remain with no limitation.

At the present time, as has been stated, our debt is about $87,000,000. I have a pamphlet issued by the Treasurer and Receiver-General the first of this year which states that the total public funded debt less sinking fund is $87,984,093.09. This, of course, includes the metropolitan assessments, which makes the per capita indebtedness of this State at the present time more than $23, — nearer $24 per capita, the largest of any State in the Union. While the metropolitan assessment should be paid and possibly will be paid by the different towns and cities within the district, the State is responsible for this indebtedness. New York is the only State which comes anywhere near beating us in the per capita indebtedness, and it is caused by a recent appropriation of over $100,000,000 for the building of public roads.

If you will refer to the pamphlet issued by the commission, you will notice at the back of the pamphlet that half a dozen States in the Union have no indebtedness, or an indebtedness so small that it is almost unnecessary to quote. South Dakota, West Virginia, Nebraska, Oregon and Iowa have no indebtedness whatsoever, while New Jersey, Pennsylvania and Kansas have an indebtedness of about four cents per capita. We in Massachusetts have increased our State indebtedness during the year previous to February, 1918, about $3,000,000, as you will notice in the report of the Treasurer and Receiver-General, — $3,081,294.56; and this year, in the time of war, you will find that our indebtedness will be increased as much if not more. I believe that we should place a limit on our State debt of zero; that we should pay the money that we owe at the present time, following the resolution as reported by the committee on State Finance. There is not one of us who would be willing to borrow money as an individual and unload a large debt on his son for him to pay. If we continue as we have, this is just exactly what we will do in Massachusetts. My friend of the committee on State Finance (Mr. Theller) is mistaken when he says that nobody appeared before our committee in favor of this resolution. If I remember correctly there were at least three or four men of standing, men who understand the financial situation in this State, like ex-Mayor Matthews. The committee gave this resolution a very careful consideration, studying, of course, the limitation of State debt of other States, and finally submitted to this Convention a broad amendment which I believe, if each of you will consider it carefully, you will adopt.

Mr. Avery of Holyoke: I debated quite a while how I wanted to vote on this question. I have listened to every word that has been said upon it. I have made up my mind that in the present form I have got to vote against it. The reason is this: We are facing the greatest times in the history of this Commonwealth. Do we want to limit the functions of the State? That is what this resolution does. Do we want to say that the State shall not take over the street railways of this Commonwealth and operate them as they ought to be? Do we want to say that we shall not build up the finest system of roads in this State that any State in the whole United States has?

Do you want to say that we shall not take over, if we have to, to feed the people in our cities, the milk industry in this State so that the women and the children, the men, the workers, shall have milk? We do not know what we are going to face. We do not know what is ahead of us. We know that we want to develop the humanity of Massachusetts, and we do not want to put into a strait-jacket the future functions of this great Commonwealth.

Mr. DELLINGER: I desire to ask the speaker if he has noticed the amendment recommended by the committee, giving the State the power to assist a corporation like the Boston Elevated Railway Company, — assist the corporation as it has this year. If he will look in the calendar near the middle of the page he will find there is an amendment providing for such a necessity.

Mr. AVERY: Will the gentleman please read that? I have not got it clearly in mind. Will the gentleman please read to what he refers?

Mr. DELLINGER: The committee on State Finance reported an amendment, adding at the end of section 1 the words "privately owned and managed", so as to take care of that particular predicament that the speaker refers to in regard to the Boston Elevated Railway Company.

Mr. EDWIN U. CURTIS of Boston: I do not think there is any need of going into extensive argument as to why it is necessary to limit the debt of the Commonwealth. There is the chart over there and it shows conclusively to any one that it is time to limit the debt. One of the gentlemen who has spoken seems to think that this has to do with money raised by taxes. This resolution merely has to do with borrowed money, and the first section provides that in case the State takes over a railroad like the Boston Elevated Railway or the Boston and Northern Railway, the money can be borrowed for that purpose. The second section allows the State to borrow in anticipation of taxes. The third section, as amended by the gentleman from Worcester who, when he speaks, ordinarily sits here (referring to a seat in the front part of the first division), and when he does not speak, ordinarily sits in his seat back there (Mr. Hobbs), corrects any misunderstanding that there may have been about the third section. I believe that the amendment offered by the gentleman from Worcester should be passed, because the words "borrow money" are plain words and can be understood easily, and again, because they already appear as the first two words of section 4. His other amendment provides that the Legislature by a two-thirds vote can originate loans, which makes it better, in my opinion, than the committee's proposition, which allows loans to be originated only on recommendation of the Governor. That will allow loans for grade crossings or for any other purpose if they get a two-thirds vote. It seems to me they would get a two-thirds vote if there is any necessity to make the loan. That is a very simple proposition. We have spent a lot of time talking about it. By adopting the amendment offered by the gentleman from Worcester I think we shall have a good resolution, one that will not do any damage, but one that may do a lot of good.

Mr. PARKMAN of Boston: I am not going to take up the ten minutes which I am allowed here. I am perfectly ready to accept the amendments offered by the gentleman from Worcester (Mr. Hobbs) changing the wording from "contract debts" to "borrow money".

I am perfectly ready also to accept the suggestion of striking out the necessity that the loans should be recommended by the Governor.

The gentleman from Worcester (Mr. Hobbs) has said that this is putting fetters on the State Legislature. It is. That is just what it is for. That is why we should do it. We do not say anything about the past. Let the dead past bury its dead. But in the future let us establish a good financial arrangement for the Commonwealth; pay as you go and contract as little debt as possible. [Applause.]

The amendment recommended by the committee on State Finance was adopted.

The amendments moved by Mr. Hobbs of Worcester were adopted.

The resolution, as amended, was ordered to a third reading Tuesday, August 6.

It was read a third time Wednesday, August 14, in the following form, as changed by the committee on Form and Phraseology (No. 419):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

SECTION 1. The credit of the Commonwealth shall not in any manner be given or loaned to or in aid of any individual, or of any private association, or of any corporation which is privately owned and managed.

SECTION 2. The Commonwealth may borrow money to repel invasion, suppress insurrection, defend the Commonwealth, or to assist the United States in case of war, and may also borrow money in anticipation of receipts from taxes or other sources, such loan to be paid out of the revenue of the year in which it is created.

SECTION 3. In addition to the loans which may be contracted as before provided, the Commonwealth may borrow money only by a vote, taken by the yeas and nays, of two-thirds of each House of the General Court present and voting thereon. The Governor shall recommend to the General Court the term for which any loan shall be contracted.

SECTION 4. Borrowed money shall not be expended for any other purpose than that for which it was borrowed or for the reduction or discharge of the principal of the loan.

Mr. THELLER of New Bedford: I do not like to rise in opposition to this resolution again, but I think it is due the Convention to point out again that this resolution, as it now has been amended, simply provides that a two-thirds vote shall be taken by yeas and nays when money is to be borrowed. Now, I am not one of those who are opposed to the pay-as-you-go policy, nor to limiting the debt of the Commonwealth, and I do not want to be understood as opposing that intent of this resolution. But the only check upon the debt limit is the two-thirds vote, and that is practically unnecessary to put into the Constitution. Why? You already have passed the budget system, which provides that the Governor shall suggest the loans or the expenditures. That gives the General Court the right of veto upon the Governor, because in that resolution it is provided that the amount borrowed or the appropriation suggested by the Governor may be decreased.

In the second place, the Governor has the veto power over any

appropriation or loan suggested by the Legislature, and in that case you do get a two-thirds vote. So that it seems to me there is no necessity for a constitutional provision of this kind.

The other proposals in this resolution are simply that the credit of the Commonwealth shall not be loaned to a corporation or individual, especially to any corporation which is privately owned and managed. When you pass such a resolution as that you practically throw the interpretation of the Boston Elevated Railway Act of last session into the Supreme Judicial Court. What is the meaning of the words "privately owned and managed"? The intent of this section 1 is to prevent the credit of the Commonwealth being loaned to any corporation that is not under public ownership or control. Well, if it is an educational institution you already have provided for it in the anti-aid amendment. There is no need for it in that particular case. If you are trying to prevent the credit of the Commonwealth being loaned to a corporation privately owned and managed, — implying thereby that the public must control that corporation or must manage it, — you simply are putting an invitation for public ownership into the Constitution; and in the second place, it seems to me you are opening the door to Supreme Judicial Court decisions as to what those words mean.

At its last session the Legislature passed an act providing trustees for the Boston Elevated Railway Company. What are the functions of those trustees? Are their functions those of public management? Is their supervisory power over the actual management of the Boston Elevated Railway Company as it now is public management? I do not know, but you are opening the door to litigation by passing such an amendment.

In the third place, it is unnecessary, because the tendency in government is to take over control, on account of necessity, of various private enterprises, and this amendment will be an obstacle to that sort of thing.

I already have pointed out that the attempt of other States to limit their debts by restrictions of this kind has been futile. It has not worked. You can take your bulletin and find States with the four different methods of restricting debts, and find that where the debt has been restricted constitutionally, in each of those States under any system they have a greater per capita debt than Massachusetts, showing the futility of this kind of legislation.

Now the third section, as I pointed out, simply provides for a two-thirds vote in the case of loans; and you get that, I say, under the budget system, where the Governor can veto loans that the Legislature attempts to make, and you get it also in the check that the Legislature has upon the Governor.

The resolution (No. 419) was passed to be engrossed Wednesday, August 14, and the Convention voted, Tuesday, August 20, to submit it to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 153,972 to 90,233.

LVII.

OFFICERS OF THE MILITIA.

Mr. Bouvé, for the committee on Military Affairs, reported, July 16, 1917, with the approval of the committee on Rules and Procedure, the following resolution (No. 316):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

Article X, Section I of Chapter II of the Constitution, the last two paragraphs of Article IV of the Articles of Amendment, relating to the appointment of a commissary-general and the removal of militia officers and Article V of the Articles of Amendment, relating to the qualifications of persons entitled to vote for officers, — are hereby stricken out and the following inserted in place thereof: —

"Article X of Section I of Chapter II of Part the Second: All military and naval officers shall be selected and may also be removed from office in such manner as the Legislature may, by law, prescribe, and all such officers entitled by law to receive commissions shall be commissioned by the Governor, but no officer shall be appointed unless he shall have passed an examination prepared by a competent commission or shall have served one year in either the Federal or State militia or military service."

The resolution was read a second time Friday, July 12, 1918.

Mr. Arthur N. Newhall of Stoneham moved that the resolution be amended by striking out, in lines 14 to 19, inclusive, the words " , and all such officers entitled by law to receive commissions shall be commissioned by the Governor, but no officer shall be appointed unless he shall have passed an examination prepared by a competent commission or shall have served one year in either the Federal or State militia or military service".

This amendment was rejected, by a vote of 34 to 85.

The resolution (No. 316) was ordered to a third reading Tuesday, July 16, by a vote of 99 to 52.

It was read a third time and, without further debate, was passed to be engrossed Tuesday, August 6, in the following form, as changed by the committee on Form and Phraseology (No. 399):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Article X of Section I of Chapter II of the Constitution, the last two paragraphs of Article IV of the Articles of Amendment, relating to the appointment of a commissary general and the removal of militia officers, and Article V of the Articles of Amendment are hereby annulled, and the following is adopted in place thereof:

Article X. All military and naval officers shall be selected and appointed and may be removed in such manner as the General Court may by law prescribe, but no such officer shall be appointed unless he shall have passed an examination prepared by a competent commission or shall have served one year in either the Federal or State militia or in military service. All such officers who are entitled by law to receive commissions shall be commissioned by the Governor.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 155,649 to 91,686.

THE DEBATE.

Mr. Newhall of Stoneham: My name appears as a dissenter on this resolution. I feel that I should explain to this body why I dissent. I believe that it is absolutely unnecessary to place this amendment upon the ballot this year. The framers of our Constitution placed certain restrictions upon the judiciary of this Commonwealth. They said in the Constitution they should be appointed by the Governor. They went further in their Constitution and said in reference to the militia, — that power which we call upon in case of any trouble which the courts cannot settle, — that the officers who commanded the militia should be elected by the votes of the members of the militia. In the language of the Constitution: "the Captains and subalterns of the militia", — or in the words which we would use to-day, the Captains and the Lieutenants, — "shall be elected by the written votes" of their respective organizations. The original Constitution allowed only those men of over twenty-one years of age to vote in those elections. The fifth article of amendment to the Constitution extended that right to all members of the militia. Now many of us may not realize that the militia force of this Commonwealth within the meaning of our Constitution is composed of all male citizens between the ages of eighteen and forty-five. Afterwards provision was made for the organized militia, and the organized militia is what we have had for some years past, — the companies in your local communities; and from the founding of the Constitution until to-day those officers, the Captains and Lieutenants, have been elected by the votes of their respective organizations. The Majors are elected by the votes of the Captains and the Lieutenants, who originally were elected by the plain privates.

Now how has that worked out? How do we elect our officers of the militia? In early days I imagine that they simply picked out and elected by written vote the man whom they felt was qualified to carry them through some trouble which they might have. At that time, of course, our conditions were entirely different. But as time went on we provided certain restrictions upon those men, so that it would be impossible for a militia company to elect a man who was unable physically to fill the position or who was not capable of filling the position, and it was provided that the Captains and Lieutenants after election should pass certain requirements, that they should go before a board, be physically and mentally examined as to fitness, and if found qualified should be commissioned as Captains and Lieutenants. A few years ago they went still further and they have decided that the men should

be selected from an eligible list, and an eligible list has been established on which a man is placed by reason of his training and education, and only those upon that list are eligible to election.

I want to bring to the attention of this Convention that every militia officer of this Commonwealth who is over in France, unless he received his appointment by going to Plattsburg or by the higher appointments which are made by the Federal Government, was elected originally by the men. When this Convention was called a year ago the men of these companies and the officers were in France or in training camps, and they are there to-day, and no question in my mind but that they will be there, if we put this proposition on the ballot, when the people vote on it this fall.

I have had the honor of serving in the House of Representatives for six years and I believe that every year that I have been there, and for a great many years prior to that time, an attempt has been made to put through the Legislature a Constitutional amendment bearing upon this subject, and I want to say it never received any substantial number of votes. And I say, in justice to those men who are across, that we should not place this upon the ballot at this time. But if we are going to place it upon the ballot I want to be recorded as being opposed to the proposition, because I think it is foolish to submit it to the people at this time; but if the Convention decides to put it on the ballot I hope they will put it on the ballot in a different form from which the committee reported it. I have absolute confidence in the Legislature of Massachusetts; I believe that the Legislature of Massachusetts will continue to allow the selection of officers for the militia companies by a form of election, — provided our militia is continued. There is grave question in my mind if, after this present war is over, we will find an entirely different condition of affairs in this country relative to our military force. I always have been a firm believer in universal training and I believe to-day the people in the country, and the people in Washington, are firm believers in that policy. Massachusetts for years has expended large sums of money for the maintenance of its militia. The last few years we have appropriated in the neighborhood of three-quarters of a million dollars each year. We have erected expensive armories throughout the Commonwealth which the people, the coming generation, have been bonded to pay for. Personally I have been in favor of all those preparations. I have felt that if the country itself and other States did nothing upon this matter, Massachusetts should lead the way and continue to perform the function which I believe the country should have done long ago. We found ourselves when this great war broke out the best equipped State in the Union. We found our militia better prepared than that of any other State in the Union. Two or three other States are very close to us, — New York, Ohio and Illinois, — but there are many States in this Union in which the people have not contributed one dollar toward training their citizenship to become effective in case occasion might require. And therefore I say I have grave doubts if, after this great war is over, the Federal Government will establish some form of universal training where the burden of training the men will be more equalized among all the people of this great country. But if we are going to pass this amendment, and if we are going to put it on the ballot, I hope that we shall

cut off all but the first few words in this amendment. It is very short and I hope that we shall make it still shorter. I am reading from Convention document No. 316, beginning in line 11 where we start on our new amendment:

Article X of Section I of Chapter II of Part the Second; All military and naval officers shall be selected and may also be removed from office in such manner as the Legislature may, by law, prescribe.

If we need any change in our Constitution we have done everything in those few lines. If we continue and put on what the committee has recommended, the latter part which says:

and all such officers entitled by law to receive commissions shall be commissioned by the Governor,

I have absolute confidence that if the Governor is the man to do it the Governor will commission them, and I say it is absolutely unnecessary to use these extra words in our Constitution (Reading):

but no officer shall be appointed unless he shall have passed an examination prepared by a competent commission or shall have served one year in either the Federal or State militia or military service.

What might the conditions be? We might have one of our young men who goes across in this great strife; he might be decorated for bravery and he might come back to this country and he might be discharged on account of some slight physical disability which in a few years disappears, and he has served but eleven months to the credit of the United States or to this State; he is not eligible for appointment except by examination by a competent board, while another man who perhaps has served a year and one day is eligible. I contend that that last wording is entirely unnecessary. Simply pass the first four lines, lines 11 to 14, ending with the word "prescribe", and you have done all that is required. Personally I believe we should not do anything. I think it is absolutely putting to the voters of this Commonwealth something that is unnecessary, something that is covered by the Constitution to-day and by the regulations prescribed by the Adjutant-General. Now I hope that this Convention realizes just what this proposition is. I am sorry that I had to take up any time but I felt I owed this to the Convention. I hope that the whole matter will be defeated, but if it is passed, I hope my proposed amendment will be accepted. I move the amendment in the hands of the clerk, — striking out all after the word "prescribe," in line 14. The words stricken out are:

and all such officers entitled by law to receive commissions shall be commissioned by the Governor, but no officer shall be appointed unless he shall have passed an examination prepared by a competent commission or shall have served one year in either the Federal or State militia or military service.

Mr. Bouvé of Hingham: I much regret that the necessity that I have been under, for many weeks past, of giving nearly all my time outside of this Convention to military duties, and to the raising of money for the men from my town now in the service in France, has prevented the preparation which I should have liked to have given to the explanation of the two resolutions presented by the committee on Military Affairs. They are Numbers 316 and 317, and are so closely related, that present consideration may well be given to both. No. 317 relates to certain powers of the Governor, and will be spoken of first. Let me

read Chapter 2, Section I, Article VII of the Constitution as it now stands:

The Governor of this Commonwealth, for the time being, shall be the Commander-in-Chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power by himself, or by any commander, or other officer or officers from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, or annoyance of this Commonwealth;

The Governor has full power, under this article, to invade Germany at the present time, and without much regard to the National government.

and to use and exercise, over the army and navy, and over the militia in actual service, the law-martial, in time of war or invasion, and also in time of rebellion, declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, which with their ships, arms, ammunition, and other goods, as shall, in a hostile manner, invade or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be entrusted with all these and other powers, incident to the offices of Captain-General and Commander-in-Chief, and Admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land, and not otherwise.

Is comment necessary? Does this Convention desire any explanation of the necessity for an amendment of an article reading as this one does; an article whose meaning I doubt the power of a member to define; obscure, involved, grandiloquent, contrary, if I understand its trend, to the Constitution of the United States in that it attempts or pretends to confer powers upon the Governor to deal with matters which are not within the province of the State? The titles bestowed remind one of those claimed until very lately by the King of England, when, at the time of his coronation, he was named also as King of the French. The language and intent of the article is unworthy of the Commonwealth.

The substitute submitted by the committee is simple and easily understood; it speaks for itself; by it all necessary power and proper authority is conferred in unequivocal language. To it there is practically no opposition. It seems unnecessary to trespass further upon the time of the Convention either for the purpose of calling attention to the reasons for it, or to the propriety and value of its provisions.

Resolution No. 316, as the gentleman who has just spoken (Mr. Newhall) says, practically puts into the power of the Legislature the regulation of the manner of the selection of the officers of the militia, and he objects to it because he says that the acknowledged evils resulting from the present provisions of the Constitution, can be, and have been, gotten around by enactments of the Legislature. If that is true, surely the evils, if not emphasized thereby, have been supplemented by even greater ones; the fundamental law of the land certainly should not be gotten around, evaded, or defeated, by legislative enactments, but where wrong or impracticable, honestly met and amended in the Constitution itself. We have the opportunity, — and we should be especially grateful that it comes at this time, — to elimi-

nate from our military system its basic weakness, a weakness not only admitted by the gentleman who has just spoken, but the bad results of which have been of common knowledge for many years, have been pointed out repeatedly and regretted by the most eminent authorities; have been almost the sole reason for existence of the association in this State whose object is the reform of the militia laws; and have been the prolific cause of the unnecessary and tragic loss of untold numbers of lives of our countrymen in every one of the recent wars of the Republic. That weakness may be expressed properly by the term, "Politics in the Militia," and finds its most emphatic exposition in the election of officers by those upon whom such officers are dependent for the honors and positions conferred; or, as is far too often the case, bargained for, or obtained through favors promised, or social or other connections which have no relation to the matter of fitness, and which practically ignore the serious consequences which so often follow. We often hesitate, and even refuse, to spread before the public matters which have come to our knowledge injurious to the Commonwealth or to some of her institutions. At times it becomes our duty to expose scandals in order that they may be eliminated. It is not my purpose to emphasize conditions well known to every officer, and to a large proportion of the men in our military service, but rather to present them only so far as is necessary for their correction. No one will contradict the statement that in company elections, it not infrequently has happened that practices have prevailed differing but little from those often employed in ward politics. Vacancies have been prolonged until men could be enlisted or discharged, as the case might be, with the object of strengthening the chance of, or weakening the opposition to, candidates for commissions; yes, and the transfer, temporarily, of members from one company to another, with the like object, has been the means of securing the desired result. The enlistment of new companies, and the recruitment of old, with agreements made among themselves by the select few, regarding the officers to be elected and the appointment of non-commissioned officers in accordance with agreements and for activities in securing votes, are facts of common knowledge; the partisan activities of privates and non-coms on behalf of, or against Lieutenants or others, candidates for promotion, and sometimes the personal solicitation of such candidates, have resulted in demoralization and bitterness, in many instances, which it has taken years to overcome. Nor is this state of things confined to the companies. It is quite as true in the battalions, regiments, and, in a slightly different form, in the brigades. Company commissioned officers are actively canvassed for their votes in the filling of vacancies in the offices of Major, Lieutenant Colonel and Colonel, and the response to this soliciting is usually much more influenced by the future probable results to the electors, than by the possible effects of their action on the service. The date of commissions of incumbents of the colonelcies, the probability of their convenient resignations to make room for the timely promotions of other aspirants, and the giving of a turn to each so as to promote good feeling among the several regiments composing a brigade, — even the getting rid of an officer by promotion, to serve the ambition of others; some, or several of these are potent considerations in many elections, while ability and fitness are considered, if at all, as of secondary im-

portance. The testimony before the committee was that the higher the rank, the more apparent the evils. The inevitable results follow, — poor discipline, incomplete and often inaccurate instruction, slack methods of administration, ignorance, subserviency of officers, insubordination in the ranks, incompetency and waste. Contributory to the same evils, not materially differing in its origin, and perhaps worse in result, is the limitation of the terms of officers. It has been asked if this is not a valuable provision as leading to the education of a much greater number of officers ready for service in the day of necessity. My answer is emphatically NO. Outside the regular service very few have the means, time, or self-sacrifice, to anywhere near fit themselves for the exacting and varied knowledge which is requisite to the competent holding of a military commission. Four years of the most strenuous and faithful work is required, with a high standard in final examination, to obtain a Second Lieutenant's commission at West Point. But it may be said: "We are not looking for professional soldiers, but for men for an emergency, or to use temporarily in the event of violation of law."

Here are some few of the titles of the books which are on this table before you: "Infantry Drill Regulations", which treats of the close and extended order drill required of every officer by every State board, and by the United States, and if not strictly followed, deprives the Commonwealth of financial aid from the Federal authorities. It teaches the necessity of leadership, the means of controlling men, the use and handling of firearms, the matter of encampments, the makeup and protection of convoys, the combat attack, defence; ammunition and its supply, intrenchments, artillery and cavalry support; the kitchen, water supply, hygiene sanitation, — the ceremonies so dear to the lay heart, yet so comparatively unimportant, — of drills and inspections. A thousand things in this little book, packed with information without a tolerable familiarity with which no man is of any value whatsoever as an officer; yet there is matter therein which years of experience are not sufficient for complete absorption. Here is "Guard Duty, U. S. Army". Every word must be known by the most inexperienced officer; it requires months of study. And it does not even touch the great and supremely important subject of patrols and protection by guards in the field. This is the standard work on "Cooking", required as a text-book, with which all officers are supposed to be familiar. Should any officer be so ignorant as to be unable to see that his men are properly provided for, and that the provisions are properly prepared? Here is "Field Service Regulations, U. S. A.", treating of that which must be taught every officer, — or he must retire from the service.

There would be no profit in my taking more time of this Convention to even read the titles of the books which lie on this table, a thorough familiarity with each of which should be absolutely necessary to the commissioning of even the lowest officer; and I may add, the several boards really base the examinations, upon which depend the holding of commissions, on their contents. These examinations, however, are made purposely easy, and sometimes are little more than farces, and mainly because few of those who appear before the boards would be able to pass, if even a tolerably high standard was required.

All this relates to the simplest military knowledge, and no man

can attain it who is looking to his men for the popularity which he hopes will carry him into the next higher office when there is an opportune vacancy. To fairly fill his present position requires unflinching faithfulness, study and self-sacrifice from the most patriotic motives. But to take their minds from their duties and add another to the usual political activities in which we Americans so constantly indulge, we have provided another, and a most pernicious one at that, in the enactment for the forced retirement of Brigadier Generals in five years, and Colonels in seven years. If a General has reached some degree of competency, and is possibly of some value to the Commonwealth, he nevertheless must get out; the time of his retirement is eagerly kept in mind, and for from one to three years previous to the auspicious event, wires are laid for the succession. Officers in the regiment are canvassed assiduously by prospective candidates, and every officer in the several regiments becomes actively engaged in preparing for the coming upheaval. Politics pervades the several commands, with well-recognized demoralization in many, if not the majority of cases. How about the result to the military and the public? Read over the list of retired Generals and Admirals and Commodores in this Commonwealth during the past 50 years, and form your own opinions. To how many of these men would you trust the lives and health of your sons? Well, the new General is chosen; now comes another contest in the regiment from which he came, and a fresh pulling of wires; a new Colonel is to take the place of the one promoted; a new survey of the personal advantages to be derived by the electors, from a choice not arrived at by consideration of the best interests of the regiment, but of other best interests. Then comes the thing repeated in the election of a Lieutenant Colonel, a Major, a Captain, Lieutenants. It is no fancied picture. Open the statutes of this State and read what they tell of the almost constant reorganization of the militia; every few years, and in a majority of cases with little alteration in the provisions, but with a saving clause in a number of cases, whereby it is not necessary to hold new elections of officers, and in others where it is. What is the inference?

Again, one of the reasons for maintaining a military force at a large expenditure for pay, armories, offices, rifle-ranges, rifle contests, stores, etc., is to uphold the civil government in case of defiance of the laws, — of mob violence, rioting, destruction of property and lives. Gentlemen, how many of your officers chosen because of their being "good fellows", or for any and all the reasons of everyday occurrence, do you think have an inkling of their rights and duties in such emergencies? I have no hesitation in answering that for this most important service, with the great responsibilities involved, and the strict limitations properly imposed by law, only an infinitesimal number ever have given a thought to the subject. They are for the most part absolutely ignorant of the duties which they would be called upon to perform under unusual, but always possible crises. And this inevitably must be the result of the choice of officers in conformity with the Constitution as it is. Ask General Sweetser about the situation and the possibilities during the employment of the military in Lawrence in 1912. It was fortunate for this Commonwealth that a lawyer as well as a military officer, and a man of coolness and common sense, happened to be in command at that time. Once more. This system

puts constantly on the shelf officers who have attained to at least some degree of efficiency, and provides others who oftentimes have little or none. It is as good as securing a considerable number of reserve officers ready to be called into the service in an emergency? Theoretically, yes; practically, no. Many of those thus forced out of their commands are retired with a rank too high for employment under any probable demand; others deprived of their connection with the activities of the service lose their interest, and still others, and almost all, having no particular incentive to keep up with the constant changes in military science and practice, and having little opportunity to do so, soon become of little or no value to the service, even when men of experience are needed. The present contest in Europe, in which vast numbers of our men are engaged, and for which others are preparing in our camps, furnishes more than sufficient proof of every one of these assertions. How many National Guard officers are being called, or permitted, to train and lead any portion of the recruits so urgently in need of instruction? Few, very few, have kept up their studies; they are not up to the jobs, and the government does not want them, and will not take them. Even more, and emphasizing everything that has been said on the matter of qualification under the present system, is the official record recently given out by the Secretary of War, of officers sent back from France for incompetency. The number runs into the hundreds already. And it is a safe guess, and an open secret, that a very large proportion of these are officers chosen throughout the National Guard, generally, through the nefarious system of elections by the men. Undoubtedly many of these discharges, also, are of those whose knowledge is obtained wholly from a three months' forced training at some camp of instruction, but who are absolutely without experience in handling men, — the experience so absolutely necessary to the making of a good officer, — only to be obtained by years of service, and to which, to a large extent, we are indebted for so much that is valuable in the National Guard; for in spite of all the faults of the system, to the enthusiasm and public spirit of large numbers of both officers and men, working under many discouragements, and under a system whose defects they keenly felt, this Commonwealth and this Republic owe a world of gratitude. We at least can be proud that our National Guard is and has been, at least during the last twenty years, no "tin soldiery."

The cure has been attempted many times, and in various, but ineffective ways. The Constitution provides for elections in the creation of boards with powers of requiring after election standards prescribed by the Governor or by the Legislature. They get around the Constitution by indirection, and it is doubtful if it is legal. There is nothing in the world to prevent that man, turned down by such a board, from being reëlected and reëlected over and over again.

Now let us look into the history of the militia of Massachusetts. I am limited by the rules of the Convention to thirty minutes. It will be impossible to cover the matter in that time, but I will do the best I can.

No army in the world can be administered as is that of Russia at the present time, and be effective. We talk about a democratic army. It is a mouth-filling expression. It effects just what is intended by those who constantly employ it. It is done to help along politics.

The quicker we get rid of the idea that the army is a branch of the government, the better. The army is no branch of the government. It is a part of the police force, enlarged, under the name of the army, for certain broader purposes, but at all times its purpose is the carrying out of the will of the people, expressed in the laws, and by the people as civilians. There should be no possible question of politics in it, and there was not in the early days.

Let us go back to Miles Standish, the first soldier of Massachusetts, and one of the most effective. It is understood generally that he was hired. He was not chosen by the six or seven men who went out with him killing Redskins. He was selected and employed by the Plymouth authorities because he had been a soldier in Europe, — a rather famous soldier, — something of a soldier of fortune, it is said. The Colony employed him to act in its defence, because he was the most efficient man who was available. There was no politics in it. There was no selection by men who received for their votes a promise from him that he would make some personal return for their favor. Nothing of the kind. These first soldiers went out there in the employ of the Colony, and under Miles Standish, because the Governor and those in authority selected him and appointed him for that purpose. That was practically the way the military was carried on by the Colony, and the province; and when it came to the great war of 1675–6, and King Phillip threatened to destroy the whole outfit, some of the biggest soldiers were Church and Underhill, not chosen, not a bit, by those who gave them a written vote, but selected for their ability; and General Winslow and others in the same manner were appointed to carry out the wishes of the civil government.

So when it came to Louisburg and its capture from the French, the best soldiers in the Colony and the province were appointed for the purpose, because they had the required ability to carry on a military expedition, and for no other reason that we can discover, — without owing anything to anybody. You know, gentlemen, — I have got along faster than I would like, — you know what happened when the Revolution came. You know what happened in the three French wars. The Colony appointed its best men to lead its armies into Canada. They did not have elections, with possibly some exceptions, of which, however, we have no information.

Mr. Herbert A. Kenny of Boston: Before the gentleman passes from the biography of Miles Standish, I wish he would announce that he was an Irishman.

Mr. Bouvé: He ought to have been if he was not. There is some dispute about the birth and considerable obscurity about the early life of Miles Standish. I believe that it even has been said that he was a Turk, captured and held as a slave by the Turks for some time, but we always thought that his parentage must be Scotch or Irish.

When it came down to the Revolutionary war, what happened? The alarm came, and fifty-five companies from different parts of Massachusetts marched to the Lexington alarm; fifty-five companies, organized and prepared under the laws of the Colony, under some of the most efficient men who ever have seen service on this side of the water, many of them under men who had experience in the three great French wars.

Mr. Talbot of Plymouth: I should like to ask, assuming that the

great war is on next November, if he thinks it is hardly fair to put a question concerning the militia on the ballot.

Mr. BOUVÉ: I hope to cover all those points. I do not mean to say that there is any intention of unfairness, but it is hardly the time to interject the question, I think. I will try to answer it later, and I think I will answer it to the gentleman's satisfaction.

When it came to the Revolutionary war, who were put in command? Who commanded at Bunker Hill? I am aware of a dispute about the command at Bunker Hill, but there is no dispute about old Israel Putnam holding and defending a large part of that hill; Israel Putnam, an experienced appointed officer, who had held a commission in the British army, elected by nobody; and Stark, a veteran of the Braddock campaign; Gridley, an accomplished engineer, who laid out the defence work of the patriots. These men were appointed to do the work for which they were designated and fitted, and the idea of holding an election entered no one's head.

Who became General of the whole army? George Washington, not elected by his Generals or other subalterns, but a lifelong soldier who had held the commission of a Royal Governor, had been an educated engineer, and who had taken part in the French war, and who was appointed for his efficiency, and his appointment was acquiesced in by the northern Colonies because of his ability and efficiency. And so it goes. And it went practically in that way until the failure of the militia, partly through the election of officers, in certain parts, compelled Congress to establish dependable force by the establishment of the Continental regiments, where men were appointed, as they are in the regular army now, for their effectiveness and ability, and because they could lead their men, — at least, they hoped those men could be led, — to victory, and that they could be looked out for in their health and in every other way, better than by men who were chosen because they made promises of appointments.

So we went through. And when the Revolution was over and the French Revolution had instilled all sorts of wild ideas into people all over the world, had made it practically socialistic from one end to the other, and people were tired of war, the army was disbanded, and Stebbins' light guard and Falstaff's ragged regiments began to spring up, so that in my little town of Hingham, of 2,000 inhabitants, there were five companies, some with twelve men, some with twenty-five and so on, existing outside the law, and sometimes inside of it, and electing whom they pleased; and if the time sufficed I could give you some very funny instances of the militia as it existed for many years.

But you know what followed. We had the war of 1812 with that sort of a force, elected officers, promising their men this, that and the other, half organized, — "Oh, a volunteer force is just as good as anything in the world."

What was the result? We had just one victory on land in the whole time that we were fighting Britain, — just one, — and the rest of the time we were whipped out of our boots. That is the plain fact. Our Capital was taken and burned; and we a great country, three, four or five million, I do not remember how many we had then, and with an army numbering five, six, seven or eight times that which the English landed on these shores. We were beaten in every engagement, excepting at sea. Excepting at sea! And at sea there was no election

of Paul Jones or of anybody else. The navy was recruited and disciplined for the purpose of carrying out the wishes of the American people, and they carried them out in good shape, and that has been the history of the American navy from the beginning to the present time. The "embattled farmer" of the Revolution is a splendid phrase, but the embattled farmer, unless he had been led by experienced men who knew how to discipline the force, and owed nothing to the men who served under them, but did not know that their duty was to carry out the laws of the Republic, would have failed utterly. And in order to carry it out, we not only had to take the best of our own men, but the Revolutionary army was filled with experienced foreign officers. You remember at once Baron Steuben, Lafayette, Pulaski, and a large number more. Those were the men who helped our men to discipline the army, and it was put under Baron Steuben by George Washington to organize and discipline the army, before we had a chance of success.

Mr. LEONARD of Boston: I understand the resolution here is the issue between the appointive and the elective system. Now, the gentleman has referred to the land forces in the war of 1812. I should like to ask him whether those officers, the Federal officers, in charge of the men of the land forces in 1812, were elected or whether they were not appointed by the Governor?

Mr. BOUVÉ: The land forces of the United States during the war of 1812 numbered, so far as the Federal forces were concerned, a mere handful. The great number who fought in various places, or did not fight, were State troops, electing their own officers.

Take the Mexican war, — and I dislike to speak about it because I know you do not care to hear it. General Kirby Smith, a distinguished officer of the Confederacy, says they were dreaded like death in every village in Mexico, they fled in every action in which they were engaged; and it was only the little regular army, commanded by General Scott and General Taylor, that carried our arms to the successful conclusion.

Get the history of the Massachusetts regiment, gentlemen. Read it and read of its coming home. Read of how it looked and how it appeared. I should like to stand up for every Massachusetts man. Loyalty to the soldiery goes with me right to the bottom. I have been in the service of this Commonwealth and of the United States for more than forty years. My grandfathers on both sides were Revolutionary soldiers.

I want to refer once more to the civil war, to emphasize what I have said. The soldiers of the civil war at the first were the volunteer militia of the several States and their officers were elected officers. You gentlemen some of you are old enough to remember the history of that terrible struggle; others have heard about it. To you who have not had the time and opportunity I propose to make a few statements, without fear of any single contradiction by any book of history. The men who went into that war were, of course, representative men. They were splendid men. They were from Massachusetts and New York and Rhode Island and Maine, and men from all the northern States. They did as well as they knew; and Big Bethel and Ball's Bluff and Bull Run, and scores of other battles for the first year, —

yes, the first two years, — are the record of their terrible and bloody failures; and Harrison's Landing, with its 16,000 men taken sick at one time, — and it could be multiplied by every camp in the whole south, — is the record of the inefficiency of the officers commanding them. And, gentlemen, it was only the handful of regulars, of the regular army of the United States, that enabled us, with a better insight, and a better organization, to save this Union. Just as fast as possible those officers were eliminated; and, Constitution or no Constitution, when John A. Andrew appointed the officers of Massachusetts' troops he did not have any elections, but he appointed them to their various offices. It was then that such men as Tom Edmands and General Osborn and General Bartlett, and thousands of others, partly trained, trained in our Massachusetts Rifle Club, and a few others, and working during those early years of the war, — Arnold Rand and his brothers, John Washburn of Worcester, I will not recapitulate, — it was those men, who disciplined their men, and did not say: "I know I promised you this, that and the other office if you would vote for me, and I will give it to you," but "Do this and that and so". It was only then that we began to win victories, only then that we began to have an intelligent care of the men who were fighting for the Union. That is the history and it cannot be denied or belied; and so it came to the Spanish war.

Gentlemen, I hate to speak of myself. I have kept from speaking in this Convention because I thought others could speak better than I could and as long as they could I did not care to speak, but I have got some personal experiences which perhaps must be brought in. I served as Adjutant-General of the third brigade of the third division of the first army corps, commanded by a civil war regular General, and I saw what went on. At Chickamauga we had 10,000 men taken sick at one time, and thousands of men died, — thousands, — where there were only killed in battle a few score. Why? Because the camps selected were improper, because the officers in command did not know how to take care of their men; brave officers, devoted officers, good officers in some respects, but officers who had been elected by this, that and the other command, and who were unfit for their positions. They had to be eliminated, largely, even in the short time that that war lasted.

Homer Lea, one of the best authorities in regard to the civil war, in his "Valor of Ignorance," a famous book, shows that in the Union army from 1861 to 1865 there were more officers discharged and cashiered for dishonor and incapacity than there were killed in battle, more discharged without stated reasons than died from disease; fearful as the record of death from disease was, the casualties from dishonor and incapacity among the officers during the three years were greater than those on the battlefield and from disease put together. That is the history as recorded in the United States returns for casualties.

Mr. CREED of Boston: I do not like to interrupt the line of thought, and I am not dissenting or indicating any dissent from his views; but I should like to ask him, knowing he is in full possession of all military information at the present time —

Mr. BOUVÉ: Not at all, sir. I wish I was.

Mr. CREED: — And for the purpose of the record, if the 101st

United States Infantry, under elected officials, — our old Ninth Regiment and his own Fifth Regiment, — was not the first National Guard Regiment to land on the shores of France?

Mr. Bouvé: Evidently I have got to take up the matter of the 101st Regiment right away in order not to be, — I say it with all courtesy, I do not object excepting that I was going to get to it, — in order not to be constantly interrupted. Nobody could say more about the 101st Massachusetts in laudation than myself. I served many years with the Fifth Massachusetts. I served on the Border as a field officer with the Ninth Massachusetts and the Fifth and the Eighth; and frequently, as field officer of the day, had to inspect every command and everything connected with them; their food, their clothing, their discipline, their actions; and nobody would say more, and more favorably, than I would of our National Guard Regiments. I do not want to have to take up that question at the present time fully, but I am going to say this in response to what the gentleman has asked. They were among the first to go, as they were among the first to go to Mexico. But, gentlemen, the chaplain of that regiment, my old friend, spent a large part of last Tuesday night with me, and a large part of the day. I have a son there fighting in that regiment now, or would be, if he were not in the second hospital, and going to be sent to the third, and finally to the sea with the hope of saving his life. He has been at the front. I am proud of the regiment. It is my old regiment. God knows I would be serving there myself if it were not for a miserable law that forbids a man, no matter how well he is, to serve if he happens to be a certain age. [Applause.] I had three of my sons on the Border under me in my battalion, and those three sons are in the service of the United States now. [Applause.] Nevertheless, gentlemen, I doubt, — and it is on statements sent to me, not by my son, but by officers from the front, and which the chaplain confirmed, — I do not think there is a single Captain in that regiment who is in command of the force which partially elected him and with which he went out; and I know of the five Lieutenants in Company K, my own company, that I commanded for fifteen years, there is not a single Lieutenant who ever received a single vote from any single member of his command. Now I think perhaps that partially answers the question. I will answer it a great deal broader by and by if I have time.

It was only after the elimination of many of the officers who were elected, who went out in the early days of 1861, and of the Spanish War, so far as we had anything amounting to great service, — and it is the same to-day, — that the real discipline and efficiency of the troops was effected; effected by officers who owed nothing whatsoever to politics in their commands.

The militia of Massachusetts was perhaps the best in the Union. I am disposed to consider so and think so, and brag about it, and hope so. It was not much superior to that of Minnesota, of Ohio, of Pennsylvania and New York, but I think it was a little better, and I always will swear it was whether it was or was not. But I served with all those on the Border, and to those who think service on the Border was a play matter, I only wish they had been there. It is true we had 100,000 men at El Paso, of which 80,000 or 90,000 were four or five miles back from the Border, doing their full duty and ready to invade

Mexico. But the Massachusetts brigade and the Minnesota troops were on the Border, against the wire fence, up against the monuments, and we were fired on about every night, and our regiment was fired into to the extent of 38 shots before I could get from headquarters to my own battalion one night. It was a real mimic war but we did not give it that name. I only say it because I am speaking with earnestness and with some experience, and I will defy anybody to meet any single statement that I make here, because it is based every time on the knowledge of the men who were there and the official reports.

The militia had improved greatly from the time of the Spanish War to the time of the Mexican War, — greatly improved. It had improved because we had been serving constantly in great maneuvers with the United States troops all over the country, and had seen the United States discipline, and those officers had been eliminated who were good for nothing. The Massachusetts troops were very good troops, but they were not so good but what Captain Hanna of the regular army, a relative of our former Senator from Ohio, told us that we were not anywhere near ready to invade Mexico and that we would not last ten days, and that was the general opinion. I thought it was ridiculous. I resented it. I did not resent it to him, — that would not have been safe. But I resented it; but before I was through the service I agreed with him. We were disciplined and drilled, drilled in the army regulations, the little book, about a half an inch thick, — the Bible of the troops, — it is true, but little compared to what an officer must know to be fit for his command.

I have brought those books to show you. I wish I could read them through. Of course you would not listen to them. But there is not a book there but what every Second Lieutenant ought to be thoroughly familiar with, and there are a lot more.

We are supposed to know all about cookery. We are obliged to go, — some officer of every company, — during the cooking of the meals of the men, and see how it is done. There was rarely a night on the Border that I was not in the cookhouse at twelve and two o'clock at night to see how the vegetables and meats were kept and what preparations there were for the next meal; and I was a major and was not obliged to do it, but we had to have an officer present at every single meal, and to know how to cook it. We have a book on taking care of leather, so that the Government will not be cheated by its neglect. We have books on the care of clothing. We have got to know it all. I could carry that on the whole afternoon. We have got to know map reading in a scientific way. We have got to be able to build rough bridges.

Talk about guard! The guards that you can see in these camps, a pretty exhibition, good for discipline, why, gentlemen, it is nothing. The real guard duty is the out-guards, where every post has to be selected by the good judgment and experience of a good soldier, for every post opens the way to the enemy to get in and to help destroy you. The advance guards! A few men go ahead, — men go miles ahead, alone often, or in small bodies, — to guard against surprise or to keep the enemy more than a cannon shot away from your troops.

I shall be answered by some of you, perhaps: "Well, we do not have a militia at home to do all those things; we treat of a body at home, to take care of the State." Are you going to spend $900,000 or

$1,000,000 a year not to have men prepared when war comes to meet the exigencies of that war, which may come to your own borders any time? Are you going to spend a vast amount of money to build armories and have boards of instruction and schools, such as they have at Charlestown, and spend, as I say, millions for play, for "tin soldiery"? Not a bit. If you are, stop every cent of appropriation; organize a little mounted constabulary of two or three hundred men and save your money. But if you propose so to organize your State forces, officered by men who can take care of their men, who can lead their men because they are scientific soldiers, who know how to avoid typhoid fever, trench fever, and every other danger coming to the men, and who will sacrifice themselves not only in the advance, — not only in the extended order, with every man exposed to death on the field, but who will look out for the men night and day, will watch them, guard them, care for them, and be considered, although disciplining them up to the highest point, as the "old man," and as their father, — that is the way the officers of the regular army and the officers of the National Guard, when they have been six months or a year in service, are regarded. But they are appointed officers by that time. The inefficient have been eliminated; others are changed around, as they are in the 101st Regiment, — what is left of them, — so that they will have charge of companies which did not have any hand in electing them, that they may carry out the discipline of the army as laid down by experienced officers. That is the case not only in the 101st, but in every other regiment that has gone to the front.

But let me touch upon another point right here, gentlemen. At home, — at home, — there was not one man in ten, as a rule, who was under the elective officer who was in command over him. Why, gentlemen, from the time a company is formed, right straight on, there are men dropping out for all sorts of purposes, and the records show that at least one-third of the militia force drops out every year. So in the course of two or three years there is hardly a man in any company that helped elect the officers in command, and it is fortunate it is so. This matter of election is rotten at the beginning, it grows rottener as it goes up. I know what it is from an experience of forty years, as I have said. And, gentlemen, I want to say, — I will say, because my company will bear me out, — I never made a promise of any sort to any man for his vote as an elected officer of the militia, and I generally had a unanimous vote. Unfortunately that is an exception to the general rule. As a rule, that is not the case, and it grows worse as it goes up higher. Why, every time there is a Major to be elected or a Lieutenant Colonel, or a Colonel, there is a regular Ward Zero political fight to see how the men will vote, and to persuade them to vote for certain candidates. And in the regiments it has got so in Massachusetts that the miserable and useless office of a Brigadier has been swapped round so that one Colonel should get it, and it was agreed who should have it next time when that Brigadier went out, and who should have it third; and it was calculated ahead just as much as the Republican party has been calculating for years who shall be Lieutenant-Governor, so that we shall have a Governor picked out for the succession. [Laughter and applause.]

It has been demoralizing. Colonels went into the Spanish War who were totally unfit for their position, and had to be eliminated, as were

a lot of other officers. The history of some of our own organizations is more than worth studying in this connection. It would prove very enlightening and I venture to commend to you some reading on this subject as applicable to our own Commonwealth. Now, Colonel Logan has been an experienced soldier, he has been studying the question for years and years, and he is a good officer, and we all are proud of him. But is that the case with all the officers of that command? Look in the papers. Write to some of your friends there, — if they dare answer you, — and see what you will get in the way of facts.

This matter of electing officers, — how far does it go? At home we do about as we fancy about our medical attendance. I am not going to name the different kinds of doctors; I could not. There are lots of them. But you can choose any man that you please for a doctor and have him treat your wife and children and yourself, — from a horse doctor up to a regular physician, and so on. But the men in the service have not a word to say about their doctors, — not a word. They are appointed. The most important thing of all, that which has the care of the health of the men, is appointed, and properly. Are the quartermasters chosen by the men, those who get their supplies for them, or the supply officers who provide the provisions to keep the army fed? Not a word of it. Not in the militia, nowhere, not a bit. Is the judge advocate, who tries them, chosen by the men? Not a bit. He is appointed, and appointed because of his supposed or real efficiency.

There should be a democratic army. It should be democratic in this way: Every man in this country should have the opportunity to enter the ranks and be the highest officer that the army holds if he deserves it. And that democratic army exists. It exists to-day. Your army is democratic, democratic in opportunity, but it is not democratic to the extent that politics shall enter into it, and that men shall be appointed sergeants and corporals and Lieutenants, and so on, because they have done something to please the eighteen-year old boys who are helping elect them, — boys whom you would not trust to elect a constable, who cannot vote for town clerk, who have nothing to say about the taxes assessed upon your property; boys who go to a high school or an academy or a college, and certainly, although eighteen or nineteen or twenty, cannot say a single word about the teachers over them. Boys who can go into a fire department, in some cases the police department of a great city, and cannot vote for their chiefs, are allowed to go in and vote for men who shall take care of them in sickness and in health "till death do them part," as the wedding ceremony says; allowed to go in and, for favors rendered, elect officers who are to take care of them.

As one gentleman said: "Why ought we not to have a choice by the men of the men who lead them into battle?"

Phil Sheridan never was chosen by anybody. George Washington never was, Ulysses Grant never was, General Pershing never was. No, sir. And, gentlemen, as to this leading into battle. A company numbers 250 men, and, under the new regulation, with an interval of three yards extended in battle line. Why, no officer can lead them into battle in the sense that you think, excepting in the short charge that really takes place, and only at the end of an engagement. The officer has got to be behind his men, — he is in just as much danger, —

where he can see both ends of the line, and by signals direct those men. [Applause.]

Debate on the resolution was resumed Tuesday, July 16.

Mr. CREED of Boston: When we took our recess last Friday the gentleman in charge of the report of the committee was about to conclude a most interesting and instructive address. I know for myself I am absolutely unfamiliar with the details of any military question and the burden of proof is on the gentlemen of the committee who advocate this radical change in the Constitution, and as the gentleman who understands the subject was about to conclude his remarks, I ask unanimous consent that the gentleman from Hingham have fifteen minutes to further enlighten this Convention.

Mr. BOUVÉ of Hingham: I recognize the courtesy of the Convention and thank them for it.

When I presented a lot of books here the other day I wished to explain that it was because I desired to give the Convention some idea of what an officer not only should know, but is expected to know, and if he does not know he is unfit to hold the lowest office in the volunteer militia or in the army. Their contents treat of that with which an officer must be familiar in war and in peace, without which he is entirely unfit to have the lives and health of his men and the interests of the Commonwealth of Massachusetts committed to his care. To what was said at that time, I desire to add. I am aware that it will be said: "What, is it necessary that so much should be known in times of peace, at which time the militia is mainly called upon?" It is not mainly called upon in peace. It very rarely is called upon in peace, but when it is so called upon, the officers need to be more accomplished, — to know more, if anything, — than in time of war. What officers are fit to hold their positions who do not fully realize the great responsibility entailed when the necessity for enforcing the laws by employment of the military arm arises, and fully comprehend the limitations which both the law, tact and common sense demand in the application of that power in domestic affairs?

Why, gentlemen, if we carry out our orders and at the same time violate the civil law, we are just as liable as though we disobeyed those orders, and rightly. It is our business to execute the laws as the people make them; it is the duty of an officer to implicitly obey the lawful orders of his superiors. He is under serious liability if he obey unlawful orders, no matter from whom received. If, on the contrary, we disobey orders because we judge that they ought not to be obeyed, when really the officers giving us the orders are in the exercise of their legal functions, we are punished for that. A military officer catches it, — or may catch it, — coming and going. As a matter of fact, in war and in peace, the employment, force demands success, and it demands in domestic affairs especially, that that success shall be attained only by doing exactly right under the law. And if we do not do right, or even if in doing right, we fail of expected success, or if we fail through a lack of common sense, or even if we fail through using it, we are equally liable to punishment. The only rule for public approval, the only possibility of defence for his action, by the military officer, is success. We must do what our officers command, and we must accomplish also what the public expects. And there can be no

missteps and no excuses; even explanations are scarcely tolerated. I repeat, the best and most experienced and most common-sense officers are needed in peace as well as in war, and quite as much in one as in the other.

Referring once more, for a moment, to the great strike in Lawrence of a few years ago. If you were conversant with the history of that in its military side, gentlemen, you would know that some of the superior officers were not allowed to exercise their proper commands there by General Sweetser, because however good they might be in tactics, in infantry regulations, he was fully aware that they were not safe to put there and have charge practically of enforcing the laws without so overstepping that they would excite a general disapprobation from the people of the State. You need the best men, and not those selected by any possible promise or whim.

Do you know that a third of your army, — the army that fought for the Union, — was composed of boys sixteen to eighteen years of age? That is a fact. Examine the statistics and I think you will find it on the whole larger. And yet as the fundamental law of the Commonwealth stands to-day, boys who would not be allowed to vote, as I said the other day, for selectmen, who could not choose their chiefs in the fire department or the police department, have their own lives and the lives of their comrades in their hands because from some fancied liking of a man they use political methods and get him elected to a captaincy or something else. How many enlisted men dream of these responsibilities?

Let me give you one example of what happened on the Mexican border. A company of the Fifth Regiment, my own old command, was supposed to elect a Captain of the machine gun company. There had been a man who claimed that he was elected here, but there were a large number enlisted and an attempt was made to reorganize the company and there was a fierce contention among the non-commissioned officers and men as to whom they should elect. Much against his will, Colonel Logan was made the presiding officer by orders from the Adjutant-General's office here, and he told me that he regarded it as entirely improper that he should hold an election. He attempted to do so, however, under the orders received, but the United States would not recognize it. It was not going to have any more elected officers there. So the old officer nominally held over while another man was put in command, and when they came back they had an election, when they were discharged from the United States service, and the man who could command the most money and raise the most money was elected. The machine gun company began to go to pieces. When it went into the service again it was abolished and the officer who received the election proved an utter failure.

I do not mean to say that elections do not sometimes produce excellent officers. Of course they do, very many. But the principle is fundamentally wrong, and it is evaded and has been evaded for a great many years by a great many commands, and by methods already partially described. Let me give you one more instance. There is an organization that always has its ballots printed, the candidates being selected by the commanding officers; the ballots are passed by the sergeants right down the line and they are followed by another sergeant who picks up those ballots in a hat and there is no chance

for anything else. That does not matter, anyway, for it meets the unanimous approval of that particular unit, and has for a great many years, because they recognize the evils and the demoralization that takes place from elections of officers.

Now you may ask in regard to this amendment: "Why not accept it? If the Legislature can establish boards with power to provide that officers should be selected after a proper classification, why will not that result in the required efficiency?"

What power has the Legislature to allow this man to be voted for, and to forbid that one?

Do you believe that when every man has a constitutional right to be voted for, it is proper for the Legislature to provide that only a limited number, or one out of a limited number, can be voted for? Suppose a man outside of some list of individuals selected by a board is elected, do you not believe that any court in the land would decree that he was chosen under the Constitution? We cannot get around the law and the Constitution in those ways; we ought not to. If we could in one matter, what is to stand in the way of our doing it in a great many?

Again, is it not true that boards have existed which, after election, threw down men as incompetent? Certainly it is, perfectly true, and the result often, perhaps always, is good. But shall we get round the Constitution in that clumsy and illegal way, when, by amending it, we can give proper authority to the Legislature to prescribe the methods by which officers shall be selected, and the conditions upon which they shall be commissioned? The present method is a mere subterfuge. It is argued that this is properly a legislative matter; that bugbear has been worked here to the limit. I am not a bit afraid of this Convention's doing legislative work if necessary. It is doing legislative work every day. Everything we do is legislative. I have heard it said: "Well, let us do it on general principles and not go into details." I do not shrink from details where they are necessary to protect the people of this Commonwealth; every amendment that has been passed has involved going into details. You have prescribed how things shall go on the ballot under the I. and R.

Everything else that this Convention has acted upon favorably has entailed some provision for details, just as much detail as this provision which says that a man shall have served or shall have had a year's experience before he can hold a military commission in the Commonwealth. I would not leave it to the Legislature; I would not leave one bit to the Legislature if I had my individual way. I would say, the Governor, like the President, shall appoint men whom he selects and have them confirmed by the Senate or by the Council. That is the true way to do it, in my opinion.

Mr. KILBON of Springfield: I notice in reading the text of the amendment, in line 16, the provision, "but no officer shall be appointed unless he shall have passed an examination," etc. I wish to raise the question why that word "appointed" is used instead of "commissioned." It seems to me, to take it at first sight, that the Legislature shall provide for the appointment, whereas the form in which the amendment stands does not require commissioning, although it evidently is to be expected and hoped for.

Mr. BOUVÉ: I should like to ask the gentleman if he refers to the amendment or the resolution.

Mr. KILBON: I refer to the amendment reported by the committee, in line 16, "and all such officers . . . shall be commissioned," etc., "but no officer shall be appointed"— whether the intent of the amendment and the uniformity of its phraseology would not be improved by using the word "commissioned" instead of "appointed."

Mr. BOUVÉ: I do not know as I am prepared instantly to answer that question in full. There are a great many officers appointed in fact, as I pointed out the other day, — the officers of the law, the officers to provide uniforms, to furnish the food for the service, when required; most important of all, the medical officers. All you gentlemen can choose your own doctor, but in the army you have got to take whoever is appointed without any selection on your part. I am sorry to say that I perhaps cannot answer the question of the gentleman satisfactorily. It seems to me at this moment that the word "commissioned" in other places in the resolution covers the whole matter and that the appointment is intended to apply to all officers. Perhaps there may be something to what the gentleman has said and that there can be an improvement in phraseology.

Now there is a very important thing to consider. Does this Convention realize that the United States by its last military bill has forbidden the States to maintain an armed and organized militia excepting in time of war? That is provided in the last military act of Congress. What is the Governor going to do in time of peace, without an organized force such as we have had for these many years? Why, by the notification and the request by the selectmen of a town, the mayor and aldermen of a city, the sheriff of a county, or because of knowledge which he has himself of dangerous conditions, on request he has got to issue a precept to the mayor or to the selectmen to require so many men in their city or town to be called out; and in the bungling way that always must be done, they will call out a lot of men and order them to go to a certain place. Then they must make a list and send it in to the Governor. Then the Governor has got to organize that body of men into troops and companies and regiments, if necessary, before he can do one single thing, and then he has got to order an election, and that in the face of the fact that the town may be in the hands of a rioting mob. There is where you are, under the present law.

Now what have the committee proposed? Not, in my opinion, the very best thing by any means, but they intend, in view of the conditions that have existed, to put into the hands of the Legislature the power to make proper laws for the appointment and commissioning of officers. And that is as far as they have gone. The Legislature, under the Constitution, if it is so amended, may provide against the certain weaknesses and dangerous factors of the prevailing conditions. It perhaps will not, but it will possess the power which it does not have now.

Now one other word. The gentleman who spoke the other day (Mr. Newhall of Stoneham) told of the hardship of having some of these brave young men who are fighting for their country and for freedom coming back here and not being able to be commissioned if this resolution passes, until they have served a year. That is perfectly true if those men have had the qualifications, and have not had the experience necessary to fit them to be good officers, — and it ought to be true. There is many a brave man who deserves well of his country who is not fit to command his fellow-soldiers merely because

he has been brave and done his duty. Why, the other day when Chaplain Rollins came home, he brought as his orderly, a young man of my own company, and he was received with an audience of 1,200 in the little town of Hingham, a great audience in Hull and another in Cohasset and was made everything of, and rightly, — he had done a brave deed, but he was not qualified to hold a commission, and no one would have disclaimed the ability quicker than he.

Mr. McCarthy of Marlborough: As a member of the committee on Military Affairs of this Convention, it seems to me that a sufficient amount of time has been taken with this question and it seems to me that a much less amount of time could well have been taken; because, in either event, — in the event of this Convention changing the present system or that the present system of providing officers of the militia remains, — I cannot for the life of me see that there is going to be any effect whatever by this resolution, because there is not any militia now. There has not been a militia in any sense for the past two years, and it seems as though after the war there will be even less of a State militia than there is now. The State militia for two or three years has been in the process of being nationalized, and it goes without saying in the opinion of everybody who knows anything about military affairs whatever, that after this war there will not be any State militia; it will be a National organization governed by National laws. That is the reason I believe that this Convention is wasting time in considering this matter.

As to the merits of the election or appointment of officers I would be inconsistent to go into it after making the statement I have, but I do want to refer to one fact, and that is this: Within a year every militia outfit in this Commonwealth has gone overseas. In the case of the militia outfit in my own city, every man who was in the company, with the exception of two or three who were disqualified because of physical disability, went along. Now it seems to me that those patriotic young men who were willing to go out and go across and fight the battles of the world, — I believe that those men, as I say, who were willing to do that, are fit and capable to elect their officers. There is far less politics in the military service than many people imagine. My experience in the militia proves to me that the average young man in the militia is far too proud of his officers, he is far too proud of his Captain's efficiency and ability and is far too pleased to witness that Captain's efficiency and ability and to have other people witness it, to elect a popular blockhead. The Captains and Lieutenants are elected by the men of the company; the other officers are elected by the officers of the line. Now, as I say, knowing the personality of the average man in the militia, I believe he is far too proud of the efficiency of his officers and too anxious to have an efficient man at the head of the company as a source of pride to him, to elect a man who was popular and did not know his business.

Some reference has been made to the 6th Regiment in the Spanish war. I had the honor to be a member of that regiment and I witnessed a disgraceful happening which occurred in regard to the head of that regiment. It seems to me that such things as that could be better forgotten and it seems to me that it is ill-becoming for any one to hold up an entire regiment of officers and men because one man happened to be incompetent in a certain sense.

As I say, the committee on Military Affairs considered this matter at great length, — considered it at more length, I believe, than it was entitled to, — and it seems to me as though the whole proposition is right here, to leave the matter as it stands and let it be taken over by the National government, which is certain to occur after the war, and that will dispose of the matter for all time.

Mr. MARSHALL of Worcester: The remarks of the speaker in the second division (Mr. Bouvé) have impressed me greatly. His years of experience have entitled him to speak well on this subject. But I think we have forgotten the subject under discussion. We have been told the whole history of the militia of this country. The question at issue is the subject of election of officers in Massachusetts. Far be it from me to go into the history of the militia, but as a former member of the militia of this State I feel in duty bound not to let this question go by without saying a word for our troops, the men who are now overseas. Some of you men may not know that we for years have been preparing to train our young men so that politics necessarily would not enter into the training of an officer of the militia. No less a man than Merch B. Stuart, Brigadier General assigned to Camp Devens, has said that Massachusetts had inaugurated the start of what should be the training-school for citizen soldiers, and yet perhaps most of you men here, representative men, never have heard of the training-schools for officers of the Massachusetts militia. It started not at the behest of the leaders of the militia in this State, but rather at the request of the enlisted men who wanted to take advantage of their opportunities to become officers. Started by men of the old 2nd Regiment, this school met at Charlestown each year. Every fall, beginning Labor Day, a three-day encampment at Framingham opened the year's course. Monthly these men put in 24 hours on a week-end at the Charlestown armory under competent United States Army officers. Correspondence school methods were adopted, weekly tests were had, ending up with an eight-day encampment. Every company or unit in this State was allowed to send one man to this school, that man being selected by the Captain as the man most likely to be an officer of that unit. And why is not that fair? Why is not that democratic and the way to show the men who are fit to be officers?

Politics? The militia is the only place in which I have not found politics. I found it in my college classes; I found it in my fraternity; I found it in organizations; but in the militia, those men are too proud, as the gentleman said who preceded me (Mr. McCarthy), of their organization. Any of you men who have been in a militia camp and have seen the spirit of rivalry in which every man thinks his company or battery the best company or battery in the regiment, — why, it is to smile to think of those men electing a "good fellow." True, perhaps there may have been exceptions, but did you men forget, as you read in last week's paper about the man, a member of last year's Legislature, who started in Battery A as a private and now has been selected as a Brigadier General of artillery? I refer to Brigadier General John H. Sherburne. [Applause.]

I wish you men might come with me to Worcester and look into our organizations in that city, — you men who have heard of the inefficiency of the militia. Perhaps the militia of this country has been

inefficient to some extent, but let me tell you that the militia of Massachusetts stood over all, and the militia of Massachusetts was not inefficient. Let me read from an article briefly, — I shall not bore you members, — in the New England Magazine for April, 1915, on "The Efficiency of the Massachusetts Militia," by Adjutant-General Charles H. Cole. In this he states:

> The criticisms recently made on the militia of the country with respect to attendance at United States inspections and rifle shooting do not apply to Massachusetts. The average attendance of all the land forces at the United States inspections held during this winter was 91.6 per cent. The percentage of militiamen of this State who have qualified with the rifle during 1914 was 84 per cent.

And that before the Mexican trouble, that before our war, that a standard year of peace-time militia, — 91 per cent; 84 per cent, — and then shall we indict our militia, the men who have gone overseas? Shall we allow this radical change to be made without saying a word for the militia?

Perhaps some of you men may not know that our professor at Harvard (Mr. Hart of Cambridge) has his research students going into volumes that are little sought and little seen by the average layman; and our debates perhaps may be classified among those books, and some day some student of militia is going to look into these volumes and these debates and say: "Massachusetts allowed her militia to go without a word being said in its favor." We must face the facts.

Now as to Worcester. The men who could pass an examination, such as a commission might get up, officered most of our companies. We had G company of the old Ninth, now the 101st, officered by a Captain, Thomas F. Foley, a police patrolman; one Lieutenant, William P. Fitzgerald, a mechanic; the other Lieutenant, George A. Corbin, a post-office clerk. And what has been their record? Do you know that company G of the old Ninth holds the banner record of this country? For several months before the Mexican border trouble there was 100 per cent attendance at their weekly drill. What did these men go after? Were they paid? No, it was at a sacrifice, giving up their leisure hours in their devotion to the service without any hope of material reward. And let me say as a former militiaman that when you hear of the State pay for annual encampments, it is bosh. They are entitled to it, but 99 per cent of the men in the State militia never have received a day's pay for going into camp all this time. That goes into the organization treasury to build up their organization. These men do not get pay even when they give up private employment to go into summer camp.

Now what of G company? Those men have gone, — that policeman Captain, who perhaps could not have been able to pass an examination, has gone over. To-day he is acting Major. Both of those Lieutenants are now in command of companies. In our battery in Worcester the Captain, — elected, it is true, but elected without politics, — the Captain is now a Lieutenant Colonel. The Captain left Worcester at the beginning of the war.

When called upon to elect a Lieutenant before going to the Mexican border these men showed their respect for capable officers by electing the only enlisted man who had graduated from the Massachusetts training-school for officers.

And later vacancies were filled capably by the election of their

stable sergeant, Robert Vail, whose ability to care for animals on whose condition the fate of the men often rests, was a determining factor.

And the next vacancy was filled by the election of a private with only one year of experience, but whose technical education had satisfied the men in the battery that the recruit was their best qualified leader. May I not point to these examples to show that the members of the militia are anxious to secure the best possible officers, despite the attempts to make us believe that political qualifications are the only basis for selection?

Are we going to stop this system in the militia in favor of one in which the appointing power will be vested in one man, who of necessity must be unable to know the merits of those who seek commissions in the service? Let me continue.

The school-house janitor, who in twelve years worked up from a private to a first sergeant, and then when an election was held just before the war broke out was elected Lieutenant, a short time ago leading the men from one of the Lawrence batteries, — it is true, not our own Worcester men, but nevertheless well trained, — was decorated by General Pershing for bravery under fire. That is the elective officer.

Let me quote to you from the article by General Cole again:

> The United States Drill Regulations state that "The excellence of an organization is judged by its field efficiency." Massachusetts troops are second to no troops in this respect. They have participated in more field maneuvers than troops of any State in the country.

Now, gentlemen, that is the theme of my remarks this morning, — my little talk. It is that the Massachusetts militia is not inefficient, however much you may say, and yet you want the appointive system. You forget that Massachusetts, so far as I can find, is unique. All the other militias have their appointed officers, we have elected officers, and if we lead the militia why forbid this system? Why, the greatest politics, — it is not your men, — and every big officer, every high officer in the State who came before our committee told us, it was not your men who go into politics. It is your intelligent, well-educated officers who, because they cannot be elected Colonel, are going to disrupt the whole regiment. It is among the officers that politics will be found, and among officers all through the country.

The most disgraceful lobby of a military nature in the history of this country took place two years ago while the Hay bill was being pushed through Congress. And who was it? One of the Adjutants-General of your States, — a man who had been appointed, — and by an Adjutant-General who was a brother of Senator Borah, but who could not secure the vote of his brother because his cause was so bad, yet they have thousands of dollars, and they are the ones who are conducting the lobby.

Are you going to take the militia out of the hands of the men who go in there, mere workmen perhaps, but who go in there with that splendid spirit, feeling some day that they may be officers? Remember you cannot take away that incentive. If we had half the interest that the business men and the professional men now take in all your rallies and your bond meetings, if we had that interest at all shown in the militia, if the security leagues had gone out to help in building up the militia around the country, — who knows but we would have

had an army that Germany would respect? They thought we were bluffing. Who knows but what we would have been ready for this great crisis? Yet the business men said: "Do not join the militia." Men were discharged from their positions every year, until it got to be such a disgrace that in the Commonwealth of Massachusetts we had to pass a law saying that in the case of any man who is discharged because of duties in the militia, — why, his employer will be subject to a fine.

That was the history of Massachusetts only in recent years, — and was not this understood before? Why, the young men were not taught to respect even the uniform of our militia. Now we have the war coming of a sudden and everything is for the army. These men have been going about, going three and four nights a week, without thanks, for our cause. We did not realize they were there. That is where the trouble is. It is not with the militia and their politics, it is not with the army, it is not with the War Department, it is not with Congress. It is with the American people, who have not used their influence, who have not taken the advice of experts who told them we needed an army. We disregarded the militia. Let me ask how many representative men in this body, how many men ever have secured one, just one member, for the militia? And then you would let it die without a word being said for it!

The members of the militia always have had an honorable history in this State. I regret that this question has come up; but you must act now. You cannot say the War Department has taken it over. A hundred years from now who knows what will happen? And then our State Guard, moreover, must have service. Do we need this legislation? I say to you, as a former member, and as a member expecting to be assigned to service again, I say, do not close the door of opportunity.

Recently the United States army adopted a policy like ours for the first time in the history of this country. Enlisted men, a certain percentage of the enlisted regular army, are going to be admitted into West Point. They are just starting out to take advantage of the lessons they learned from the "West Point of Massachusetts," our training-school for officers; they see the good of it. They are going to send a proportion of the regular army into West Point each year. They are opening up. Are you going to close the doors? A man perhaps may take a ten-hour or five-hour course at Harvard, and has the right social connections. He is qualified for a commission; you know that is what people think. It used to give great social prestige around the country to be a militia officer. That is what we are coming to if this goes through. They are going to have a theoretical course. But the man who passes his little theoretical examination, taking a five-hour course at one of our educational institutions, — is he going to lead those men properly in maneuvers? He is going to be a laughing-stock. And if he cannot lead those men, if that organization goes down, because the officers cannot lead the battery or the company, those men are going to lose interest and are not going to secure recruits, and recruits are secured only by enlisted men. Do not close the doors to an incentive to the enlisted man, because if you do you will stop the doors to getting recruits to your State Guard, and you need recruits as much as did the militia. [Applause].

Mr. CHANDLER of Somerville: I move the previous question.

Mr. HERBERT A. KENNY of Boston: The only committee on which I received appointment at the hands of the presiding officer was the committee on Military Affairs. I suppose that was the last thing that the president thought of, but that committee on Military Affairs gave great attention to the so-called Military Efficiency Association. Our distinguished friend from Hingham (Mr. Bouvé), the chairman of this committee, spoke at great length on the history of the Massachusetts militia. I do not think you can add one word to what the delegate in the second division has said. I did not wish to interrupt him when I asked him whether Miles Standish was an Irishman or not, but I wanted to get credit for the Irish race. Ever since the beginnings of this country, commencing from the time of Miles Standish down to the distinguished gentleman from ward 5 (Mr. Lomasney), the Irish have been doing their duty.

It is all very well for the distinguished gentleman from Marlborough (Mr. McCarthy) who is seeking Congressional honors, and it is all very well for others who are seeking political favors, to get up here and argue the election of militia officers, but if this entire Convention had listened to the testimony before that committee on Military Affairs they would be convinced that it would be nothing but organized murder to allow these companies to elect their officers. If you read the history of the battles of the world you will find that the greatest mistakes of those battles were either by placing a battery, the misplacement of a battery, a battery not arriving on time, or the technical training of those handling the guns not being such as to enable them to handle them with efficiency. It takes six years to learn to command a battery. The battery is the most potent force in the army. The idea of taking any man from ward 8, or a more distinguished ward, which is greater than ward 8, ward 12, and allowing a man to come from my ward to an election of a man to handle a battery, when it takes a man six years of constant study in mathematics to handle it!

And now these demagogues rise in this Convention and think they will pander to the passions of the people by saying militia officers should be elected. I subordinate my politics to the distinguished chairman of that committee. Gentlemen, I want to read to you just one moment, if the President does not knock me out with that hammer, just one selection from the Military Efficiency Association, which was only a fragment of the entire volumes presented to us, and I am sorry my distinguished friend from Marlborough was absent from the committee so much or he would not have made that speech. On Leaflet No. 4, — a Boston Democrat wants to get this on the record, and one of Irish birth, — the Military Efficiency Association says:

> The immense value of the highly trained officer is admirably demonstrated by what is perhaps the greatest weakness of the German army. On completing their service, German soldiers who have passed through the active or first line army are turned over into the reserve army. The actual reserve of the first line army, that is the extra men poured into the first line cadres in time of war, belong to a different and virtually untrained category, the ersatz. The trained reserve men are used as a homogeneous mass in what are known as the reserve divisions. Now the men themselves may be considered, two or three weeks after joining the colors, in every way as good as the first line. They have regained their proficiency in drill and tactics, while physically, being a couple of years older, they are stronger and better

men. And yet, as is well known, for fighting purposes they are immensely below the first line troops in value. And for what reason? Simply that the officer corps does not correspond in quality with the troops. The officers are left-overs of the first line, together with improvised officers hastily put in for war purposes; and this constitutes a fundamental defect, almost impossible to overcome.

It is the trained officer that makes the value of the troops. To serve as an officer often involves for a man of adequate ability a considerable sacrifice of time and of money. In the Swiss democracy, this service is compulsory, a duty which no citizen may decline. The cost of training officers is high. Yet it can fairly be claimed that to rid the Constitution of its obsolete provisions about election would enable the Commonwealth at a cost not much greater than that incurred at present, to develop the training of its militia officers along correct lines, and thereby to raise immensely its efficiency, while setting an example for the other States of the Union, and the Federal Government itself.

Mr. Broderick of Waltham: It is with much hesitancy that I rise to address the Convention on the subject-matter now before us and I shall be very brief in what I may have to say. I was surprised upon learning of my appointment as a member of the committee on Military Affairs, as I never had served in the active militia of the State and never had given military matters any study, or any special study. But when the committee assembled, and I found among its members several who had served many years in the army of the Nation and in the militia of the State, I concluded that, in the exercise of your wise discretion, Mr. President, it was your desire, in selecting that committee, that there should be among its members, as well as those who love war, some who love peace.

However, no one can regard more highly than I do those who have the courage and who are willing to make the sacrifice to endure the hardships of military camps, and risk their lives in battle in defence of the country. Realizing the limitations of my knowledge of military affairs, what I have to offer as a member of that committee is not intended in the way of argument, but is testimony based upon the information which I have obtained from my own personal inquiry and investigation among members of the militia.

As a member of the committee, my interest was enlisted first when it was proposed to change the Constitution, taking from the privates of militia companies the privilege to elect their Captains and subaltern officers. When a change is proposed I believe that it is a plain duty which devolves upon those who suggest or urge the change, and upon those in whose power it may be to make the change, to ascertain if possible the views and wishes of those who will be affected by the change proposed if it should be adopted. Acting upon that principle, I talked with a great number of men, most of whom are now in the army of the United States, but who previously served in the different Massachusetts militia companies. Without a single exception every man I talked with was opposed to a change in the Constitution which would withdraw from the private the privilege of electing the Captains and subaltern officers.

Mr. Walker of New Bedford: As the member of the committee on Military Affairs whose name appears on document No. 316, I wish to state to the members of this Convention that in the committee I spoke in favor of the elective rather than the appointive system for our militia officers, and the reason my name is on this measure is because we rushed down at the last minute to put it in and there was nobody there to sign it but me, I was told to go ahead and sign

it. The reason I signed it was because the clerk of the committee, the gentleman from Worcester (Mr. Marshall), was away at a military training-school. He was clerk of the committee and I was appointed clerk in his place. That being the case, I thought I had to sign that report. That is the reason my name is there; and I, for one, believe in the elective and not the appointive system for militia officers.

Mr. Bryant of Milton: I hope that we shall get more clearly before us the real issues in this discussion. The competency of the militia is not in issue. Everybody admits the fine work that the Massachusetts militia always has done. Neither is the question whether we prefer appointment or election of officers directly before us. The measure which is offered here by the committee, and which has the recommendation of the majority of those who were present at the last meeting, and I think of the last speaker, is simply that we leave the entire question to the handling of the Legislature of Massachusetts.

The reason that we find the Constitution in the present condition is historically perfectly clear. I am not going to try in the time that is given me to trace the history of why it was so, but I will state in a few words that when this provision was put in our Constitution the military system, as everybody knows, — military matters, — were very, very different from what they are to-day. What was needed then was a man who would grab his gun down from the mantelpiece and rush out to repel an attack of Indians or to repel the British. Up to 1780, with the exception of the British army, no enemy had been faced who knew anything about military tactics, and the only thing that military tactics included was the ability to shoot straight and to conceal oneself behind a tree as much as possible. I do not think that the British army itself manifested any very great amount of military tactics, certainly not at Bunker Hill, where it chose to advance up a steep hill against a foe behind breastworks, when all it had to do was to camp down on the Neck and starve them out. It could have done that in 48 hours, but it chose the old system of going shoulder to shoulder up the hill. The men needed for officers at that time were men who would inspire confidence in their neighbors and arouse enthusiasm for whatever enterprise might be on hand.

But just for a moment compare the different conditions to-day. What an officer has to know to-day must be familiar to all of us from merely reading the newspapers. There are problems of transportation, problems of feeding and of taking care of men in the open. Nobody had to take care of men in the open in 1780. Any man could take care of himself anywhere at that time. Now they take men out of the stores, out of professions, out of an indoor life, and they do not know how to take care of themselves in the open, and the officers must do it. Our memory of the Spanish war is sufficient to clinch that. The number of men who died of disease in that war may be said to be a disgrace to the United States.

But that is not the question. Personally I do believe in appointed officers, I admit it, but that is not the question. The question is: Shall we continue to tie the hands of this Commonwealth, so that even if the Legislature thinks appointed officers are best, still we must go back to 1780 and say, "No, you cannot have appointed officers?" Or, to put it another way, is the system which is in force

in the United States, and in every other civilized nation in the world, so dangerous that we must forbid it by the Massachusetts Constitution? There is not a nation in this world where officers are elected to command its troops. In the most democratic of the armies, which is the French army, the officers are appointed. In no army in the world are the officers and men closer together than in the French army, but all those officers are appointed. No other system is possible from a military point of view.

Now, are we going on record here, in this Constitutional Convention in the year 1918, as saying that the system under which the armies of the United States, France, Germany, England, — every army we know about, — are regulated, is so dangerous that we are going to say: "No, it cannot be carried on in Massachusetts?"

Mr. Brown of Brockton: I am in favor of the amendment. I have watched the militia of Massachusetts. I used to be in it. I may be an old fogy but I like the old ideas.

There is a vast difference, I hold, between what the last gentleman spoke about and what I am going to talk about in this matter. He is talking about the army; I am talking about the militia. Now, the resolution is going to delegate a most important constitutional power which the State has held; it is going to put it over to the Nation. It is going there, I have no doubt about it. I like the old style; I do not know but what we are going back to it. Just in the very moment when you are talking about what you are doing to disarm every nation in the world, you are very much concerned for legislation that will demand that they shall be armed. What are you doing toward disarming the nations of the world? The forefathers were afraid of delegating this power over to the militia. The gentleman from Marlborough (Mr. McCarthy) showed just what may happen; just give some men a little bit of power and see how they lord it over everybody else. We sent our men down into Mexico, to the borders of Mexico, and the militia Captain's wife could not speak to the private's wife, — both friends. And this in a representative Republic, a place where all men are supposed to be free and equal! Here we are, legislating, as the Legislature has been doing all along, to take power away from the people and put it into the hands of the officer.

Do the people come up here and ask you to do this? Have the people discovered anything wrong about the militia? The whole trouble across the water, — the great war, — is because a man thinks he was appointed by the Lord God Almighty, when in truth he is appointed by himself; he is the fellow kicking up all the row. Do you suppose if he had been elected we would have had any such trouble? Of course we would not. I dislike the idea that a man cannot have his own musket over his own door. Time was when every man was supposed to own a firearm. On a certain day he was supposed to go with it to the training field. They were not always of the same kind, the uniforms were not always the same. When men organized they paid for their own uniforms. The militia became voluntary organizations.

I like the question of the militia, and I should like to see coming again the days when the officers of the militia constituted a real Ancient and Honorable Artillery Company. I am speaking of the

militia, not the army. There is an essential difference. There are constitutional requirements that every man shall do his duty as a militia man.

Mr. Herbert A. Kenny of Boston: Does the gentleman want an individual army at the present time, — forgetting aëroplanes, wireless, telegraph and submarines, — the same as he would at the time of Bunker Hill?

Mr. Brown: The gentleman has missed my point. I am not talking about the army, I am talking about the militia, and I am saying that the militia has passed into the army. Under present proposals no longer are you going to have the militia. You might as well strike out the word altogether. You are organizing an army. I have no objection to it. An army, — sure, — but the army is not the militia. The militia was formed because people were afraid of an army. The Republic partly originated in a quarrel over the soldiers quartered in the streets of Boston. Later the militia met the army. When the militia did meet the regular army, the regular army went down, in spite of the fact that they had been trained in the arts of war for years and the militia never had been trained to shoot except at a bird or an animal, but they could shoot straight and did shoot straight, and did not want the army. I believe in the militia.

Mr. Webster of Haverhill: I had no thought of imparting my views to the Convention on this subject, but I fear in view of the remarks made by the honorable gentleman from Worcester (Mr. Marshall) that a vote in favor of this measure may be construed in some quarters as a criticism or attack upon our militia, past or present, and especially, sir, as I should have great regret if such a motive were attributed to me, I want to say, without any attempt at emotion, that I suppose there is no one here who has greater admiration for, who has any greater pride and pleasure in, the glorious record of the men whom we have at the front, — my old outfit and their comrades, — than I have. We all know they are doing well. They are splendid men. They are, officers and men, all that could be desired.

It is of no avail to pick out the particular instances, where companies have elected men of surpassing efficiency, or, on the other hand, where they have elected failures. The simple question is: Under which system are we likely to get a greater proportion of efficiency? I believe, sir, that it is not by the elective system. I was never, strictly speaking, a member of the militia. I went directly into the United States service at the outbreak of the Spanish war, but my service was with a militia regiment and under elected officers for the most part, and I have had occasion to form a pretty strong opinion upon the desirability of the company's electing their officers. In many instances they did well; no appointing or examining board could do better. There were many companies where they did not do so well. It seems to me, sir, that in such a highly technical business as the military, the examination of candidates for office should be made by men who supposedly may possess higher qualifications than the candidates themselves in that very matter of technique. However splendid the quality, the purpose and patriotism of the boys in the ranks may be, — certainly no one would question that less than myself, — however plain that may be, they cannot be supposed to be as good

judges of the ability of officers, especially when a large proportion of them, perhaps holding the balance of voting power in the ranks, may be recruits. It is as if you should have your examination for admission to the bar conducted by the scholars of the law school rather than by your State Board of Bar Examiners. They might do well, and if they have had a chance to observe the man they might occasionally do splendidly. But, as a matter of fact, in all those things we want as judges men who are supposed to know more about the practical details and the technical demands that will be made than do the candidates themselves.

The honorable member from Milton (Mr. Bryant) said there was no instance of an army which elected its officers. I hope the honorable member will pardon me, sir, but there is an example so recent and striking that I marvel that it should have escaped his attention. In its last days the army of Russia elected its officers, and voted upon pretty nearly everything they undertook. The result, in the crushing and disintegration of the country, I attribute to that fact and not to national prohibition, as some people think. [Laughter.] Democracy and military economy do not mix, regrettable as it may appear to some of us. You may use that as an argument against the military if you choose, but you cannot combine them and get efficiency in military affairs.

Mr. NEWHALL of Stoneham: I want to apologize to the members of this Convention for taking the time of the members, but I feel, as I opened up on this proposition, that I should say a few words in regard to this matter.

The gentleman from Hingham (Mr. Bouvé) has taken the history of the United States from the Revolutionary war and followed it down through. Now, when was this Constitution written, or when was this provision for the election of officers placed in the Constitution? It was placed in the Constitution in 1780. That was some years after the Revolution had started, and when the Revolution had had its blackest day. After this proposition was passed by that Constitutional Convention, and accepted, you will see that the Revolution was cleaned up pretty quick. I am not for a minute going to offer that as the reason why the Revolutionary war changed. The gentleman from Hingham was of the opinion that this had been a rotten system since its instigation; and I contend that the people, the framers of the Constitution in 1780, were in a tighter position than we are to-day, and when they put that in the Constitution they knew what they were doing.

Now I am going to take him down to the war of 1812, which he cited. He says the armies of its land force proved an absolute failure, but whenever we were on the water we were on the winning side. The militia of Massachusetts never left Massachusetts in the war of 1812. The only time the militia of Massachusetts went anywhere was to a couple of little places where they landed down here in Orleans and such places as that on the Cape. The militia of Massachusetts as militia never went to the war of 1812. The elective system of Massachusetts did not cause the defeat of the armies of the United States in that war.

Take it along down to the next war that he referred to.

Mr. O'CONNELL of Boston: The gentleman refers to the militia of

Massachusetts leaving Massachusetts in the war of 1812. May I add this to what the gentleman said: That that was due to the decision of a judge of the Supreme Judicial Court, who advised our Governor that the President of the United States had no right to call for the militia to go out of the State.

Mr. NEWHALL: I do not intend to take up any length of time on the war of 1812. You all know its history, that it was unpopular in Massachusetts. I am not going to waste time on those little technicalities. The gentleman from Hingham said that it shows in the war of 1812 the reason that we did not win land battles practically was the fault of our elective system, — that the Massachusetts officers or militia were the cause of it. That is what he leaves with the Convention. I am going to take him down to the next war, — the Mexican war. I am going to tell him there was not a Massachusetts regiment of militia that went into the Mexican war. There was one regiment under Caleb Cushing, who went down there as Massachusetts volunteers and made a good record for themselves, but the militia of Massachusetts did not enter into the Mexican war.

As to the civil war, the elected officers in the militia of Massachusetts stood far above the appointed officers of the other States of the Union, and I am going to stand up for them in that war.

I am going to pass through this quickly and get down to the Spanish war. When he made the statement that the camps in the south were selected by certain parties he did not tell you that they were selected by appointed officers. He did tell you that the doctors or the surgeons or the quartermasters were appointed, and he should have said that they were the men who selected the camps, that is, they were in charge of the men who were in the southern camps, and that is why the men had so much sickness. I had occasion to serve in one of those regiments. The regiment in which I served, — the commander of that regiment, — was the man to whom he referred. I know something about how that man received his election. I know if he had been appointed he would not have had the trouble to get his job that he did. He had hard work to get his job but he finally got it. If it had been under the appointive system that man would have got his colonelcy right off, and if he had stayed in camp in the south you never would have heard about it, but when he went to Porto Rico he lost his courage. He lost his courage, and that is about all there is to that proposition, but the result would have been the same if he had been appointed rather than elected.

I am not taking an attitude against this proposition, I simply say it is unnecessary. The gentleman from Worcester (Mr. Marshall) has pointed out the whole story. The Federal government is going to take over this whole question of the militia. If we want to put upon our ballot this fall a couple or more amendments to the Constitution, for the sake of making people think they are getting their money's worth, why, let it go to the people, and they will vote to accept them, and that is all they will amount to, because there never will be anything done under it. I contend that the Constitution when written was correct in practice. I will agree that the times then were not such as we have now. If every man who left Massachusetts as an elective officer, who received his position in the militia as an elective officer, and is now in foreign lands, is doing his part in making an honorable

record for Massachusetts, I contend that you would have a different style of man. It is far from me to say that you may not have men just as good, but I will say you would not have men any better if you had the appointive system.

Mr. Bouvé of Hingham: I do not believe that I shall take the time of the Convention for any personal defence; it would seem that a reply is hardly needed to the insinuations of members that I attack the Massachusetts militia. I have been a member of the Massachusetts militia for very many years, and the record of my service will bear out the statement that I have been elected, almost unanimously, to every office for which I have been, or well could have been a candidate and, it may be added, without the solicitation of a vote or a promise of any kind, expressed or implied, and I have three sons who have served with me, as well as many personal friends, for a great many years in the militia and in the army. Because I point out the defects of the existing law, which is so injurious to the force, has cost so much money and a vast number of lives, and has caused experienced officers of the United States Army to constantly work for its abolishment, and in spite of my desire to improve and strengthen and perpetuate it, I am met by this stale and ridiculous charge of attacking that which has entered more into my life and has absorbed more of my interest than anything else.

Nobody could say more for the Massachusetts militia than I, but that does not and will not prevent my insisting that the most ineffective, most wicked and most injurious provision of our Constitution, in relation to it, is that which prescribes that the enforcement of our laws, under extraordinary conditions, the defence of our homes in the event of invasion, and the health and lives of the men upon whom we must depend, shall be subject to the results of political activities, in which personal friendships and influences, and personal ambitions, with the usual partisan methods, enter and control.

We held many a session extensively advertised, without obtaining the testimony of a single person in favor of the present system. Not a single person came up and advocated the election of officers. The Massachusetts Military Efficiency Association, headed by Professor Johnston of Cambridge, a large association, however, had sent out notices to a great many officers, and 50 per cent answered, and here is, briefly, the record in writing:

"Do you favor an increase of training by National aid?" Yes, 60; no, 8.

"Do you consider the election of officers a good system for peace conditions?" Yes, 14; no, 56.

"For war conditions?" Yes, 5; no, 63.

These men making these replies, do so without influence or obligation. They gave impartial opinions, for they were already in possession of their offices and had nothing more to ask.

We have quoted here John H. Sherburne, — Harry Sherburne, we commonly call him, just made a Brigadier General, — and Harry Sherburne told me during the sitting of the committee that he did not believe he should have time to come before it, although he should like to, and that he had altered his mind about elections, in which he formerly believed. Then we had General Sweetser and General Pearson and Colonel Stover, and others, all testifying in the same way.

And, finally, when nobody seemed able to get any privates, the gentleman from Milton asked a private to come up and express his opinion, and the gentleman from Milton did not know what it was going to be, if we can believe him, — and we, of course, all do. That man was Private Brickett, of Company K of the Fifth, now serving as a corporal or sergeant in France. He came up and he said we were working under a very defective system, that he was thoroughly opposed to it, and he gave his reasons at length, answering many questions asked by members of the committee, and those reasons coincided with those which I have had the honor to present; still more, he elaborated and emphasized them.

Mr. Marshall of Worcester: Does the speaker realize that it is insubordination for a non-commissioned officer or enlisted man to publicly criticize his superior officer? May not that account for the fact that the enlisted men did not attend?

Mr. Bouvé: It is no insubordination for a private in the militia to come and testify before a committee of the Convention or the Legislature, and no officer would dare even call him down for it, — not one.

Mr. Marshall: At the time the committee did go to Framingham an overwhelming sentiment the other way was revealed. My brother members of the committee, I believe, will uphold me in that.

Mr. Bryant of Milton: I should like to testify for a moment. I went to Framingham with the members of the committee, and there was not a single man who wanted the election of officers. We saw Colonel Logan, we saw Private Cole, now General Cole, then a private in the ranks, and there was not a man whom I met there or heard of, or heard any member of the committee tell of, who wanted the election of officers.

Mr. Bouvé: I was about to say that myself. We went to a camp of the United States Army, where we really had no right to go excepting as a matter of courtesy, at the urgency of one of the gentlemen who has spoken, who was in favor of the election of officers. We went there and we saw Colonel Logan and Mr. Cole, and we told them the object of our visit; they both said: "This is absurd, obsolete, harmful; we do not approve of elections in the service. We do not believe at all in this coming to this camp to consult with the men. They have given no thought to the matter and are not competent to give intelligent opinions on it." Then we asked Colonel Logan, in order that the opinions of privates might be obtained, — for that was what some of the committee desired, although I am frank enough to say that I do not care what their opinions are, as they have not the slightest idea of the duties and responsibilities of officers, — we asked him to publish it at the head of every company in the Ninth Regiment that the committee would be glad to have privates or non-commissioned officers write to the committee and express their opinions, either signed or unsigned. Colonel Logan promised to comply with the request and subsequently informed us that he had done so; nevertheless, not a single soldier wrote a word to the committee on the subject, — or on any other.

As to these men who are in the field, let me tell you about Company K of Hingham. When it came to the election of a new Captain, there were only eight men able to vote on that subject who were

enlisted originally; the rest were all men who had joined since, and scattered over some fifteen years. Many were members of only a few days or weeks. Any thoughtful, well formed judgment is impossible under such conditions, — and they are the usual ones. After the first enlistment there is a continuous change in the personnel of membership. And that change amounts to nearly twenty per cent annually. Officers are being promoted or dropping out, and any sound judgment, based on even the unstable grounds of long personal acquaintanceship and knowledge of the character and fitness of possible candidates, is impossible. Of the hundred men who served on the Border, there were only about 40 who had belonged to that company for any considerable time before mobilization; and of the 250 in Company K, now composed of men from the old Fifth and the old Ninth, there are only 30 men from the town of Hingham, and I venture to say there are no more from the town that Company K of the Ninth came from. Probably 60 would more than cover the aggregate number from both contingents who had any connection with the service at the date of choosing any of the officers. Moreover, as I said the other day, nearly every officer has been transferred from one company to another, and directly, I am informed, in the interest of discipline, which is far more nearly what it should be, and what it must be, if there is no sense of personal obligation to the men on the part of the officer, and no personal claim on the part of the men for favors rendered. If that is true in time of war, it is more emphatically so in time of peace. I am told, — I do not know how true it is, but it is approximately true, — that nine of the twelve officers, line officers, Captains, are not in command of the companies with which they went out, and by whom they were elected.

I hope the amendment will be voted down and that the resolution will be passed as reported.

Mr. Marshall of Worcester: As to the veracity of my remark that there was an overwhelming sentiment, or any sentiment at all, at Framingham, I wish to state that I went with the committee to Framingham, and some of the members, including the member who has just completed his talk, went home shortly afterwards. Some of us accepted an invitation to supper, and at supper there that night we talked with scores of officers, — before supper and after supper, — high officers and officers of low degree, and these men almost unanimously were in favor of the election of officers. True, of course the two men in that camp who have been named, Colonel Logan and Private Cole, both of whom were then candidates for appointment as Brigadier General in the army, were in favor of the system upon which they depended to secure the honored position which each of them at the time was so actively seeking.

The amendment moved by Mr. Newhall was rejected, by a vote of 34 to 85.

The resolution (No. 316) was ordered to a third reading Tuesday, July 16, by a vote of 99 to 52.

It was read a third time and passed to be engrossed, without further debate, Tuesday, August 6, in the following form, as changed by the committee on Form and Phraseology (No. 399):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Article X of Section I of Chapter II of the Constitution, the last two paragraphs of Article IV of the Articles of Amendment, relating to the appointment of a commissary general and the removal of militia officers, and Article V of the Articles of Amendment are hereby annulled, and the following is adopted in place thereof:

Article X. All military and naval officers shall be selected and appointed and may be removed in such manner as the General Court may by law prescribe, but no such officer shall be appointed unless he shall have passed an examination prepared by a competent commission or shall have served one year in either the Federal or State militia or in military service. All such officers who are entitled by law to receive commissions shall be commissioned by the Governor.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 155,649 to 91,686.

LVIII.

POWERS OF THE COMMANDER-IN-CHIEF.

Article VII of Section I of Chapter II of the Constitution is as follows:

ART. VII. The Governor of this Commonwealth, for the time being, shall be the Commander-in-Chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise, and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel, and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay, and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law-martial, in time of war or invasion, and also in time of rebellion, declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprise, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be intrusted with all these and other powers, incident to the offices of Captain-General and Commander-in-Chief, and Admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land, and not otherwise.

Provided, that the said Governor shall not, at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the Legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the State to which they cannot otherwise conveniently have access.

The committee on Military Affairs, with the approval of the committee on Rules and Procedure, reported, July 16, 1917, the following resolution (No. 317):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

Article VII of Section I of Chapter II of the Constitution is hereby amended by striking out said article and inserting in place thereof the following: — The General Court shall provide by law for the recruitment, equipment, organization, training and discipline of the military and naval forces subject only to the constitutional powers of and in accordance with, the provisions of the Congress of the United States. The Governor shall be the Commander-in-Chief of the military and naval forces, and shall have full power from time to time to assemble the whole or any part thereof, for the purposes of training, instruction or parade; and he may employ the same as occasion may arise, for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws. He may, as authorized by the General Court, prescribe, and from time to time change by executive order, the organization of the military and naval forces, and make regulations for the government of the same.

The resolution was read a second time Tuesday, July 16, 1918, and was ordered to a third reading the same day.

It was read a third time and passed to be engrossed without debate Tuesday, August 6, in the following form, as changed by the committee on Form and Phraseology (No. 400):

Article VII of Section I of Chapter II of the Constitution is hereby annulled and the following is adopted in place thereof:

ARTICLE OF AMENDMENT.

Article VII. The General Court shall provide by law for the recruitment, equipment, organization, training and discipline of the military and naval forces. The Governor shall be the Commander-in-Chief thereof, and shall have power to assemble the whole or any part of them for training, instruction or parade, and to employ them for the suppression of rebellion, the repelling of invasion, and the enforcement of the laws. He may, as authorized by the General Court, prescribe from time to time the organization of the military and naval forces and make regulations for their government.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 155,114 to 84,822.

THE DEBATE.

Mr. NEWHALL of Stoneham: I hope that whatever I may say will not take up as much time of the Convention as the last matter took. I simply want to bring to the attention of this Convention that this amendment is practically a rewording of the present Constitution. Now, if it is the intention of the Convention to put on the ballot questions which simply mean a rewording of the present Constitution and striking out certain sections which are of no avail at this time, I wish to withdraw my opposition; but if it is the intention of the Convention to some time later codify these sections or revise these sections, then I say that this matter should be added to them. If you will go through this particular amendment, you will find that it simply leaves to the Governor certain powers which he already has, and simply strikes out a whole lot of those needless words which now appear in the Constitution. As I said before, if it is the intention of this Convention to put these upon the ballot to show to the people of the Commonwealth that we have acted favorably on some matters, why, all well and good, I will abide by the decision of the Convention; but this amendment practically does nothing, it simply changes the language and strikes from the Constitution certain sections which are absolutely unnecessary and are not used to-day.

Mr. BROWN of Brockton: Years ago you would not find a single Democrat but who would be holding against taking away from the State and delegating to the Nation power which the Nation has not now got. The State reserved certain powers. It was because the State reserved certain powers that you had your Hartford Convention during the war of 1812. So firmly were they of the opinion that the interests of Massachusetts should be protected by Massachusetts men, that in this Hartford Convention they were ready to secede in order to maintain their rights.

I am talking about the State militia, not the army. We are entirely confusing the army and the militia. We are going to lose what

the forefathers thought was the safeguard of the people, — a well-regulated militia. A man was supposed to have full right to keep and bear arms. The court has determined his limitations. Now a man may bear arms only under certain conditions.

Mr. Bouvé of Hingham: I should like to ask the gentleman who is speaking wherein the proposition submitted to the Convention by the committee has anything whatsoever to do with the keeping or bearing arms by the people. I will add that the committee under no circumstances would favor taking away any such right, and this does not take the right from them in any way.

Mr. Brown: It is in this way, — that no man was to be forced to leave this Commonwealth without his consent. Nay more, you have got in your Constitution that inasmuch as a man has joined society and joined government he owes to that government his service, — or what? Or an equivalent. There is plain language in this Constitution. They had but one idea in mind. It was to protect the rights of the individual, not to permit the rights of the individual to be imposed upon by the powers of government.

I feel rather deeply on the subject, to see these landmarks passing away. If it is of any interest to this Convention, I certainly was interested in the experiences of the gentleman from Haverhill (Mr. Webster). So I want to say that when I was 13 years of age the war broke out. I was in the old Eliot School of Boston, and I was thrashed regularly once a week for sending in my composition in the form of a newspaper whose name I had changed from "Volunteer" to "Conscript," and advocating State rights. I wanted a Franklin medal, I worked hard over extras to try to get it. I fell just outside of the ranks, and knew I was doing it simply because I held to that idea. It is a question whether you can centralize great power permanently in this Nation and have the Nation stand. If it can, then you are at variance with all that has preceded us in history. Can you delegate all these many State powers which have been withheld up to the present time? Can you delegate those permanently to the Nation and still live? I hope so; but I hold that Massachusetts should not delegate any more power than she has delegated. You do delegate power by this resolution. No longer does there appear anything about the power of the Governor, that is, so far as it may relate to having any voice in the reason for which they are sent.

Under the pressure of the present conditions, under the demand that democracy must live, I with everybody respond "Yes." All over this country you are finding men who are responding "Yes." Previous to this war, and right on the edge of it, up to the time of it, the labor organizations were declaring that, in case of any trouble, they would not manufacture any munitions of war, that whenever there was an attempt for war they should leave it and the rest of the members should support them at their expense. That was pending in the international meeting of the organizations. In passing, it was German delegates that held it off. Labor is against forced military training. The bearing of arms, except in case of war, should be voluntary. A man should go into the army because he likes it, because he believes in it. I am not objecting, as I say, to the idea of the military training, the old idea that every man should have a gun, that he should know how to use it, that he should be subject to call,

that in case of necessity, invasion, anything of that kind, he should give his service or its equivalent, as it was placed there.

Even while I am speaking I realize that I am not going to alter the result, but at least I can go on record as entering a protest at this time against the permanent delegation of power.

Mr. HART of Cambridge: Is the gentleman aware that if he were to make a public speech outside of this Convention in which he made the statements that he has made here with regard to the authority of the United States to summon any citizen of Massachusetts or of any State into the army and to send him out of the country he would render himself liable to the provisions of the espionage act of the United States?

Mr. BROWN: I realize that the gentleman again has entirely misunderstood me. As to the right of the government of the United States to summon a man into the army to defend the United States I raise no question. We are talking about militia in times of peace. Militia is not supposed to be for the time of war. There are two different bodies here.

Mr. AVERY of Holyoke: I cannot understand just what this discussion is about. I should like to ask the member from Brockton (Mr. Brown), for whom I have very great respect, whether he favors the adoption of the committee's report or its rejection. [Laughter.]

Mr. BROWN: I am against the changing of the Constitution. In these matters that are so far-reaching, at a time when it is not essential, as has been pointed out by a member of this committee, I am against cumbering up the ballot with any more questions than actually need to go down. I think this matter is entirely unnecessary. There is not anything that has prevented you from getting along fairly well under that Constitution. There has nothing arisen to show why you should rewrite that section. That is why I am advocating the idea of letting it remain, because I see in it a delegation of a power that is reserved to a State at a time when there is no necessity of delegating that power. I am attached to the idea that the safety of the government is in the balance which is maintained by a certain sovereignty of the States under certain conditions. I am thinking of what is left after the war. I am against the idea of centralizing power. As to what is taking place now, there is absolutely no other way to do what is to be done than the way followed up to the present time in the matter of this war. My voice never has been raised against it. I am for the President. I am for all powers you may give to him. Labor is that way. We want first the question settled as to whether we have got democracy at all, but, in passing, some of us may be pardoned if we express the fear that we are losing something of democracy while we are passing. While it may be necessary now, yet at the same time we want to enter a protest, that the precedent which is now necessary may not hereafter be construed as final. That is the point that I am making. I want my record straight. I will try to keep it so if it is not so when I correct the remarks, but I certainly do not want any imputation of the gentleman from Cambridge (Mr. Hart) that what I am saying in a body of the people of Massachusetts is to raise Massachusetts' voice against the successful prosecution of this war. God knows there is no greater optimist than I am. There is no man who prays more often in the

day that it may come to a speedy determination, that all of our men who have gone over there may return, that hell itself, if there be such a locality, and I do not believe it, may swallow up the man who has brought all the misery on the earth, and in God's time it will. No, sir, I will preach a patriotic speech any time, and never will preach anything but patriotism. It is because I believe that I am a true American and a descendant of those of the Revolutionary spirit that I still am here to believe that while conditions have changed principles have not. The principles that underlie the science of government have not changed in a hundred and fifty years, and never can change. The application of them may change, conditions may change, but the principles not. The principles upon which this government is founded, and which are so well outlined in this Constitution, I stand by, and I do not want to give up to the Nation any power which Massachusetts has reserved. That is what I am talking about. Still, I do not know that you know anything about it, but I have tried to make you understand what I am talking about.

Mr. HART: The difficulty with the debate upon the question upon which a vote has just been taken and upon the present question is illustrated precisely by the frame of mind of the gentleman who has just spoken, who says that we are discussing the militia in time of peace instead of a time of war. There is absolutely no use of a militia in any State of this country except with reference to the possibilities of war. Militia as a peace instrument and for peace purposes has broken down, as we all know. There is not a poorer police force than a body of militia, not a more expensive one or a less efficient one for the purpose, because the only thing they can do is to take a man by the collar of his coat and point a gun at him, and in very, very rare instances they actually fire at somebody.

Mr. BROWN: I should like to ask the gentleman if he is not familiar with the fact that the militia in some States in a time of labor troubles, in times when the corporations themselves have forced the outbreak, have been so efficient that they have fired into the people and murdered them.

Mr. HART: I am not a court of justice, to decide when a musket is fired, whether it is a murder, or an act of self-defence, or a protection of the Commonwealth. That depends upon the circumstances in the individual case. But I am here to say that the only purpose for keeping up a militia in this State or any State is in order to serve the country, the State as a part of it, at any time, and the whole Nation in time of war. The reason why the arguments of the gentleman from Hingham (Mr. Bouvé) have had such weight upon the minds of this Convention, is evidently the conviction that his argument carries, — that the facts carry. The conviction they carry is that the militia of Massachusetts has not been a useful instrument for the war-like purposes of the Nation, that when the time of stress came at the Mexican border, and when it came again when we went into war a year ago, the militia was not ready. I am the son of a volunteer officer in the service during the civil war, — an appointed officer. He was a Major in an Ohio volunteer regiment. I have associated all my life with military people, and it has been ground into me by that association and by a long study of American history that the militia system as developed up to the year 1914 was an

inadequate and a useless system; that if you are going to make anything of the militia in preparation for war you must do it by a kind of preparation which is impossible for militia.

With regard to the specific amendment, we are asked by the committee to give our assent, first of all, to a codification of an article which, according to the gentleman from Stoneham (Mr. Newhall), has dropped out things that are obsolete. It is perfectly clear that the militia clauses in our Constitution do not in the least accord with the present conditions. If it be true that the clauses of which he speaks are inoperative because of circumstances, then why in heaven's name should they be in the Constitution? One of the great services which this Convention can render in this and in many other directions is by restating clauses of this Constitution which have ceased to have the meaning that they had, which were meant to apply to circumstances which have ceased to be or have changed. Therefore I shall vote enthusiastically for the proposition of the committee, especially in view of the statement of the gentleman from Stoneham (Mr. Newhall) that it does not seriously change the present text of the Constitution, but restates it and somewhat improves it.

Mr. PILLSBURY of Wellesley: The subject of this resolution is none of my business, and I should not interfere except that in form it is so palpably open to one criticism, at least, that clearly it ought not to be adopted without change of its language. The resolution says in substance that the militia shall be under the control and regulation of the Legislature, "subject only to the constitutional powers of and in accordance with the provisions of the Congress of the United States." Article 2, section 2, of the Federal Constitution makes the President Commander-in-Chief of the army and navy of the United States and of the militia of the several States when called into the actual service of the United States. I suppose, without knowing anything about it, that what the authors of the resolution intended to say was that the Legislature shall have the regulation and control of the militia, subject to the exercise of the paramount Federal power, if and so far as that may be exercised, a reservation that would have to be read into it if it were not expressly there. It may very properly be put there in words, but not in these words, for the Federal power over the militia of the States is, to say the least, so far in the President and not in the Congress, as to call for correction of this clause which recognizes only the powers of Congress. I may add, that while Congress is accustomed to legislate on the subject and may have power to, within limits, it is a serious question how far it may impose limitations or restrictions upon the constitutional power of the President as Commander-in-Chief, a question much discussed during the war of the rebellion.

Mr. BRYANT of Milton: I agree with the gentleman in charge of this measure (Mr. Bouvé) that the clause which he seeks to recodify is archaic in its terms, but I regret that I should have to oppose the amendment which he suggests in its present form. You will notice that it provides that the Governor shall be Commander-in-Chief of the military and naval forces and shall have full power from time to time to assemble the whole or any part thereof. Now, that word "militia" is a rather misleading word. Militia may mean either one of two things: It may mean the organized militia, which com-

poses the military and naval forces of the Commonwealth, or it may mean every male inhabitant from 18 to 45. Used in its broadest sense that is what militia means, — every male inhabitant from 18 to 45. Now, the original draft of the Constitution gives to the Governor the power to summon every male inhabitant from 18 to 45 and put him in war-like array, as the old-fashioned phrase is. The provision of the suggested amendment is limited to the military and naval forces of the Commonwealth. Does not this provision mean simply the organized militia, that is, the regiments and the naval brigade, and do not we, if we adopt this amendment, cut down, or apparently cut down, the power of the Governor and Legislature to summon any male inhabitant between 18 and 45 and reduce it to a power to summon merely the naval and military forces, — in other words, those individuals who happen to be in the organized militia at the time when the crisis comes? Now, I think the military power of the State should and does include the power to summon every inhabitant if necessary, and I do not think we ought to put into our Constitution a clause which seems to limit that power of the State to a very small body of the inhabitants. When we start to remodel a phrase of this kind it has to be done, of course, with extreme care, lest we leave out something that is valuable and put in something which we really do not want to use. I shall have to oppose the amendment in its present form, because I do not feel that it is as broad in giving powers to summon the inhabitants as the present article in the Constitution.

Mr. Sullivan of Salem: I have been much interested, as I presume many members of the Convention have, in the two points raised in this debate: First, the one by the gentleman from Wellesley (Mr. Pillsbury); next, the one by the gentleman from Milton (Mr. Bryant). I hesitate to make the motion that I am going to make, for the Convention already has turned down some motions of that character, but I think this is a mighty important subject. I should like to make a motion that the Convention take a recess of an hour at this time and allow the committee to get together with the gentleman from Milton (Mr. Bryant) and the gentleman from Wellesley (Mr. Pillsbury) and bring in a redraft of this resolution, taking in the very important points that the delegates mentioned have made.

The President: Mr. Sullivan of Salem moves that the Convention take a recess until 2 o'clock.

Mr. Sullivan: No, sir. Pardon me, I said a recess of one hour. I do not mean to lose any time.

Mr. Underhill of Somerville: That would upset our method of carrying on business. As this is only a question of ordering the resolution to a third reading, there is another debatable and amendable stage, and there is no necessity of the committee getting together at this time. I hope the motion will not prevail.

The motion for a recess was negatived.

Mr. Bartlett of Newburyport: I observe that the committee in this amendment have left out the provision of the Constitution that the Governor cannot send the troops out of the Commonwealth. That provision seemed to be very important to the Convention of 1853, but this amendment is entirely silent upon the subject. I think the committee ought to inform the Convention why they did that.

LIX.

AMENDMENTS BY GENERAL COURT.

Messrs. Samuel Ross of New Bedford, Albert H. Washburn of Middleborough, James P. Donnelly of Lawrence and John W. McCormack of Boston presented resolutions numbered respectively 64, 65, 135 and 138.

The committee on Amendment and Codification of the Constitution reported (in part on No. 65) the following new draft (No. 305):

Resolved, That it is expedient to amend the Constitution by the adoption of the following subjoined Article of Amendment.

ARTICLE OF AMENDMENT.

If at any time hereafter any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to, on each day for three several days, by a majority of the members of each of the two Houses present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to, all the requirements for the original passage thereof being observed, 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 thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth on the first day of January next after such approval. When two or more amendments shall be submitted, they shall be voted upon separately.

The resolution was considered by the Convention Tuesday, July 23, 1918, and it was rejected the same day.

THE DEBATE.

Mr. WASHBURN of Middleborough: A word of explanation will be sufficient to dispose of this matter. When it was reported it was designed to amend the existing method of proposing legislative constitutional amendments as now provided for by the ninth article of amendment of our present Constitution. Since the report was made the Convention has acted upon the so-called I. and R. amendment, which provides for two kinds of constitutional amendments, one originating with the people and the other originating in the Legislature, — one of them called by the terms of the I. and R. resolution an initiative amendment, and the other a legislative amendment. This last provision for a legislative amendment in the I. and R.

resolution expressly annuls the existing Article IX of our amendments of the Constitution. It provides for a method of proposing legislative amendments by a unicameral body, that is, by the Senate and the House sitting jointly, as this Convention will recall. That being so, there is no longer, much as I regret it, any need of taking any favorable action upon the amendment proposed by the committee of which I have the honor to be a member. And because of this situation, I can only ask the Convention to negative the pending resolution.

LX.

FUTURE CONVENTIONS.

Messrs. James P. Richardson of Newton, Albert H. Washburn of Middleborough, Francis J. Horgan of Boston, Michael A. Sullivan of Lawrence and John C. Twomey of Lawrence presented resolutions numbered respectively 63, 65, 139, 140 and 141.

The committee on Amendment and Codification of the Constitution reported, July 12, 1917, the following new draft (No. 304):

Resolved, That it is expedient to amend the Constitution by the adoption of the following subjoined article of amendment: —

ARTICLE OF AMENDMENT.

SECTION 1. At the first general election for State officers to be held after the year nineteen hundred and thirty-six, and every twentieth year after said election, and also at such other general elections for State officers as the General Court may by law provide, the Secretary of the Commonwealth shall cause to be placed on the official ballot the question: — "Shall there be a Convention to revise, alter or amend the Constitution of the Commonwealth?" If this question shall be answered in the affirmative by a majority of the qualified voters voting thereon, it shall be the duty of the General Court, at its next regular session, to provide by law for the calling and holding of such a Convention.

SECTION 2. The General Court shall determine the number of delegates and their apportionment: *provided, however*, that the number of delegates shall not be less than the number of Representatives in the General Court, as then organized, nor more than the number of members in both branches thereof. No party or political designation shall appear on the ballot. The delegates so elected shall meet within three months after their election at a time and place to be fixed by the General Court. Except as in this article provided, the Convention shall not be in any respect subject to the authority of the General Court.

SECTION 3. A majority of the Convention shall constitute a quorum for the transaction of business. The Convention shall choose its own officers, determine the rules of its own proceedings, and be the judge of the qualifications, elections and returns of its members. The Convention shall have power to appoint such officers, employees or assistants as it may deem necessary, to fix their compensation, to provide for the printing and distribution of its documents, journals and proceedings, and in general to do and perform such things as to the Convention may deem necessary or proper for the purpose of revising, altering, or amending the existing Constitution. Each delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the General Court.

SECTION 4. Any proposed Constitution or constitutional amendments which shall have been adopted by such Convention shall be submitted to the people at the time and in the manner provided by such Convention, and if such Constitution or constitutional amendments shall be approved and ratified by a majority of the qualified voters voting thereon, such Constitution or constitutional amendments shall go into effect on the first day of January next after such approval and ratification.

Mr. Robert Luce of Waltham moved that the resolution be amended by striking out, in lines 18 to 22, inclusive, the words ": *provided, however*, that the number of delegates shall not be less than the number of Representatives in the General Court, as then organized, nor more than the number of members in both branches thereof";

This amendment was adopted, by a vote of 66 to 37.

The same gentleman moved that the resolution be amended by striking out, in lines 23 to 25, inclusive, the words "The delegates so elected shall meet within three months after their election at a time and place to be fixed by the General Court".

This amendment was adopted.

Mr. Francis N. Balch of Boston moved that the resolution be amended by adding at the end of line 53 the words ", unless some other time is specifically provided".

This amendment was adopted.

Mr. Albert H. Washburn of Middleborough moved that the resolution be amended by striking out, in lines 4 to 7, inclusive, the words "the first general election for State officers to be held after the year nineteen hundred and thirty-six, and every twentieth year after said election, and also at"; and by striking out, in line 7, the word "other".

These amendments were rejected, by a vote of 45 to 67.

Mr. James P. Richardson of Newton moved that the resolution be amended as follows:

By striking out, in lines 41 to 43, inclusive, the words "the same compensation and the same mileage as shall then be annually payable to the members of the General Court", and inserting in place thereof the words "such compensation and such allowance for mileage as the Convention may determine."

This amendment was adopted, by a vote of 88 to 2.

The same gentleman moved that the resolution be amended, by inserting after section 3 the following:

SECTION 4. The General Court shall raise by taxation or otherwise and shall appropriate and place at the disposal of the Convention such money as it determines to be adequate to meet the expenses of the Convention. The Convention may obligate the Commonwealth for such further sum as may be necessary to meet its expenses and the General Court shall provide for the payment of any deficit so caused by the Convention.

By adding at the end of the resolution the following:

SECTION 6. The Convention shall have power to codify the Constitution and amendments which have been approved and ratified by the people and may direct its president to promulgate such codification without submission to the people. Upon such promulgation by the president of the Convention such codification shall be the Constitution of the Commonwealth.

These amendments were adopted.

The resolution, as amended, was rejected Wednesday, July 24, 1918, by a call of the yeas and nays, by a vote of 84 to 109.

On the following day a motion was made that the Convention reconsider its vote by which the resolution had been rejected; and the motion to reconsider was negatived.

THE DEBATE.

Mr. RICHARDSON of Newton: This matter requires a brief explanation before a vote is taken on it, and I must ask the delegates of the Convention to take their files and turn to document No. 304 if they are to vote intelligently upon this matter.

At the time when the question as to whether this Convention should be held was before the people a very intelligent citizen came to me with a query something like this: "I have been studying the Constitution," said he, "to find out what the provisions are with reference to the holding of a Constitutional Convention. I have read it several times and I cannot find anything on the subject. It seems to me there must be something that I have missed or overlooked. I wish you would direct me to it." I had to explain to him as well as I could that he had missed nothing, that our Constitution was entirely silent on this subject; that the Convention, if held, would rely for its authority only on precedent, that is, the Conventions of 1820 and 1853. He did not seem particularly well satisfied with the explanation, and remarked that he thought that was a rather insecure foundation for such an important, substantial part of the governmental machinery as the Convention, and there was little left for me except to agree generally with his conclusions in the matter.

The effect of the adoption of this pending resolution would be to furnish for the future a plain answer to all such doubts and questions.

Such doubts as these are by no means those of a casual observer or of a layman. Essentially these same questions relating to the status and the authority of Constitutional Conventions, both in this State and elsewhere, have vexed and are vexing to-day students of political science, constitutional lawyers and the judges of our courts; and the conclusions of those who have devoted the most time and thought to them are by no means unanimous. What is the status of this very Convention in which we are sitting? It has been described by one of our own commission to prepare data for us (Mr. Roger Sherman Hoar) as "a revolutionary body," which means simply that it is not recognized by our Constitution and that its authority, therefore, comes from some other source outside and superior to the Constitution. Using the word "revolutionary" in this sense it cannot be denied that we are sitting here as an extra-constitutional, supra-constitutional body, relying for our very authority on some unwritten, inorganic law.

Now, in American institutions this is a novel and a rather startling proposition. It presents an anomaly which ought not to exist and which raises possibilities of argument, of litigation and of uncertainty which, undesirable enough with reference to any part of our governmental system, certainly should be eliminated so far as possible when they trespass upon the field of the fundamental organic law of the State. In other words, the Constitutional Convention as a part and a valuable part of the government of Massachusetts should be or-

ganized and should operate under the Constitution and not outside of it.

This principle has been recognized in most of the States of the Union and by the Federal Constitution itself. The Constitutions of 36 States contain provisions more or less complete with reference to the calling and holding of Constitutional Conventions, and the National Constitution itself provides for a Federal Convention. In the days of readjustment after the war we are likely to hear much more about this last, almost forgotten, and so far never used provision.

Nor is this matter by any means solely an academic one. Our neighboring State of Rhode Island is one of the dozen which does not provide for a Convention in its Constitution. There the Supreme Court has held squarely and definitely that a Constitutional Convention may not be held.

Indiana is another State with the same constitutional silence on this point. The Legislature of Indiana in 1917 provided for a Convention, to meet in January, 1918, without referring the question to the people, and the Supreme Court, by a majority of 4 to 1, held that that action was unconstitutional, partly because the question had not been submitted to the people; but the dissenting opinion, which is an extremely able one, holds that the whole question was within the power of the Legislature, and that the Legislature itself, legally, without ever submitting the question to the people, might call a Constitutional Convention and provide for the election of delegates.

The oft-quoted Opinion of the Justices of our own Supreme Judicial Court in 1833, to be found in the 6th volume of Cushing's Reports, at least throws doubt upon the power and authority of Conventions in Massachusetts.

As the case now stands the Convention is left like Mahomet's coffin, hung between heaven and earth. It is the part of simple common sense to recognize this situation and to settle this question for the future so far as those doubts may be put to rest.

But there is another matter quite as important as the fundamental one to which I have just alluded. It is the constantly recurring contest or argument as to how far, if at all, the Legislature of the State has authority over the Convention, and the converse of the proposition, how far, if at all, the Convention has what may be generally described as ordinary legislative power. To give a single illustration of the latter case, suppose that the last Legislature had refused to appropriate any money for the salaries of the Convention for this present session, and assume that the Convention had endeavored to make such an appropriation for that purpose. At once a bitter debate would have been precipitated, the result of which I will not venture to predict. But it will be admitted that this situation, which came very near arising, at the least would have brought about an unseemly struggle between the Convention and the Legislature. Such situations ought to be avoided.

In the Massachusetts Convention of 1853 Judge Joel Parker, a former Chief Justice of the Supreme Court of New Hampshire and then a learned professor of the Harvard Law School, stated as his opinion that the Legislature had the power, even at that moment, while the Convention was sitting, to come together in special session

and pass a law abolishing the Convention. That is the statement in extreme terms of what may be called the doctrine of legislative supremacy. The other extreme of the proposition, which is that the Convention is a sovereign body and represents the people as no other legislative body does or can, is what may be called the doctrine of conventional supremacy.

Now, it is the object of the pending and present resolution to put to rest for the future all those questions in this Commonwealth. It has seemed impossible to do it without going into some slight detail. The resolution is modeled, so far as it has any other instrument for a model, upon the provision in the Constitution of the State of New York, which has been pronounced by political scientists and by governmental authorities as a whole the most perfect arrangement of this sort to be found in any Constitution of any of the United States.

Just a word of comment on one or two of the details, and I beg to state to the Convention that on some of these details neither the committee nor myself has any pride of opinion nor of authorship. If, for example, it should seem best to the Convention to make some amendment changing the number of delegates to future Conventions or making that feature more flexible, the committee will have no preconceived opinion about that matter. We fixed the number of delegates at not less than the number of representatives in the General Court and not more than the entire number of the General Court as at any time made up. That makes a Convention probably somewhat smaller than the present one, and I think this Convention will agree generally that this Convention is too large for the most efficient work. However, that is a matter of detail. I urge, however, that even though there may be disagreement on some of these matters of detail, the general principle here is the important thing, and that now the Convention can send this matter to another reading and in the meantime be giving it such thought as may result in any necessary amendment.

Just a word about the amendment which already has been introduced by the delegate from Middleborough (Mr. Washburn). This present resolution starts out with what may be called an automatic provision for putting on the ballot once in 20 years the question: "Shall there be a Constitutional Convention?" I believe, personally, that that is a wise and salutary provision. Twenty years is Thomas Jefferson's political generation. At about such intervals it probably is true that the question of revising the organic law may be raised profitably. I believe that the provision for an automatic call of this sort, an automatic putting the question on the ballot, will discourage more frequent calls at other times by the action of the Legislature. But if the Convention should disagree upon that, that is not in itself a matter of great moment, and while I should vote for the retention of the resolution in its present form, I should not regard it as a world-shaking catastrophe if that part of the resolution was amended so as simply to leave the General Court power to put the question on the ballot whenever in its wisdom it may decide so to do.

Mr. Luce of Waltham: The gentleman in front of me (Mr. Richardson) suggested that there may be a difference of opinion as to some details, and I venture to differ from the committee in the matter of two details where I would move amendments. I move to strike out,

in lines 18 to 22 inclusive, the words which there appear, and in lines 23, 24 and 25 the whole sentence beginning "The delegates so elected."

Mr. Luce of Waltham moved to amend, by striking out, in section 2, lines 18 to 22, inclusive, the words "*provided, however*, that the number of delegates shall not be less than the number of representatives in the General Court as then established, nor more than the number of members in both branches thereof"; and by striking out, in lines 23 to 25, inclusive, the words "The delegates so elected shall meet within three months after their election, at a time and place to be fixed by the General Court."

Mr. Luce: Apart from the general danger of attempting to anticipate the conditions of the future, it may be pointed out as to the second amendment, which I will discuss first, — and the discussion may be of the briefest sort, — that if it proved desirable to have delegates elected at the ordinary election in November and they must meet inside of three months, their meeting would conflict with that of the General Court and could not be held in this chamber. Much as we have suffered from the inconvenience of meeting in the summer, the necessities of the Legislature and the fact that this is the most suitable auditorium in the Commonwealth for the purpose, probably make it undesirable for us to tell the next generation that if delegates to a Convention are elected in November they must meet within three months. I trust that suggestion will argue itself.

Specifying the number of delegates is a matter that I would submit might with wisdom be left to the General Court of that day, the year 1938, to determine according to the habits and needs and the conditions of the time. We should not at this juncture try to anticipate whether men will then think a small body or a large body preferable.

Mr. Sawyer of Ware: The gentleman who has just spoken pointed out that if we order this resolution to another reading we are incurring the danger of trying to anticipate the future about which we know nothing. May I be allowed to add that we also are violating the experience of the past. Our Legislature has succeeded very admirably and fairly in giving us these various Constitutional Conventions we have had without anything of this sort, and it seems to me it is entire folly for us to order this proposition to another reading. I want to say that I doubt if any legislative body ever has shown greater wisdom and fairness than the Legislature that passed the act to call together this Convention. They were very careful that no political body should receive advantage, that no taint of political wire-pulling or anything of that sort should be present. One who was in the Legislature that drew the act that brought this Convention together would see very quickly the undesirability of any such resolution as we have before us, and I hope that this resolution and all its amendments may be voted down.

Mr. Balch of Boston: I rise merely to suggest a very small perfecting amendment. It appears to me that the last three lines of the resolution presented to us may cause trouble. It is difficult to state in advance a definite date on which all measures alike should take effect. Circumstances differ for different measures. Sometimes it is desirable to provide for the lapse of a certain amount of time before any new measure takes effect. We already have had experience with that. I desire, therefore, to offer an amendment by adding

the following words: "unless some other time is specifically provided."

Mr. WALKER of Brookline: I trust that this resolution will not be given a third reading. We want to think over pretty carefully what we are doing. Now the Legislature is unrestricted. Our courts have recognized the power of the General Court to call Constitutional Conventions. If this amendment is once adopted, the method provided must be followed, and probably no other method would be permitted. The proposed amendment provides for Constitutional Conventions to be called periodically, and also provides for Constitutional Conventions to be called by the Legislature.

Let me point out one provision that is not made in this amendment, which probably has not occurred to the gentleman in the first division (Mr. Richardson). It might be very desirable to call a Constitutional Convention not to consider the revision of the entire Constitution but to consider some particular part of it, some particular constitutional question. I take it if we pass the proposed amendment, the Legislature would not have the power to limit the questions to be considered by a Constitutional Convention. It seems to me that this constitutional amendment is unnecessary, that the present arrangement works very well. I am fearful of making any hard and fast provision for calling Constitutional Conventions in the future.

Mr. Washburn of Middleborough moved that the resolution be amended by striking out, in lines 4 to 7, inclusive, the words "the first general election for State officers to be held after the year nineteen hundred and thirty-six, and every twentieth year after said election, and also at"; and by striking out, in line 7, the word "other".

The discussion of the resolution was resumed Wednesday, July 24.

Mr. Richardson of Newton moved that the resolution be amended in section 3, by striking out all after the word "services", in line 41, and inserting in place thereof the words "such compensation and such allowance for mileage as the Convention may determine"; by inserting a new section 4 as follows:

SECTION 4. The General Court shall raise by taxation or otherwise and shall appropriate and place at the disposal of the Convention such money as it determines to be adequate to meet the expenses of the Convention. The Convention may obligate the Commonwealth for such further sum as may be necessary to meet its expenses and the General Court shall provide for the payment of any deficit so caused by the Convention.

By adding a new section after section 4, as follows:

SECTION 6. The Convention shall have power to codify the Constitution and amendments which have been approved and ratified by the people and may direct its president to promulgate such codification without submission to the people. Upon such promulgation by the president of the Convention such codification shall be the Constitution of the Commonwealth.

Mr. WASHBURN of Middleborough: There are exactly twelve States, if my count be right, which make no provision whatever for the calling of a Constitutional Convention either through the agency of the Legislature or by automatic periodic submission. Massachusetts is one of those States. Now, I do not maintain that because of this fact a body chosen as this body has been chosen is extra-constitutional, or that it is revolutionary. By no means. Such an argument was made, though not pressed very seriously, in the Convention of 1820, but since that time, sir, it has had no validity or

force in this particular State, nor do I think it has any validity or force elsewhere. The State of North Dakota has no provision in its organic law for the calling of a Constitutional Convention. In 1896, I think it was, by joint resolution, which did not obtain the Governor's signature, anyway, the question of calling a Constitutional Convention was required to be submitted to the people. The Secretary of State apparently indicated his intention of not putting the question on the ballot, I suppose because it had not received executive sanction. I have not examined the decision carefully. At all events, a mandamus was obtained to compel the Secretary to do what the resolution called for. The decision is reported in State *v.* Giles, 6 N. D., I think page 81. So I say this question may be said fairly to be beyond controversy.

Nevertheless, I for one am strongly of the opinion that this Convention should take some action with respect to the calling of future Constitutional Conventions, if for no other reason, to accomplish this purpose: To put at rest forever in this Commonwealth the question of Convention subordination to the Legislature. I do not need to say for the purpose of establishing Convention sovereignty, — I do not need to use that term, — but rather for the purpose of making the Convention independent of legislative control. I think that is a highly important thing to be attained.

Nor is this a mere bogy. The question has been a highly controversial one in a number of States. The system which obtains in the State of New York was alluded to yesterday. It had its origin, I believe, in the Constitution of 1846. The provision is very brief, and I will read it:

> At the general election to be held in the year 1866, and each twentieth year thereafter, and also at such time as the Legislature may by law provide, the question "Shall there be a Convention to revise the Constitution and amend the same?" shall be decided by the electors qualified to vote for members of the Legislature, and in case a majority of the electors so qualified voting at such election shall decide in favor of a Convention for such purpose, the Legislature at its next session shall provide by law for the election of delegates to such Convention.

In 1866 under this provision the question was submitted to the people, and the answer was favorable. Thereafter the Legislature of 1867 provided, among other things, in enacting a very elaborate Convention Act, for the number of doorkeepers and messengers, that the delegates to the Convention should be entitled to the sum of $6 for every day, and that no pay should be received for any recess longer than three days at one time. It fixed the compensation of the secretary, the doorkeepers, messengers and Sergeant-at-arms. It provided further that the amendments should be submitted to the people at the next general election, to be held on the Tuesday next after the first Monday of November. It also prescribed the form of the oath of office to be taken.

Mr. Horgan of Boston: I wish to ask the gentleman from Middleborough (Mr. Washburn), in view of his statement that he fears legislative control or domination of future Conventions, if it is not a fact that, under the language of his amendment as proposed to the pending resolution, the general elections, and practically the control of designating or determining the advisability of future Constitutional Conventions, are not still vested in the Legislature, in view of the fact that he phrased it thus: "at such general elections for State

officers as the General Court may by law provide". If that is so, and he still feels that rather than designating specific years or for any other reason there ought to be direct provision for future Constitutional Conventions, how does he propose to take that power from the General Court if he intends to retain the language in which he has embodied his pending amendment to this resolution?

Mr. WASHBURN of Middleborough: I had not intended to discuss that phase of the matter at this point, but I will say this: The initiative and referendum amendment which this Convention has adopted for submission provides a comparatively easy way under which the people may amend their organic law. In view of that fact, I for one am quite content to leave the matter of submitting the question of calling a Convention to the discretion of the Legislature.

Mr. HORGAN: If that is so, I desire to ask the gentleman from Middleborough (Mr. Washburn) if that power, provided the people adopt it, is not sufficient protection, without the special provisions which he now is requesting this Convention to adopt in relation to future Conventions.

Mr. WASHBURN of Middleborough: I apprehend that the initiative and referendum, if it ever becomes a part of the organic law of this Commonwealth, will be invoked from time to time for the purpose of proposing *specific and particular* amendments to the Constitution, and such amendments only; but the time may come, as it came last year, and as happened in 1853 and as happened also in 1820, when there will be real need for a Convention to revise the organic law as a whole, and if that time does come again I think the fact will be manifested through the Legislature and the people will indicate their will and pleasure in that way.

Mr. HORGAN: I do not like to impose too much upon the good nature of the delegate, but I do desire to ask at this time one other question. If that time, of which he is fearful, does arise, does not sufficient power now exist under our Constitution to compel the Legislature, even though adverse, by the pressure of public opinion to call a Convention, as was the case in 1820 and in 1853, and if that is so why is there not now sufficient authority under the fundamental law of this Commonwealth, without the necessity of a specific resolution?

Mr. WASHBURN of Middleborough: Of course I believe there is power in the Legislature to submit the question to the people whenever in their discretion there is any demand for it, or when they think there is. That is not the point. I am supporting this particular resolution because I want to put at rest the question of legislative control. I say the attempt has been made in various States to impose improper restrictions and to fetter Constitutional Conventions. That is what I am seeking to show now. I think a Constitutional Convention ought to be responsible to the people only, and to no other power, and that in order to insure this result we should make it impossible for the Legislature in this State ever to interfere with a Convention in the discharge of its proper functions. Hence I give my support to this resolution. I say undue interference was attempted under the New York Constitution in 1867, and as a matter of fact the Convention of that year sat beyond the time fixed by the Legislature, and the delegates had to serve for the rest of the session without pay. I have a recollection, — I make the statement with

caution, — that I have read somewhere that at the subsequent session of the Legislature additional pay was voted to the delegates. This happened in 1867. And again something similar happened in 1894. Under this system of a periodical submission of the question, the question of calling a Convention was put on the ballot in 1886. Again the answer of the people was favorable, but the Legislature refused, or at least no law was passed, to provide for the calling of the Convention, and the reason was this: David B. Hill was Governor at the time. He is the gentleman who in his later years was fond of saying that he was "still a Democrat, though very still." He had a Republican Legislature, and they could not agree. Accordingly the legislative act providing for the calling of a Convention, sanctioned by the people in 1886, was deferred until 1893. Then the Legislature did pass an act, approved January 27, which, like the Act of 1867, made elaborate provision for the calling of a Convention in 1894. It provided that the delegates should be entitled to the sum of $10 a day and that no *per diem* should be paid for any recess of more than three days at one time nor for any services rendered after the 15th day of September, 1894. The delegates were required to assemble on the second Tuesday in May. Provision was made for the submission of the amendments to the people at the general election in November. The Convention again sat beyond its time, but in this instance it continued its work without any further compensation whatever. Now I submit this is just the sort of legislative interference that we should prevent.

Another case, a historic case, happened in the Commonwealth of Pennsylvania. The Constitution of 1838 made no provision, as ours makes no provision, for the calling of a Convention. Nevertheless, in 1871 the question of calling a Convention was put on the ballot. To that question a favorable answer was returned by the electors. Subsequently, at the succeeding session in 1872, provision was made for the calling of a Convention, and a number of restrictions, some of them pretty harsh, were sought to be imposed by the Legislature. For example, it was provided that the Convention work should be submitted at the general election in 1873. It was provided that in case one-third of the delegates should demand it any given amendment should be submitted separately.

It was provided further that the Convention should not touch any article of the Bill of Rights, on the theory, I suppose, that those articles were inviolable. It further provided that the Convention should not create or establish, or submit any article creating or establishing, any court or courts with exclusive equity jurisdiction. All these things, — some of them, I say, very restrictive in character,— were imposed by the terms of the act, and what happened? The Convention had some reason to fear (I have heard somewhere a rumor that elections in that State have not been always 100 per cent pure) that the gang in Philadelphia were making preparations to defeat its work, as it undertook to provide for a special election in the city of Philadelphia. Commissioners were named for that purpose. The court, in a well-known case, enjoined the election commissioners appointed by the Convention from holding an election.

Furthermore, there was a certain article relating to the judiciary which, it was claimed, more than one-third of the delegates asked to be sepa-

rately submitted. The court said that this did not appear sufficiently, and the presumption was that the Convention had followed the act of the Legislature.

But the point I want to make is that the Pennsylvania decision (which I for one venture to think is not sound, and which subsequently has been reversed in a number of other cases, at least in effect) was that the Convention derived its sole powers from the Act of 1872, which the people never passed on nor accepted.

Now, just to pursue this question a little further, to give one other illustration, and one other only, the most flagrant case that has been called to my attention happened in the State of Alabama. By the Constitution of that State, in 1900 the question was put on the ballot, "Convention or no Convention," and the people answered "Convention." In 1901 the Alabama Legislature passed an act providing for the calling of that Convention, and seeking to impose a number of restrictions of a preposterous nature. At the risk of boring this Convention I want to take the time to read some of them.

It provided that the *per diem* compensation should not be paid to any member of the Convention for a longer time than fifty days.

Section 16 provided that the Convention should incorporate and adopt the following as part or parcel of any Constitution it might frame and adopt, to wit: — Then followed the exact wording of the provision relating to the county tax.

Section 17 required the Convention to incorporate the exact wording of a provision relating to the municipal tax, with a proviso that the section should not apply to the city of Birmingham.

Section 18 required the Convention to incorporate the exact wording of a provision relating to equal taxation.

Section 19 required it to incorporate *in totidem verbis* a provision that "no power to levy taxes shall be delegated to individuals or corporations."

Section 20 required it to incorporate it in any Constitution it might frame or adopt "any and all limitations upon the rights of taxation that are in the present Constitution."

Section 21 required the Convention should not incorporate or adopt any clause looking to the removal of the State Capital.

Section 21½ prohibited any change in the present exemption laws of the State.

Now, as a matter of fact, the Convention ignored many of the mandates of the Legislature, and it further resolved that the pay of its members should continue after the expiration of the fifty days and until the completion of its work.

Those are examples of the demands that have been made in some of the States to impose restrictions upon the Convention in the discharge of its duties. I say we ought to put it beyond the power of any Legislature, whatever the temptation may be in the future, to fetter the Convention. The people may do it, yes; but the Legislature, no. I think the trend of authority is this way, but it should be put beyond all dispute.

I have submitted an amendment, it is true. The gentleman from Boston in the first division (Mr. Horgan) has catechised me about it. I originally voted for the resolution as it was reported by the committee, but since that time this Convention has acted upon the

initiative and referendum. On the theory that the people should have the right to amend and alter their Constitution, I submit that therein a comparatively easy way is provided for the proposal of specific amendments to the organic law; but when we undertake to say that the question of calling a Convention shall be put on the ballot periodically, we run the risk of having it submitted at times when there is no occasion for or interest in it whatever. In other words, we make it come up automatically. There are only two States in the Union which have adopted such a provision. One is the State of New York and the other is the State of Michigan. In both States controversies growing out of it have gone to the courts for settlement.

I, therefore, for one, think it wise to strike out the provision for periodic reference.

There are one or two other amendments which have been offered to which I can give my hearty support. This resolution is in the very competent hands of my friend from Newton (Mr. Richardson). What his attitude will be with respect to them I do not know. I am speaking for myself only, as one member of the committee.

The amendment proposed by the gentleman from Waltham (Mr. Luce), striking out the provision that the Convention shall be called in three months after the people have elected delegates, I think is wholly proper. It may interfere with the Legislature. It may be desirable to meet again in this hall at some future period. But, sir, he has offered another amendment which strikes out the provision relating to the number of delegates to the Convention. I think, for one, that the committee provision ought to be retained, and for this reason: If we leave it to the Legislature in its discretion to fix the number of delegates, that body at some time may pass a Convention Act under which the delegates, we will say, are to be elected by Congressional districts or by Senatorial districts. Now, we always have been very solicitous of the rights of the small towns in this Commonwealth. In my own town of Middleborough, for example, in the Convention of 1780 we had two delegates, in the Convention of 1788 we had four, in 1820 we had four, and in 1853 we had two. Every town in the Commonwealth, no matter how small, in prior Conventions has had at least one delegate.

Now, the apportionment is based upon the Representative system, but under that system the small towns still can be heard in a Constitutional Convention; but if it were otherwise, a Legislature might say that delegates should be elected by Senatorial districts, as in the State of New York in 1915.

I happen to live in a town which with six or seven other towns is hitched up with the city of Brockton. This city overshadows the rest of the district. If delegates were to be elected in this way, of course the city of Brockton would send its own men, and the towns in the district would have a slim chance at best to be represented at all. That would not be an unmitigated misfortune, so far as I personally am concerned. My personal happiness is not bound up in a seat in this Convention, as much as I prize it. But my colleague from Bridgewater and my colleague from Wareham would not be here either. That is evident. I think we ought to protect the interests of the towns in providing for future Constitutional Conventions.

This, then, seems to me to be the case for the committee recommendation. I for one deem it highly important that we should make the Convention, so far as it is possible to do it, wholly independent of any form of legislative control.

Mr. CHANDLER of Somerville: I believe that in the next half an hour of debate on this question the members of this Convention will be well qualified to vote on this subject. I therefore move the previous question.

The main question was ordered.

Mr. HART of Cambridge: Without going deeply into the questions which are here before us, let me point out what the two main issues are. First, the question of the periodic Convention, upon which the gentleman from Middleborough (Mr. Washburn) has just been speaking, and spoken much to the point. It ought to be observed that those periodical terms, as he suggested, repeatedly have made trouble in other States, — in the State of New York, for instance. In 1890, as I remember, when a Convention was due, the Legislature failed to act for several years, and for lack of some kind of automatic method the Convention was thus postponed, presumably to the detriment of the State, which was ready for some constitutional change.

It is not, however, upon that side of the question that I wish to speak, but upon section 3, the significance of which is that it gives to future Conventions an automatic status. Hardly had this Convention appeared in this hall before one of its members put forward the proposition that we were nobody, we were nothing, we had no constitutional rights, and he proposed that the Supreme Judicial Court be called upon for an opinion as to whether we had not better dissolve and go home again. That of course was not to the mind of the Convention, which desired to see things done. But it is desirable that a future Convention shall have that question, and collateral questions of the same nature, settled once for all, so that when the Convention meets it may know that there is no question of ascertaining what the Legislature thinks desirable for the Constitutional Convention.

First of all, what is the text of the Constitution under this amendment, should it be carried? We have found it a great blessing that to a Constitutional Convention all things are constitutional, a statement which does not in the least mean that a body of this kind has a right to trample upon the general principles of the Constitution, but we have a right to propose anything that approves itself to our judgment, for the future action of the people. It is possible of course to make propositions contrary to the Federal Constitution; but there is a practical limitation upon this Convention and every such Convention, namely, the overruling provisions of the Federal Constitution. Excepting this, there is no limitation upon what this Convention may submit to the voters to be placed in the text of the Massachusetts Constitution. We are Constitution makers in that sense.

It is very desirable that any future Convention should come into being as a body of fixed determination, governed by rules with regard to its proceedings which are embodied in the Constitution, so that

there can be no question among members of the Convention nor in the minds of the voters, no question in the Houses of the Legislature, as to the organization of the Convention. Such a provision is to be found in section 3 of the proposed measure, a provision which will relieve the Legislature of the task of attempting beforehand, as has been done in many States, to tie the hands of future Conventions. I therefore shall vote for this main proposition, with some of the amendments that have been proposed.

Mr. WALKER of Brookline: Yesterday afternoon when this matter was under consideration I took occasion to doubt the wisdom of passing the resolution as presented. I wish simply to state that since then I have been in consultation with those interested in this resolution, and that with the amendments offered by Mr. Washburn of Middleborough, by Mr. Luce of Waltham, by Mr. Balch of Boston, and by Mr. Richardson of Newton, I think the resolution should be passed. I think it would be useful, principally because it makes the Convention absolutely independent of the Legislature, and gives it full power over its own expenditures. I believe that the real necessity for the passage of this amendment is to free the Convention when once called from the dominance of the Legislature.

Mr. HARRIMAN of New Bedford: This matter of being free from the Legislature I think reaches deeper than many of us realize. The next Convention that will be called will deal with problems which we in this Convention have dodged. In that Convention it will be absolutely necessary that all walks of life be represented. I can see, and I think you all can see, that under certain circumstances the changes which are to come will mean dire results to special privilege, — as it must, — in evolution it must mean just that. It is absolutely necessary that the wage-earner and those of small means have the opportunity to come here, — come here not hedged about by any organization that may try to cripple them through their finances. I hope, if nothing else, that the incoming Convention, meet when it may, will have the absolute right to fix its compensation regardless of any other body in the Commonwealth. The Convention of 1820, the Convention of 1853, adopted that identical program. I think that all Constitutional Conventions should have that same power. For while there are men here who differ, — the conservatives of our number, — yet the future welfare of our Nation rests not in them, but it rests in those so-called radical men who are willing to go out, as our forefathers did, and put their trust, not in the past, but in the people who are to come. And these are the men, the wage-earners, the men of small means, who are the majority, — under our industrial system they are fast increasing in numbers, — because as our industries evolve, the men who own property are becoming less numerous and more powerful. The wage-earner, the working-class, should be able to come here and legislate in proportion to their strength in the community, and they ought to be free and untrammeled.

I cannot think that this Convention, or any other Constitutional Convention, would do anything along lines that would not be honorable and above-board, on which they were willing to go to the people. The people, I believe, would be just as willing to trust the Constitutional Convention to fix its salaries and expend its money as it would by an act of the Legislature.

Mr. LUMMUS of Lynn: When the previous question was moved I had just handed to the secretary a substitute, in which I had endeavored, without making any vital change in the scheme of the committee, to reduce the resolution to smaller compass. I suppose it is too late now to present such a substitute, and perhaps it would be unwise, because the Convention would have to act upon it without seeing it in print. But there is one rather important feature of the present resolution which it seems to me should be modified. Under the present resolution the question goes on the ballot in every twentieth year after the year 1936. It may well happen that a Convention may be called and held in some other year, perhaps shortly before the date fixed for a periodic submission.

Mr. WASHBURN of Middleborough: I have proposed an amendment striking out that part of the resolution requiring periodic submission. The delegate from Brookline (Mr. Walker) has approved of it and I understand my colleage in charge of the resolution to say that he does not strenuously oppose it.

Mr. LUMMUS: May I inquire of the gentleman who has just spoken whether the time of submission is left to the Legislature, and no Convention is to be called except as the Legislature may vote to have it called, or the question is submitted to the people?

Mr. WASHBURN of Middleborough: If the amendment is adopted the effect of it will be to leave the question of submission wholly in the hands of the Legislature.

Mr. LUMMUS: Of course if that is the situation, — and I am sorry that I had not apprehended it before, — then the suggestion that I was about to make lacks force. But if that is not to be the policy of the Convention, and if the policy of the Convention is to require periodic submission, then surely those periods should be computed, not from the year 1936, but from the date of the then most recent Constitutional Convention.

Mr. AVERY of Holyoke: As the gentleman in the third division (Mr. Walker) said a little while ago, I had considerable doubt about this resolution. Some of the amendments which have been offered have dissolved some of my doubts, but I still have one very serious doubt. The biggest problems that this State is going to have to solve are going to be in the next ten years, after the closing of this Convention. We say under this resolution, "at the first general election for State officers to be held after the year 1936." What is going to be done in the meantime? Piecemeal amendment of the Constitution?

Mr. RICHARDSON of Newton: Does the gentleman fully apprehend the meaning of the next few words: "also at such other general elections for State officers as the General Court may by law provide"?

Mr. AVERY: My point is, I would say in reply, that if the words are stricken out as proposed by the gentleman from Middleborough (Mr. Washburn), there would be no question anywhere, and the General Court would feel absolutely that they had not only a legal but moral right to go ahead and call a Convention to face the issues that are before us.

Mr. HORGAN of Boston: On this proposition, as a member of the committee on Amendments and Codification, I dissented principally because I did not believe, and despite the arguments which have

been presented so far this morning I do not believe, that it is necessary to place this resolution in our Constitution. The gentleman from Middleborough (Mr. Washburn), in reply to a question of the gentleman from Lynn in the third division (Mr. Lummus), stated that the question of calling a Convention would still be under the domination, as he described it, of the Legislature; yet in the opening of his argument he made the statement that the reason, the best reason that he had, if I recollect his argument, for urging the adoption of this resolution, was that it would take the Constitutional Convention in the future out of the control, in relation to every phase and feature of it, of any future legislative body.

I believe that, with the adoption of the initiative and referendum, with the inherent power invested in the people, as has been demonstrated by the calling of the Convention of 1820 and the calling of the Convention of 1853, there will be absolutely no necessity for the submission of this resolution. I believe also that if an acute condition should arise in the future, with the acceptance by the people of the initiative and referendum, — which I assume will be the verdict of the people, — power sufficient, and more than sufficient, is vested in the people to control the situation.

I also desire to call the attention of the Convention to the fact that although the gentleman from Middleborough (Mr. Washburn) feels that the question of calling a Convention every twenty years, as provided in the report, ought to be eliminated, the gentleman in charge of this report favors the calling of a Convention every twenty years. The last resolution, either as recommended by the committee, or amended as suggested by the gentleman from Middleborough, still leaves the details of regulation, etc., in the hands of the Legislature. It seems to me to be perfectly safe and proper to leave the details concerning the form of calling, the time and place of convening, and such phases of the preliminary preparations as those, properly within the jurisdiction of the Legislature; and the language of this resolution emphasizes that the same opinion is in the minds of those who favor the submission of this resolution. As to the argument in regard to salary I simply wish to state, and so far as I personally am concerned my judgment is, that it may be left safely with the Legislature, despite some unpleasant experiences that the delegates had with the past Legislature, reasons for which are obvious; and I believe that the delegates to this Convention are men who are too big to pay any attention to that condition or to permit it to sway their judgment.

I am not so frankly antagonistic to this proposition that I am losing any sleep about it, but I do believe it is unnecessary. I do believe that in rejecting this resolution we are not taking any power from the people. They are as superior to a Convention as they are to the Legislature. They may compel, by pressure of public opinion, as they did in the case of this Convention, the calling of a Convention when conditions require it. I have as much desire to meet economic conditions as is possessed by the gentleman from New Bedford (Mr. Harriman) who spoke a few moments ago; but I believe that the men who watch the conditions in this Commonwealth, and who have their fingers upon the public pulse, have as great interest as he has, even though he assumes to be the mouth-

piece of labor, in the welfare and happiness of the people of this great Commonwealth, and that they have sufficient intelligence and integrity to conserve those interests when conditions arise. And confident as I am that there is still sufficient power in the people to control all these situations which this resolution tries to remedy, for one I shall vote against the adoption of the resolution or the adoption of any amendment to the proposition.

Mr. ADAMS of Quincy: I have observed with great regret for many weeks, as I have watched the progress of this Convention, apparently a studious determination on the part of members of the Convention to set aside the one great question which confronts us, and which is going to be settled entirely apart from our volition. It is going to be settled by the course of nature. It is not going to be settled by the courts. It is one of the instincts which I regret most in my friends the conservatives, with whom I usually have acted, that they have a fixed belief that by mixing up the courts in this thing they are going to accomplish something. Well, they are not going to accomplish anything. That thing is absolutely fixed by the course of history for a thousand years. The Parliament of England has undertaken to decide the course of wages over and over and over again. They have succeeded occasionally in stirring up a rebellion or a civil war, or spilling a good deal of blood, or the confiscation of a good deal of property; but the mixing up of the courts with the Legislature never has resulted in anything but disaster.

There is one course before us which is common sense. That is to let the matter alone. Let the matter alone and let it adjust itself, and that is the only way in which it ever can be adjusted.

Mr. RICHARDSON of Newton: There has been published this morning by the commission to compile information for the Convention a bulletin on the Amendment and Revision of State Constitutions, which I apprehend very few of the delegates have had an opportunity to even look at, much less read. I am sorry that the bulletin was not published earlier because I think that a reading of it, especially some of its pages, would satisfy the delegates that there is a real need for some such amendment as we have proposed, and that the general principles are necessary and salutary. One quotation only will suffice us:

> Whatever legal doctrines these opinions establish, [quoting opinions of courts in Massachusetts, Rhode Island and Indiana] they clearly demonstrate the wisdom of embodying in the Constitution a definite provision for the summoning of a Constitutional Convention.

With reference to some of these amendments that are proposed I have only this to say: Personally I shall oppose the amendment offered by the delegate from Middleborough (Mr. Washburn). I believe that there is something to be said in favor of the automatic submission of this question, once in a while, once in a long while, once in twenty years, without any legislative action whatever being necessary, so as to make the Convention in that respect utterly and entirely independent of any legislative action in starting the machinery at all. Further than that, I believe that such a provision would operate to keep the question off the ballot at more frequent intervals, which I do not believe to be necessary. However, this is a detail, in my opinion, and is subordinate entirely to the general

principle; and as the gentleman from Boston (Mr. Horgan) said a moment ago, I shall not lose very much sleep whether this amendment be adopted or rejected by the Convention.

As to the amendments of the gentleman from Waltham (Mr. Luce), I am quite content to leave those to the action of the Convention. The amendment by Mr. Balch of Boston obviously is in the nature of a perfecting amendment and I hope it will be adopted. The amendments which I moved this morning I moved at the request of the gentleman from Brookline in the third division (Mr. Walker), to whom credit for their authorship is due, and whom I wish to thank now for his helpful and constructive criticism and suggestion. He has improved the resolution by his amendments and rounded it out to a state of greater perfection.

I hope, then, that the resolution will be passed to a third reading, when it will be printed with all these amendments, and will then be capable of further debate and re-amendment, if the Convention shall so decide.

The amendments moved by Mr. Washburn of Middleborough were rejected, by a vote of 45 to 67.

The first amendment moved by Mr. Luce of Waltham was adopted, by a vote of 66 to 37.

The second amendment moved by the same gentleman was adopted.

The first amendment moved by Mr. Richardson of Newton was adopted, by a vote of 88 to 2.

The remaining amendments moved by the same gentleman were adopted.

The amendment moved by Mr. Balch of Boston was adopted.

The resolution, as amended, was rejected Wednesday, July 24, 1918, by a call of the yeas and nays, by a vote of 84 to 109.

On the following day Mr. Richardson of Newton moved that the Convention reconsider the vote by which the resolution had been rejected.

Mr. Richardson: I make this motion reluctantly, but I think it is my duty to make it. I hope I do not make it because I was defeated, because I think one of the lessons that every delegate to this Convention ought to have learned is to be a good loser. I do it for two or three reasons. The first is because I feel that the delegates to the Convention have not had time to consider this subject as set forth in the bulletin which came into the hands of the Convention only yesterday morning, and that a reading of that bulletin ought to convince some of my conservative friends who voted against this amendment of the real necessity for something of this sort in the Constitution to avoid the possibilities of future trouble and argument. The second reason is this: That I feel the Convention was prejudiced by the failure to include in the resolution finally the provisions of the so-called Washburn amendment which the Convention refused to adopt. I regard that matter, which was, as you will remember, the putting on the ballot automatically every twenty years of the question, "Shall there be a Constitutional Convention?" as so unimportant as compared with the main issue involved, that, if reconsideration prevails, I myself shall move the Washburn amendment or something equivalent to it. I further think that the Convention was somewhat appalled, perhaps, by the length of the proposed

amendment, and if reconsideration shall prevail I shall move to substitute for the whole amendment as originally presented something like this:

No Convention shall be called to amend or propose amendments to the Constitution or to propose a new Constitution unless the law providing for such Convention shall first be approved by the people on a referendum vote at a regular general election for State officers, and except and in so far as provided in such law, the Convention shall not be in any respect subject to the authority of the General Court.

That simple amendment will give future Constitutional Conventions a constitutional standing and we shall avoid what seems to me to be the reproach of sitting as an extra-constitutional or revolutionary body. And, further than that, even that simple amendment will go far to designate the respective spheres of the Legislature and of the Convention; and, gentlemen, I venture to say that that is a thing which certainly ought to be done. You are breeding trouble for yourselves in the future, gentlemen, because I do not think for a moment this is the last Constitutional Convention that will be held in Massachusetts. Other Constitutional Conventions before us in this State have fallen into that mistaken mental attitude, and they have been wrong. Let not this Convention take the attitude that we are the last body of this sort to sit. And it is almost certain that unless some such amendment as this some time becomes a part of our Constitution, quarrels and disputes will arise between the Legislature, the regular law-making body of the Commonwealth, and the Convention, which is equally a recognized law-making body in this Commonwealth, though sitting at irregular and longer intervals.

Mr. Creed of Boston: The committee on Amendment and Codification took a great deal of time last summer in the committee on this matter of the resolution that my brother desires to have reconsidered by the Convention now. Three dissenters out of the fifteen members appeared when the report was made to this body. During recess that resolution has been in the docket of the Convention. It was the result of many meetings of the committee in executive session, and yet when the matter was presented to the Convention yesterday the committee accepted a number of amendments, and even now the gentleman in charge of the report desires to incorporate an amendment offered by the gentleman from Middleborough (Mr. Washburn) that was defeated on a rising vote by a substantial margin. The fact is that there is no need of this resolution. We have several methods of amending our Constitution: the one, under the legislative amendments, under the ninth article, which came out of the Convention of 1820; the other, — and I assume that the gentleman from Middleborough thinks that the initiative and referendum will be adopted by the citizenry at the next election, — the so-called Loring amendment contained in that amendment which is going on the ballot at the next election. And we also have the fact that if a situation arose in the Commonwealth, as it did in 1916, whereby the people, — the voters, — believed that there was a necessity for a Convention so that they could take up the whole question of the Constitution, which of course is not provided in the other two methods to which I have referred, the pressure of public opinion would force the Legislature to call a Constitutional Convention. Why, the resolution provides now that we shall put it on the ballot every twenty

years. The proposition to eradicate it was defeated by a substantial margin yesterday in the Convention. Do you know what that means? It means that the question will go on the ballot every twenty years; and the people, perhaps, if there should be a spirited election for Governor or referendum matters or the question of United States Senator, might be diverted from that proposition and automatically believe they should reply "Yes" and have the Convention called. There may be no great necessity for a Convention. Specific amendment procedure may be all that is needed by the people during that twenty-year period; and yet the cities and towns, directly through the cost of primaries and election, and indirectly through the State tax, will be taxed a million and a half for something which is not needed at that time in this State.

So the question comes down to this: The two gentlemen who have made a study of this question tell us there is a doubt as to whether a Convention can be called in Massachusetts. My brother from Newton (Mr. Richardson) says we are sitting here as an extra-constitutional or revolutionary body, or have been so accused. The gentleman from Middleborough contests that and claims our right to be here. The fact is that the overwhelming majority of judicial decisions of this question is that when the people have voted at the ballot-box that a Constitutional Convention shall be held, the Constitutional Convention represents the voice of the people, and that when the people have called a Convention the Convention is independent of and supreme over the Legislature; it represents the sovereignty of the people of Massachusetts, and that is what we represent here, according to the overwhelming decisions and according to the best writers on constitutional law, constitutional government and Constitutional Conventions. Why pass this amendment? There is no need of it, and yesterday the Convention, after a debate that started the day before, voted against it. We do not want a Convention every twenty years at the cost of the taxpayers, who will be burdened by the expense of carrying on this war, of a million and a half. We do not want it, because already it has been established by the precedent that the people can call a Constitutional Convention when the people desire it to be called.

But they say finally, when driven to the last resort, that the Legislature might call a Convention and then they would hamper it with restrictions by which it would not do its work efficiently. They say that they might call a Convention with only twenty members, might allow the members only one dollar a year. The precedents of 1853 and 1917 should prove to this Convention that the Legislature will use rightly and properly the Convention if the people want it called; they will not hamper it, they will give it sufficient salary, they will give it sufficient delegates, they will give it sufficient means of doing business efficiently and properly. And therefore I say there is no need of this resolution. The Convention acted wisely yesterday. The resolution has been in the docket for nearly a year. Why should we pass it? I hope it will not be reconsidered. [Applause.]

Mr. Washburn of Middleborough: The sole point I sought to make yesterday was this: That the Convention in the discharge of its duty may be called upon to pass upon the powers, upon the prerogatives, nay, upon the very existence of the law-making branch

itself; and because of that fact it seemed to me unwise to put the legislative branch in a position to interfere with a Convention. That was the sole point of my argument. This is why I for one favor the amendment as proposed by the gentleman from Newton.

Mr. CREED: As I understand the resolution which is now offered, it contains the amendments that were fathered by the gentleman from Brookline (Mr. Walker), but presented in the resolution in charge of the gentleman from Newton, which allows the Convention that is called when it meets to appropriate money for its own expenses and to fix its own salaries. Do you not believe if that is permitted the people may vote against the calling of a Convention, even if it was needed, for fear they would spend too much money?

Mr. WASHBURN of Middleborough: Of course a fear of that kind might work in the minds of some of the voters, but I think that the people of Massachusetts, in calling a body vested with such high powers as a Constitutional Convention, would be entirely content to trust the delegates to act reasonably on a proposition of that kind.

Now I understand the proposed substitute which my friend from Newton will offer if he gets an opportunity is this:

> No Convention shall be called to amend or propose amendments to the Constitution or to propose a new Constitution unless the law providing for such Convention shall first be approved by the people on a referendum vote at a regular general election for State affairs, and except and in so far as provided in such law, the Convention shall not be in any respect subject to the authority of the General Court.

I think that this substitute very largely resolves the difficulties suggested by my friend from Boston in the first division (Mr. Creed).

Mr. UNDERHILL of Somerville: Under the head of reconsideration I take the occasion to make my weekly report to the Convention in answer to many questions as to when we are going to get through. I cannot prophesy as to when that will be, but we have twenty-four matters on the calendar. There are forty-one amendments relating to the twenty-four matters. Seven of the twenty-four matters have two more debatable stages and seventeen matters have at least one more debatable stage and amendable stage.

Now, sir, yesterday we took three-quarters of an hour on reconsideration. This morning we bid fair to take pretty nearly as long. So the members of the Convention, realizing that we work but four days a week and that we usually dispose of one matter a day on an average, can easily figure up, — and if you are going to establish a precedent of reconsidering the matters which we have argued out on one day, taking half the next day to argue reconsideration, — that in all probability this twelve-page calendar which we have had on our desks for over two weeks will still be twelve pages, two, three or four weeks from now. Now, without touching upon the merits of the question involved, I trust the Convention at this time will disapprove of reconsideration of this matter by so decisive and overwhelming a vote as to discourage any efforts in the future on the part of members to ask for reconsideration.

Mr. BUTTRICK of Lancaster: I desire to give notice that if reconsideration prevails I shall offer an amendment providing in substance this: "But no Constitutional Convention shall be held in any event until the year 2016." [Laughter.]

The motion to reconsider was negatived.

LXI.

IDENTIFICATION OF AMENDMENTS.

Messrs. Albert Bushnell Hart of Cambridge and Michael A. Sullivan of Lawrence presented resolutions numbered respectively 136 and 137.

The committee on Amendment and Codification of the Constitution reported, August 14, 1918, the following new draft (No. 425):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

1. Every amendment to the Constitution which shall be submitted to the people after the annual State election of November, nineteen hundred and nineteen, shall set forth the specific words or clauses which are thereby altered or annulled, if any.

2. Every such amendment shall name the place in the text of the Constitution at which it shall be incorporated, if adopted.

The resolution was read a second time Thursday, August 15, and was ordered to a third reading the same day.

It was rejected Tuesday, August 20, 1918.

THE DEBATE.

Mr. Williams of Brookline: To be frank, I do not know what is set forth in this resolution. I should like to have an opportunity of reading it or of having somebody on the committee explain it.

Mr. Creed of Boston: I would suggest that it go to another reading, then he can have a chance to look at it in the document.

Mr. Richardson of Newton: I am sorry that the chairman of the committee, who has the matter in charge, is not here. The amendment, however, is very simple. It is to provide that, in the future, as amendments to the Constitution come along either by legislative process or by the adoption of the initiative and referendum, — and I take it that we must all expect that such will be the course of history, — the amendments shall be so drawn that they automatically will find a place in the Constitution as it then stands, so that we shall not again have the spectacle of a Constitution with a tail of amendments which in process of time may be longer than the Constitution itself, and also so that obsolete matter may be actually cut out of the Constitution as fast as such matter is rendered obsolete by the substitution therefor of other provisions. That is all the explanation of the amendment that I care to make at the present time, because I prefer that the chairman of the committee should have that opportunity, it being a matter in which he is much interested. But it seems that the resolution, so to speak, is in the nature of a perfecting

amendment to the Constitution; that it can by no possibility do any harm, and that it does tend toward a more orderly condition of affairs. I therefore hope that the Convention will follow the suggestion of the gentleman in the first division (Mr. Creed), and at least send the matter to another reading, and if there are then any objections to it, — which do not occur or have not occurred to the committee, — they may well be raised.

The resolution was ordered to a third reading Thursday, August 15.

It was read a third time Tuesday, August 20.

Mr. HART of Cambridge: As this is the first time that the opportunity has been afforded the Convention of understanding the precise reasons for this brief amendment, I shall spend a very few minutes in making clear that it is in no sense a contentious question, that it does not involve the rights of any of the departments of the State government or their relation to each other; and that it is simply an extension, a completion, of a process frequently followed in the amendments to the Constitution of the Commonwealth.

The proposition, as you will observe, is, first:

> Every amendment to the Constitution which shall be submitted to the people after the annual State election in November, nineteen hundred and nineteen, etc.

The object of that limitation is simply that this amendment may keep out of the way of the work of this Convention. Inasmuch as no such clause was attached to the early amendments which were submitted last year, nor to the amendments which already have been adopted by this Convention for submission to the people, it did not seem worth while to introduce a measure which would require an addition to be made to the text of those amendments in order to be consistent with our own action. That is to say, that limitation simply means that any amendments that may be introduced by any process for the vote of the people after the work of the Convention shall have been passed upon shall be subject to these two simple restrictions.

Those restrictions are, in the first place, that an amendment "shall set forth the specific words or clauses which are thereby altered or annulled, if any." Second, that "every such amendment shall name the place in the text of the Constitution at which it shall be incorporated, if adopted."

I might mention the fact that there are precedents in the action of other States upon this point. In Maryland, for instance, the General Assembly may propose amendments embraced in a separate bill embodying the article or section as the same shall stand amended. That is to say, what is here proposed appears to be the practice in Maryland.

In Michigan, in 1912, the Constitution was published in full with the provision that any existing provisions of the Constitution would be altered or abrogated thereby. That is, the provision was made that all proper amendments should be so published.

In New York, in 1912, the amendments submitted, though not adopted, — since the whole Constitution was lost, — were submitted upon that principle.

The point that an amendment ought to mention the previous articles of the Constitution with which it conflicts is one very familiar in legislation and not at all unfamiliar in the constitutional legislation of Massachusetts. I have gone through the text carefully and noted some 12 or 15 places in which there is such a reference. I have noted a certain number of amendments in which there is no explicit reference to the original Constitution or to previous amendments. In many cases the phrase used is to the effect that a new provision is inserted instead of an original provision. In two cases there is a provision that the original Constitution "is so far altered". That would seem to be unnecessary, of course. Anything subsequent alters any previous part of the Constitution with which it is in conflict, and that idea, therefore, is not incorporated in the amendment.

Again, there is a statement in Article X and Article XII that all provisions inconsistent with the amendment here made are "wholly annulled."

There is one provision in these amendments to the Constitution already adopted which especially interests me, being Article XXVII of the Amendments, to the effect that

> So much of article two of chapter six of the Constitution of this Commonwealth as relates to the persons holding the office of president, professor, or instructor of Harvard College, is hereby annulled.

That provision was one to the effect that no member of the faculty of Harvard College could be a member of either the Senate or the House of Representatives of the Legislature, and presumably the same disqualification would have applied in elections to this Convention but for the kindness of the Legislature in submitting Article XXVII, which was duly adopted.

I might go on to quote phrases from the constitutional amendments in which there is a distinct statement that the new amendment annuls or removes a previous clause, or in which there is a statement that a clause, the text of which is mentioned, is thereby annulled.

I take it it is hardly necessary to argue that this is a convenient system.

The second part of the amendment relates to the question of stating in the amendment where it shall appear in the original Constitution.

Mr. Lowell of Newton: I trust the Convention will not adopt this measure. We already have adopted 15 measures. There were 13 adopted before we began this morning, and we have adopted two more. There are four more left, which would make 19 without this.

Now, this is a very minor matter to my mind, anyway, and also it seems to me there are objections to it. The idea at the basis certainly is a good one, — that every time you have an amendment to the Constitution in connection with it you thereby should bring the Constitution and the words thereof right up to date. But that is something which cannot be done. You, looking forward, cannot see just what effect that proposed amendment will have on all other clauses of the Constitution. It is in its essence a legal question which requires a great deal of careful scrutiny to determine the real meaning of it. We cannot say, — we could not say with our various amendments that we have submitted and which we are to submit to the

people, — just what effect they would have on the part of the old document concerned.

There is this further objection to it: The word is "shall". That may be merely directory, as the word "shall" means merely "may" sometimes, or it may be mandatory. If it is directory it does not amount to anything; and if it is mandatory, if you must do that, it is merely giving a guess by the Legislature which passes the amendment as to what effect that will have on the Constitution. As I say, that cannot be done.

There is another slight objection, and that is, supposing that in the parts which are to be altered or annulled there is something that escapes the attention of the framers of the amendment, — what effect then will the amendment have? In other words, it seems to me that this brings in a great deal of confusion in a matter which is a very minor matter and would not add to simplification in the long run.

Mr. PILLSBURY of Wellesley: I am sorry that I cannot follow the committee, but I agree with my friend from Newton (Mr. Lowell) that the resolution ought not to be passed. I think there are possibilities of more trouble in it than he has indicated. It is easy to imagine cases in which it would work well enough, if a proposed amendment could possibly affect or annul but a single plain clause in the Constitution if adopted. But it is quite as easy to imagine a constitutional amendment which might more or less directly affect a dozen other clauses of the Constitution. The resolution proposes to require that every one of them shall be set forth. This is official construction of the new amendment by the body that proposes it. Ordinarily the extent or effect of a constitutional amendment is a judicial question, for the court to decide. It is easy to see that very embarrassing situations might arise. Suppose that an amendment sets out certain passages of the Constitution which it is supposed to affect. The judges find other clauses which they think it may affect, or others which they think are entirely inconsistent with it. What is the result? What are the judges to do? What is to stand as the true construction? These are questions which might be very difficult to decide. I do not think it is necessary to go farther in the discussion. There are possibilities of other trouble with the resolution, and it can hardly be of so much importance that we are warranted in taking such chances or even in taking further time over it.

Mr. ADAMS of Quincy: Might I ask the gentleman who has just sat down whether in his opinion it would be possible to produce the desired effect short of printing the whole Constitution?

Mr. PILLSBURY: I do not think there is any assurance that it would be, at least in some cases.

Mr. HART: It will take only a moment or two to answer the objections that have been made to this amendment. No amendment is proof, of course, against judicial examination and construction. The draft of this amendment, I may say, has been submitted to the most competent authorities in this Convention (except the two gentlemen who have just spoken), who see no such pitfalls as they observe. The point as regards possible trouble growing out of the requirement of setting forth the "words or clauses which are thereby altered or annulled, if any", is protected of course by the words "the specific words or clauses." That is, if the new amendment, in the

contemplation of those who submit it, takes the place of a previous specific provision, there is no reason why that should not be mentioned; as a matter of fact, it is mentioned in a considerable number of cases in the present Constitution.

The objection of the gentleman from Wellesley is an objection which would lie against six or eight amendments which have been duly adopted and are part of our Constitution. It is perfectly true that the question of the bearing of a subsequent amendment upon previous clauses of the Constitution is very liable to become a judicial question, to be passed upon by the courts. I take it that this article would go no further than to bind the court in so far as particular words as those which previously stood in the Constitution, were declared to be deleted, — to say that those words no longer had any effect. You cannot preclude the court from passing upon the relation of the new clause to the general spirit of other articles of the Constitution or provisions which are not mentioned specifically in the new amendment.

The whole purpose of this amendment is merely to simplify the Constitution, which has got into a disgraceful state of disorder. The original 56 articles have been supplemented by 44 more adopted prior to the holding of this Convention; then by the 3 articles which were voted upon last fall; and now they are to be still further supplemented by the additional articles which we are to submit. That is to say, if our proposals are adopted there will be something like 120 successive articles of the Constitution, not, in the first place, arranged in a good order, and that order completely lacking in the additional amendments.

The purpose of the first clause, — and you will observe that the purpose is perfectly plain and visible, — the purpose of the first clause is simply that if certain words are substituted for other words there shall be a statement to that effect. It is done in a considerable number of cases. It ought to be done in all cases where it is possible. You will notice the limitation of the words "if any".

As to the second proposition, I observe no objection in the remarks of either gentleman who has spoken to the effect that: "Every such amendment shall name the place in the text of the Constitution at which it shall be incorporated, if adopted." That is the practice followed in some other Constitutions. It is a very useful process, because it gives you an ordered Constitution, where, if there has been a change of text, the change is officially set forth. Read the present Constitution, and you will find footnotes to the effect that this or that clause no longer has any effect; that this or that has been superseded, and so on. Those, however, are not legal statements; they are the statements of the executive officials, not the Governor.

I submit that this amendment does not interfere in any way with the working of the present system of government. It does not attack the power of the Governor or the Legislature or the courts. It does not add anything to the text of the Constitution. It simply asks us, where the words of the Constitution are altered purposely, that that alteration shall be set forth in the text; that where a new amendment has been introduced, that amendment shall be docketed as fitting into a place in the Constitution.

You will observe that this whole subject has a connection with the pending proposition next on the calendar for a method of codification of the Constitution. It is to be hoped that that method will be adopted. If not, some other must be, because at the present time the Constitution is in confusion; and the purpose of this proposition is, when the Constitution is once codified, once set in order, to preserve through the codification of future amendments that orderly and systematic form of the future Constitution which we hope will be the result of our deliberations.

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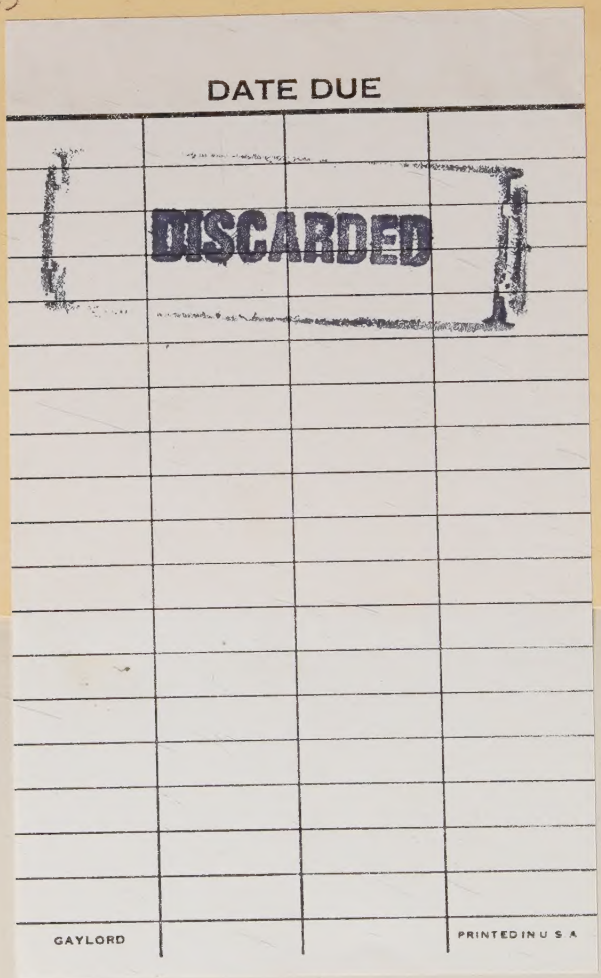
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