

# THIRTY-EIGHTH DAY

(LEGISLATIVE DAY OF MARCH 11)

## AFTERNOON SESSION.

THURSDAY, March 14, 1912.

The Convention was called to order pursuant to recess, the president in the chair.

The PRESIDENT: The member from Noble [Mr. OKEY] has the floor.

Mr. SMITH, of Hamilton: Will the gentleman from Noble [Mr. OKEY] yield the floor for a few minutes? I want to ask unanimous consent for Judge Taggart to introduce a proposal at this time so that it may be printed and get in the hands of the committee. First, I will move that the consideration of Proposal No. 2 be postponed until 1:05.

The motion was carried.

Mr. SMITH, of Hamilton: I ask unanimous consent that Judge Taggart be allowed to introduce a proposal.

The consent was given and the following proposal was introduced and read the first time.

Proposal No. 309—Mr. Taggart. To submit an amendment to article XVI, sections 1, 2, and 3, of the constitution. — Relative to amendments to the constitution.

Mr. TAGGART: I move that we suspend the rules and that this proposal be referred to the committee on Method of Amending the Constitution.

The motion was carried.

The PRESIDENT: If there is no objection the proposal will be referred to that committee. The member from Noble now has the floor.

Mr. OKEY: Mr. President and Gentlemen of the Convention: In standing here at this hour to discuss this question which we now have before the Convention I am conscious of the great responsibility that rests upon each and every delegate here. I was thinking today that whenever any great proposition that concerns the common people of this country is brought up, we find opposition to it coming from various sources. It has been the history of all truth, that it has had to fight its way up through opposition until it finally triumphed. Error can proceed easily, but truth must fight for the victory it seeks.

We have before us today a proposal that deeply concerns the welfare of the people of the great state of Ohio. It concerns them because it relates to and will relate to things with which they will be intimately concerned in future years. This proposition now offered to make government more responsive to the will of the people was evolved out of conditions. It was not originated by a few men or a set of men, but like other great fundamental things it evolved. The framers of our constitution in 1851 did not discuss any proposition of this kind and if this Convention adopts the proposal that we have before us now, it will not be any reproach upon the ability or the integrity or the honesty of those who framed that constitution. But since they assembled there have arisen in this country questions of which they never dreamed — questions which we are called upon to consider, and

that is the question before the house this day. Since this original proposal has been introduced there have been proposed to the original some amendments, and before I attempt to discuss the primary principles of the main proposition I would like to refer incidentally to these amendments that have been offered. The amendment to which I desire to call attention is the one that was offered by the gentleman from Ashtabula [Mr. LAMPSON]. If you will all refer to Proposal No. 1 in your proposal book, I think we can see some intimate connection between that proposal and the amendment that has been offered by the gentleman from Ashtabula. I find that this Proposal No. 1 was introduced into this body on the 17th day of January, 1912. If you commence at line eight of that proposal you will find these words: "No law shall ever be enacted levying the single tax on land or land values, or taxing land or land values at a higher rate or by a different rule, than is applied to improvements thereon or to personal property." The journal shows that this was the first proposal introduced for the consideration of the delegates to this Convention, and the journal further shows that this proposal was referred to the committee on Taxation because the title says, "Relative to levying of taxes — single tax." Now, for anything we know that proposal has not been reported out from the committee.

Now I want to read the amendment that has been offered by the gentleman from Ashtabula:

After section 1-c insert as follows:

The powers defined herein as "the initiative" and "the referendum" shall never be used to amend or repeal any of the provisions of this paragraph or to enact a law to adopt an amendment to the constitution, authorizing a levy of the single tax on land or taxing land, or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon, to personal property or to the bonds of corporations other than municipal.

That is the first proposition of the amendment relating to the question of tax. There is a second proposition to this amendment which follows what I have just read:

Such powers shall never be used to enact a law or laws redistricting the state for representatives in congress or redistricting the state for members of the general assembly, or changing the boundaries of judicial districts.

I submit to every delegate here present this proposition: Are the two amendments that have been offered to the proposal germane to the subject of the proposal? Is it not fundamental that when amendments are offered to a proposal they must relate to or be germane to the subject matter of the original proposal?

Mr. LAMPSON: Will the gentleman yield to a question?

## Initiative and Referendum.

Mr. OKEY: Just one.

Mr. LAMPSON: The subject matter of this proposal is powers to be given under the initiative and referendum.

Mr. OKEY: I understand that.

Mr. HURSH: There is so much noise in the Convention that we cannot hear the speaker back here. I move that we recess until 1:55 o'clock p. m.

The motion was lost.

Mr. OKEY: As I just said, the first part of this amendment relates to the part of Proposal No. 1, and it seems to me that this is an effort to have a proposal that was introduced into the Convention in a proper way and referred to a proper committee taken out of the power of that committee and engrafted as an amendment on another proposal.

Mr. LAMPSON: Will the gentleman yield to another question?

The PRESIDENT: Does the member yield?

Mr. OKEY: No; I don't yield now.

The PRESIDENT: The member does not yield.

Mr. OKEY: What I maintain is this, gentlemen, that the gentleman from Ashtabula has the right to bring his proposal upon the floor of this Convention and have it discussed upon its merits independent of the proposal now under consideration, but I am opposed to having an issue obscured by loading it down with amendments that are designed sometimes—I am not saying this one is—to obscure the real issue and destroy the effectiveness of the original proposal. There seems to have been a design upon the part of some of the people before this Convention was assembled and even afterwards to throw every obstruction in its way. There has been a concerted design on the part of some organizations in this state to throw every obstacle possible in the way of this great proposition now before us for popular government. I hold in my hand a pamphlet and on the back of that pamphlet it reads as follows: "Government by the Initiative and Referendum will Destroy Representative Government. It is Impracticable, Irresponsible and Dangerous."

This pamphlet is published by the Ohio Journal of Commerce. I suppose every delegate in this Convention received a copy of that journal before he came to this Convention and perhaps after he came. I do not know what the other delegates of this Convention know, but I know what occurred in my part of the state before this Convention assembled. I do not know where this organization originated, and I do not know who is at the head of it, but I think I am safe in saying it has not the endorsement of the people of Ohio for its existence.

There came into my community one day a man who said he was going about the state consulting with the delegates that were elected to this Constitutional Convention, and he said to me that there were some men in that Convention who ought not to sit there, that they were dangerous men because they were in favor of the initiative and referendum and several other "fads" as he termed it. And then that man went so far as to inquire what my income was, what banks I did business with and who were my relatives. What did that have to do with my being a candidate for a delegate to the

Constitutional Convention? Then this man, who claimed he represented something of this kind, turned to me and made a personal assault on our honored president of this Convention. It seems that this institution has been hounding not only our honored president but has been hounding this Convention, and if you read that through you will see it is an attempt to cast reflections on every delegate in this Convention and that it claims we do not represent the people. I take occasion to refer to this matter, for I will not stand for any man to speak against the one hundred and eighteen delegates here after meeting them as I have met them and finding them as I have found them, men of honesty, integrity and honor.

I find this publication I hold in my hand is by Allen Ripley Foote. I do not know the gentleman, but if he means what he says in this pamphlet he thinks he is the self-constituted guardian for the people of Ohio and of this Convention. He starts out under the title that the initiative and referendum system of government is dangerous and he gives several reasons why we should not adopt initiative and referendum and he says that some of us here have not got open minds. I think the gentleman who edited this wants the people to come to a Constitutional Convention with an open mind. We have recently in the courts of this county had the results of men coming to the legislature with open minds. That is the kind of men I suppose this gentleman wants to come to this Convention, men who do not know what they stand for before they come, men who have not made any promises to their constituents whom they represent. Then he says in the sixth reason, "The disclosed purpose of those who have secured pledges from delegates to support the initiative and referendum proposition, containing the percentages specified in the pledge, is to use the power so obtained to initiate a law establishing the single tax."

Was there any man in this Convention who ran on that platform? Was that an issue raised in the campaign which sent us here? Is that issue raised in the proposal we have before us? No. Why then raise the question? I come back to the original proposition that the object of this thing is to obscure the real issue we have before us. Then after giving the reasons for not adopting the initiative and referendum, he says: "Had you any knowledge of the dangers that are inseparable from the initiative and referendum system of lawmaking when you voted for the election of a delegate pledged to support such a proposition? If not, is it not now your duty to instruct the delegate, or delegates, representing your county in the Constitutional Convention to make it certain that any initiative and referendum proposition supported by them shall safeguard you against these dangers?"

Then he says if you must have an initiative and referendum proposition enacted that he will give us six things that ought to be injected into it. This can be done as follows:

1. By providing that no proposed law submitted to the people by an initiative petition shall be adopted by an affirmative vote of less than a majority of the whole number of electors residing within the jurisdiction to be affected.

## Initiative and Referendum.—Address of J. B. Foraker.

Then I go to the fifth thing:

That no proposed law shall be initiated by petition on the subject of taxation placing a restraint upon, or interfering with, the legislative power of the general assembly.

Now, I say to you that you can trace the footprints of that institution right here to the very doors of the Convention. I am not charging that the gentleman who introduced that proposal knew anything about it, but he has walked into their trap and has incorporated in this original proposition the very thing that this institution wants—the Ohio Journal of Commerce—to the end that the very instrument that we propose to put in the hands of the people to make it more effective and more responsive to their will is chained down on one of the most important propositions and will not enable the people to get what they want.

Mr. LAMPSON: Will you yield for a question?

The PRESIDENT PRO TEM [Mr. HALENKAMP]: Does the gentleman yield?

Mr. OKEY: Yes.

Mr. LAMPSON: Do you admit that through the initiative and referendum you want to get the single tax on land?

Mr. OKEY: I do not.

Mr. LAMPSON: You object to the chaining down as preventing that?

Mr. OKEY: They can get nearly anything under your proposition.

Mr. LAMPSON: Will you support the proposition if everything is stripped out of it except that prevention of the single tax?

Mr. OKEY: Certainly I will; but I will not support it with all those amendments.

Mr. LAMPSON: Will you support it—

Mr. OKEY: Not as your amendment is written, no.

Mr. LAMPSON: Will you support that part of the amendment which refers to the single tax?

Mr. OKEY: I will not. I do not want to chain down the people of this country. Thomas Jefferson said that the people of one generation were not competent to fix a constitution for future generations. I say to the gentlemen of this Convention that the initiative and referendum can be used to fight the single tax and I am opposed to the single tax as much as any man in this Convention. When we have the initiative and referendum we can fight the proposition if it comes up; but why inject it here, that the initiative and referendum shall never be used to accomplish that purpose?

On motion of Mr. Tetlow the Convention recessed until 1:55 o'clock p. m., at which time proceedings were resumed.

The PRESIDENT: The Convention will be in order. It is now our privilege to listen to a man whose magnetic personality and conspicuous abilities have won for him and held throughout a long life of public service a host of friends, Mr. Foraker.

## ADDRESS OF J. B. FORAKER.

Mr. President and Gentlemen of the Convention: I make no apology for having put on paper the remarks I wish to make to you. You are entitled to the very

best thought and the very best and most concise expression of which I am capable. That is all I have had in view in taking the course, somewhat unusual for me, of using manuscript while I talk.

I thank you for the invitation that has brought me here, although I fear I may not be able to greatly interest or help you.

I did not feel at liberty to decline to address you on that or any other account, because the work in which you are engaged is one of such high dignity and such far-reaching importance and consequence that all your requests should be regarded as commands.

In view of the long time you have been studying the subjects you have under consideration and after the many addresses to which you have listened, I do not hope to say anything new, but only to further elucidate, if that be possible, views with which you are already familiar.

Before I touch upon any controverted question, let me speak of your work as a whole.

It is commonly and properly accounted of much higher dignity and importance than that which usually falls to the legislature.

This is because it deals with fundamental principles that do not change, while the other deals with circumstances and conditions that are constantly changing. In framing an organic law you are governed by human nature and standards of morality that continue the same through all generations; that are the same to-day that they were when our government was organized, when the common law was established, in the days of the ancient governments of Rome and Greece and Egypt, and that will be the same so long as the world stands.

Of course, as we go along, living under a written constitution, it may develop that some power has been omitted or inadequately provided for, or that some plan for executing some purpose can be improved, and in consequence an amendment may be necessary, but if the form of government and the general distribution of powers be satisfactory, there will be little necessity to make changes or additions.

In the century and a quarter we have lived under the federal constitution we have found it necessary to make only fifteen amendments, and ten of these were submitted to the states for ratification almost contemporaneously with the submission of the constitution itself. In other words, in more than a hundred years we have made only five amendments to the constitution of the United States, and three of these were made necessary by the Civil War.

When our fathers framed that instrument they had never heard of steamboats, or railroads, or electric motive power, or of any one of a thousand other things of which we have knowledge and are constantly making use, and yet the work they did has been found capable of being adapted to and of providing for all the numerous changing conditions and relations of society that have resulted in consequence. It has not been necessary to strike from or add to the instrument they framed a single word on any such account.

But while it has been necessary to make only this limited number of changes in our constitution, it has been necessary for the legislative department of the government to enact thousands of pages of statutory provisions, most of them made necessary by the ever-chang-

Address of J. B. Foraker.

ing conditions that have marked the progress of the world.

This is practical proof of the weightiest character, that in making an organic law we should confine ourselves as nearly as possible to that which is elementary, fundamental and unchanging, while the legislature should be authorized to deal with that which is inconstant. The one should deal with that which can always with a reasonable degree of certainty be foreseen, while the other must deal with that which it is impossible to foresee, and which can be dealt with intelligently only when it comes to pass. The one is intended to stand indefinitely; the other as occasion may require. Stating the same thing in another way, a constitution should deal only with great principles and it should deal with them only in a broad way, while the legislature, on the other hand, must attend always to details.

Such being the character and offices respectively of these two kinds of law, it follows that specific details are out of place in a constitution, but imperatively necessary in a statute. The one confers power and regulates its use; the other prescribes duties and regulates human conduct.

Specifications as to how much power shall be conferred and in what particular manner and under what particular circumstances it shall be employed, weakens, hinders and often defeats altogether the purpose to be subserved.

But the greater and more specific the details in fixing a rule of conduct the more certain will be its observance.

The men who framed the constitution of the United States understood this distinction thoroughly and observed it carefully.

They aptly defined the purposes of their work, provided for the federation of the states, the character and powers of the national government, its three departments, their respective authority and organization, including a system of elections for president and vice president, senators and representatives in congress, the appointment of judges, their jurisdiction, tenure and impeachment; they provided for our foreign relations, for an army and a navy, and established a treasury, with a revenue system to support it. They authorized all the legislation of different kinds that it has been found necessary to enact to govern the Indian tribes and regulate our domestic and foreign commerce, together with all the steamboats, railroads, telegraph lines, express companies and every other kind of carrier or facility that ever has been or ever will be employed in connection therewith, and did it all in a compass of seven articles, consisting of an aggregate of only twenty-four short sections, embracing all told less than forty-four hundred words. Some of our latest state constitutions with more than 40,000 words and approximately 50,000 words, putting into the very bowels of the constitution all the statutory regulations they could think of are in painful contrast.

You may not be able to excel, but you can at least emulate their example.

You have many great questions to deal with, but having no political platform to enunciate I shall deal with only a few of them. I shall talk about the initiative, referendum and recall, not slighting anything that belongs to either if I can avoid it.

These are new questions that have broken upon us like a storm. They are of such commanding importance that I pass everything else by that I may speak of them the more fully; but first let me indicate if I can with what spirit I speak.

I have great confidence in all my fellow-citizens. I believe most men want to do what is right — what will most promote the public welfare — and that, with only the rarest exceptions, all are patriotic enough to sacrifice bias, prejudice, ambitions, personal advantages and all unworthiness for the public good as freely as they would peril life itself for the national flag. All they need to know is what is right, what is best, what will give us the best results for all, the greatest good for the greatest number, make us the strongest and most respected, and knowing this, instantly that will be done.

This is true of the men of all parties, creeds and classes.

The most impressive legislative scene I ever witnessed was presented when the United States senate, having become satisfied that war with Spain was inevitable, put a measure on its passage, appropriating fifty millions of dollars, to be immediately available for the national defense, and, without a word of discussion, debate or comment of any kind, ordered the call of the roll and voted unanimously in its support.

All party differences, all personal and political antagonisms of every kind were effaced and forgotten in the presence of the country's danger, and republicans, democrats, and populists, all alike remembered only that they were Americans.

And so it must be here in this body. The law governing your selection to be delegates to this Convention was purposely so framed as to make you free, in the discharge of your duties, from all kinds of extraneous obligations, and give you an eye single to the highest and best interests of our beloved commonwealth.

It should not be doubted that you were imbued with spirit it was intended you should have and that you are, therefore, open to argument, to reason, to persuasion. I would not despair of converting anybody. I shall strive in all I may say to show myself in full sympathy with you in that respect. In this spirit let us reason together.

First now of the initiative and referendum. It has been remarked in the last few days that they commonly go together. I hope they will and go the right way.

Not to go beyond our own history when the constitution of the United States was framed it was submitted by the convention that framed it to the people of the several states for ratification before it was put into operation. That was referendum.

When the first constitution of Ohio was adopted the convention that framed it did not submit it to the people for ratification, but promulgated it and put it into operation without giving the people any opportunity to approve or disapprove.

That was not referendum. Time developed imperfections and insufficiencies in that instrument, but this failure to submit it to the people for their approval was one of the causes in addition to others on account of which it was superseded by the constitution of 1851.

The practice of submitting constitutions and their amendments to the people for ratification and adoption

## Address of J. B. Foraker.

has been generally observed in all the states of the Union.

In some of the states, even though their constitutions did not provide for it, legislative measures of a local character have also been occasionally submitted to the people for approval before putting them into operation.

In the same way a form of the initiative has been sometimes recognized in connection with local legislation without any special authority for it.

There are some judicial decisions on the subject.

With but little conflict the courts have held that where the constitution of a state has vested all legislative power in the legislature and is silent on the subject, both the initiative and the referendum may be exercised as to the legislation of municipalities and local subdivisions, but not as to general legislation affecting the whole state.

The foundation for the distinction is stated by Judge Cooley in the discussion of another subject, in his work on Constitutional Limitations, as follows:

\* \* \* The legislature can not delegate its power to make laws, but fundamental as this maxim is, it is so qualified by the customs of race and by other maxims which regard local government, that the right of the legislature, in the entire absence of authorization or prohibition to create town and other inferior municipal organizations, and to confer upon them the powers of local government, and especially of local taxation and the police regulation, usual with such corporations, would always pass unchallenged. The legislature in these cases is not regarded as delegating its authority, because the regulation of such local affairs as are commonly left to local boards and officers is not understood to belong properly to the state.

It is not necessary, therefore, to change our constitution to authorize both the initiative and the referendum as to local legislation; but it is necessary to change it to authorize the exercise of these rights by the electors of the whole state.

It is because of this holding of the courts that it was competent for our last legislature to authorize the initiative and the referendum in municipalities; and competent for a preceding legislature to enact the Rose county local option law, because under it action is taken by counties upon the petition of a prescribed number of voters.

The same is true as to all the laws we have had subject to local votes, authorizing municipal and township local option, the location of county seats, the building of bridges, the making of local improvements, and doing many other things that might serve as illustrations to show that in various ways we have always had a species of initiative and referendum, although we have not heretofore commonly employed these names to designate such proceedings. Our experience in this respect should be of value to us now.

According to this experience where the electorate is not too large and where the question submitted is simple, and one affecting either the pocketbooks or the personal habits of the people, a good vote and an intelligent vote is usually secured; but when the number of voters is

large, and the questions are complicated, or have reference to the community as a whole, and nobody in particular, the vote is generally very light as compared with that cast for the candidates for office, voted for at the same time, and consequently the public expression so secured is correspondingly less satisfactory.

We have had the same experience with respect to constitutional amendments that have been submitted to be voted upon by all the electors of the state.

We should bear in mind, therefore, that if it be the purpose of the initiative and the referendum to secure an expression of the voters with respect to local legislation, we have all the power and authority now necessary for that purpose without changing our constitution; and that, in the second place, we are likely to get the most satisfactory expressions, only when the numbers to vote are smallest and the questions submitted are simplest; particularly is all this true when the questions submitted do not involve sumptuary legislation or affect individual property rights. When these features are involved there is, as a rule, a large vote.

But what we are now called upon to consider is not the initiative and referendum as applied to local subdivisions and to simple and distinct propositions of legislation, such as whether a community shall be wet or dry, the courthouse shall be located at one place or another, a particular bridge shall be built or not built; but whether or not we shall have general legislation affecting the whole state, to be submitted to all the electors of the whole state; and not only general legislation, but the most complicated as well as the simplest kind of general legislation; and be compelled to accept or reject without privilege or power to debate or amend.

For the proposal, as you have formulated it, is that on the petition of a small percentage of the voters any law enacted by the legislature having general operation throughout the whole state, shall be submitted to the voters of the whole state for their approval before it shall be allowed to go into operation; and that on a like petition any bill that anybody may draft shall be submitted to the whole body of the voters of the state for approval and that securing a majority vote in its favor it shall become a law, even beyond the power of the governor to veto it.

All concede that this involves a radical change in legislative methods, but the advocates of these propositions tell us that they do not involve an abandonment of representative government or any experiment, that they have been put into operation in Oregon, California, and a number of other states, and that they have been found effective for good results; that the movement was conceived and inaugurated to cure conditions of political bossism and corruption; that the people had lost control of their own government, and in this way control has been restored to them, and that no one should oppose these propositions unless he is afraid to trust the people, and that as wholesome results have been secured elsewhere, so, too, can they be secured here in Ohio.

There are a number of objections that should be considered.

In the first place, it would increase the burden of elections; if not by increasing the number, at least, by increasing our duties and responsibilities.

With only a duty of choosing between candidates and

## Address of J. B. Foraker.

platforms we have found elections such a disagreeable responsibility that we have wisely sought to minimize their number and simplify their character.

In this behalf only a few years ago we abolished our October elections and later consolidated elections of congressmen and state officials so as to have all occur in even-numbered years and municipal and other local elections so as to have them occur in odd-numbered years.

If now in addition to candidates and platforms we are to be compelled to consider and vote on all kinds of local and state legislation every time we go to the ballot box, we shall find election day the busiest and most burdensome of all the year, since although the mere voting may be a small matter, yet the duty that will be placed upon us by this change will be onerous indeed.

The reading, study and labor attendant upon the general investigation and inquiry we must make to familiarize ourselves with the many measures we are likely to be required to pass judgment upon will be exacting beyond any experience we have ever had with elections. It has been said there will be a compensation in the education the people will get and the gratification that will come to them from a realizing sense of duty performed.

As to many people this may be in some measure true, but there will be a large percentage of the voters who will not appreciate the benefit thus received. It is too intangible to be an inducement to a large percentage who will always be so practical as to be more concerned about their own affairs than they are about those of the state.

It has also been suggested that there may be but little resort to these methods in actual experience; that the great value to the public is in the moral effect of the knowledge that such weapons are at hand.

There are two answers.

In the first place, if they are to be little used it is not important that we have them. "The game will not be worth the candle." In the second place, practical experience where these measures have been adopted and put into operation shows the contrary. In Oregon, where the initiative and referendum have been in operation some years, there has been a growing increase in the number of measures voters have been called upon to approve or disapprove at each state election.

There were only two such measures in 1904, the first year; eleven such measures in 1906; nineteen in 1908; while in 1910, thirty-two legislative measures were submitted under the initiative and referendum. In Oregon, the state prints and distributes these bills with explanations and arguments, limited to two hundred words, for and against each measure.

According to the proposal you have adopted these arguments are to be limited to three hundred words each. We require more intellectual food than they seem to need in Oregon.

In Oregon, in 1910, these bills and the explanations and arguments made a book of two hundred and eight pages. Each voter was expected to study carefully each bill and the argument for it, and the argument against it, in order to qualify himself to pass judgment upon it; and manifestly if he failed to do this he was not qualified to vote intelligently.

If we should put similar measures into operation here

and should make a proportionate use of them, our voting population being ten times greater than it is in Oregon, it would mean that we would at each state election be called upon to vote upon more than three hundred legislative measures, and in order to qualify ourselves to vote upon them intelligently, we would have to read more than three thousand pages of bills and arguments, since our arguments are each to be one hundred words longer than they are in Oregon; and that is more of that kind of literature than fifty per cent. of the people of the United States read in a lifetime. And yet if this proposition is forced upon us we shall have to do it at least once a year. Most people might read that amount of fiction or history for pleasure, but they would not wade through such a mass of that kind of printed matter merely to learn how to vote. They would ordinarily rather vote in the dark or forego the privilege entirely.

But those who would not read at all would, perhaps, have less trouble than those who did. To those who would not read it, it could not make any difference that the power of amendment is denied—that the bills must be voted upon precisely as submitted—"not a t crossed nor an i dotted."

Every man knows who has ever had experience as a member of a parliamentary body that it is only through the power of amendment and the debate and discussion precipitated by objections that the weaknesses of bills as introduced are developed and corrected, and that without an opportunity for consideration in committee and discussion and amendment there, and on the floor of the body, it is usually impossible to reach conclusions acceptable to a majority of the membership with respect to a controverted proposition.

You do not need to go beyond your own experience for a conclusive illustration of the truth of this statement. Recall your experience with respect to the proposal for which a majority have voted with respect to the liquor question, and you will be reminded that it has been only through the employment of all the facilities of regular parliamentary procedure that you were able, finally, to reach a conclusion upon which a majority could unite; but you need not go beyond the very proposition I am discussing.

When the campaign was on, and your distinguished president was electrifying everybody with the charm of his eloquence and the persuasion of his argumentative powers and for weeks after the Convention assembled, the members who favored the initiative and referendum probably did not realize that they would have trouble to agree upon a proposal acceptable to a majority of the membership; but, according to the press advices, it has been only through long, wearisome, patient, struggling endeavor and resort to every available parliamentary facility and procedure, including the much-abused caucus, that you have finally agreed in committee upon the proposal that has been reported. What you will do when the Convention acts remains to be seen.

Another objection, applicable to the referendum, is that it has a tendency to induce legislators to evade their responsibility as to troublesome questions of legislation, a vote on which, either for or against, they desire, for any reason to avoid.

## Address of J. B. Foraker.

Again it is unnecessary to go beyond the experience of this body for support for this objection.

A few days ago in the report of your proceedings the newspapers carried the following:

Many delegates here to-day predicted the adoption of the woman's suffrage proposal. Several delegates stated that they would not oppose the question on the floor, for the reason that they believed the electors would defeat it when submitted.

It is fundamental that every public official should act with respect to every measure he is called upon to consider, according to his conscientious conviction of duty.

And if he does not act that way he ought not act at all. Somebody ought to recall him.. And yet it is common knowledge that we do not always get this highest and best service when it known that no matter what action may be taken, it is not final, but subject to review.

A more serious objection is the fact that these proposed changes would provide for practically two legislatures.

One composed of representatives duly chosen who meet in an organized body and under the obligations of an oath of office discharging their duties according to parliamentary procedure.

The other an unorganized body of electors limited only by the total number in the state, who do not act under the responsibilities of an oath of office; who have no parliamentary procedure; who cannot have the benefits of consideration by a committee, with a report therefrom; who cannot amend or suggest amendments; who cannot by objection and discussion and debate develop a necessity for amendments; who are largely dependent for information upon what is furnished them by the state, which would probably be greater in volume in a state like Ohio than the average voter would be able to read, let alone study and master, no matter how willing he might be to try to do so under fair circumstances.

It is not a question of trusting either the integrity or the intelligence of the people, but rather of trusting their patience and willingness to make the investigation and study necessary to enable them to act with wisdom.

We have had some experience as to what voters will do as to general proposals under ordinary circumstances. They have had a good deal of experience in Oregon.

This experience shows that on legislative propositions of a general character, not affecting personal habits or individual pocketbooks, the total vote cast ranges from about sixty to eighty per cent. of the total vote cast at the same election for candidates for office, indicating that in addition to those who may vote against measures because they do not know enough about them to be satisfied to vote for them, there must be a very large percentage of voters, who, for the lack of information, do not vote at all.

According to newspaper reports you have been advised to favor a short ballot. There is much to be said in favor of that suggestion. The chief reason for favoring a short ballot is, however, that the voters, according to the gentlemen who advocate that reform, should not be required to study the qualifications and fitness of an undue number of candidates to be voted for at the same time; but it would seem inconsistent to argue that it is

too much to require of the voter that he shall pass judgment on perhaps a dozen candidates at the same time, and yet, at the same time vote to approve or disapprove thirty or more, perhaps three hundred or more, legislative measures, all important, and all affecting the whole state, and most of them probably sufficiently complicated to cause lawyers to differ and courts to disagree as to how they should be construed.

How any man can vote for a short ballot and then vote for such a wholesale way of legislating is more than I can understand. Experience has shown that the voter is much more likely to study candidates than he is to study legislative propositions; especially when the legislative propositions do not concern his personal habits or his pocketbook; for the record shows that everywhere in this country where experience has been had, and everywhere in Switzerland, from which country we are borrowing these ideas, with the exceptions noted, the vote will always be from twenty to fifty per cent. greater upon individual candidates than on legislative propositions. Many voters lose interest in a ballot as soon as they get through with the human being, flesh and blood part of it.

In Switzerland the neglect of the elector to vote on legislative propositions, although presented on the same ticket with candidates, for whom he voted, became so great that, finally, laws were passed, making it compulsory for him to also vote upon the legislative proposals. But the aggregate vote for and against measures has been no larger since than it was before. The non-voters now vote as the law requires, but they vote blanks, thereby demonstrating that while you may compel the voter to go to the polls and cast a ballot, you cannot compel him to vote for or against if he prefers not to do so; and that rather than vote for or against measures he does not understand, or take the trouble to learn about, he will "shoot in the air." That is what they do in Switzerland.

The result is that where a majority of all the votes cast at the election is not required to carry a measure, but only a majority of the votes cast for and against the proposition, it frequently occurs that a measure is adopted by a minority vote. This has happened so often that it is a just criticism to charge that the plan is well calculated, if not intended, to enable a compact, well-organized minority, to carry a proposition against an unorganized majority.

It has been stated that, as a rule, all men who believe in a single tax as advocated by Henry George, favor the initiative and referendum because of the possibility thus afforded of enacting a law of that character.

The statement has been repeatedly made in the public press that prominent leaders of the single-tax movement have said that their purpose in favoring the initiative and the referendum is to make more possible, through the compact organization of a minority, the enactment of the legislation they desire.

Without regard to what the fact may be as to that matter, it is not wise to favor measures calculated to give a minority control. That the majority shall rule is a basic principle of our institutions.

Many other objections might be made, but I shall mention only one more, probably the most serious of all.

We could survive all the evils that would likely result on account of the objections already mentioned, if they

## Address of J. B. Foraker.

should be overruled and there were no others; for none of them would be vital in character, and in time we might and would find some way to correct evils that might arise, both those which are foreseen and those which are unforeseen; but this proposed change would be attended, I fear, with far more serious consequences than any yet pointed out.

We have a representative form of government; our fathers were of the opinion that in a country of such vast areas as we have, with a population of millions, soon to be multiplied to hundreds of millions, direct government by the people was impracticable and impossible. They, therefore, provided for a popular government to be conducted, not by the people directly acting in its conduct, but by representatives of the people so acting—representatives chosen by the people because of their supposed character and qualifications for such service—all sworn to sustain the constitution of the state and the nation and all the laws of the country.

When this form of government was adopted it was thought to be a long step forward in the science and progress of enlightened government. It was thought to solve the difficult problem of how the people could conduct a government of their own.

For more than a hundred years we apparently unanimously flattered ourselves that we had successfully solved that problem; that we had popular government; that the people did control the government. We believe with Lincoln that our government was of the people, by the people and for the people.

All American people not only have believed through all this—more than a century of national life and experience—that they have had such a government, but they have become attached to it, affectionately attached to it, because of the wonderful success they have achieved under it. This should, at least, admonish us to not make radical changes lightly or inconsiderately, but only after careful examination and with an intelligent conception, if we can get it, of the consequences.

Surely we should know whether we are to take a step backward or forward; whether it is progress or retrogression that is offered. What then is it that we are asked to do?

We are told that it is not an abandonment of representative government, but only a restoration. This statement concedes that abandonment would be a fatal objection. They did not make that concession a year ago. They made it only during the last six months since this question had come to be considered and discussed and in some measure understood by the people—the people of whom they had charge. It is, therefore, important to ascertain whether the statement be true.

To say that the people shall do directly what they have been doing by representatives is to simply say that as to the particular matters involved, they will have no representatives; and to say they will have no representatives in a given case, is to say that we have at least to that extent reached the end of representative government. And that is at least partial abandonment, and that is all that has been claimed. It is the entering wedge. That is all anybody has claimed; and it is more than we should have.

If representative government had been a failure there might be a good excuse for what is proposed, for in such

a contingency it would behoove us to make some kind of change; but representative government has not been a failure. Who says it has been a failure? [A voice, Diegle.] Is it not true that in spite of everything we have made greater progress than any country on the face of the earth? It has not been a failure. Instead of being a failure it has been a triumphant success.

Under it there have been many abuses. Under what government of the world have there not? Many men selected to office have disappointed their constituents. There have been many scandals to jar our confidence, but all things considered, we can say without successful contradiction that our government and our people have been freer from troubles of this character than any other in the world.

This is particularly true as to our own state of Ohio. From the day, when in 1788 civil government for the Northwest Territory was inaugurated at Marietta, down until this time the history of our state and its government has been one to excite our unqualified pride.

We have had only enough disappointment to emphasize the exceptionally high character and extraordinary efficiency of those who have represented us in public life.

They may have had insufferable troubles in Oregon and California and they probably did have. It may be they could not find any other equally efficient way in which to remedy those troubles. I would not criticise the men who in those states were compelled to grapple with conditions we may not understand, and who doubtless with a patriotic and laudable purpose to restore and insure good government resorted to these methods; but, however it may have been in those states, there has been no sufficient provocation for any such experiment in Ohio.

Moreover, with their smaller populations and their peculiar conditions, methods and systems may be practicable there that would not be with us. We have a vastly larger population, more varied interests, more business activities, and a restless, busy, intelligent people, who need all their time for their own affairs and therefore prefer that legislative measures shall be framed and dealt with by representatives, assembled in parliamentary bodies and acting under official responsibility.

So much of our time is so necessarily taken up with elections and legislative matters that we prefer to curtail these duties rather than enlarge them. Only a few years ago public sentiment became so strong against annual sessions of our general assembly that it forced the adoption of biennial sessions. Let us not now thoughtlessly or for some trivial cause or under some specious pretext fly to the other extreme and create another legislature, of the character proposed, especially not until we have some better reason than that "it has worked well in Oregon."

Along with the initiative and referendum the recall has been put into operation in these other states, and has been proposed to this Convention. I understand there is not much likelihood of such a proposal being adopted, and that is fortunate. Fortunate, because most of our civil officers are elected only for the short term of two years. As to all such they are scarcely familiar with their duties until they must either retire or stand for re-election.

## Address of J. B. Foraker.

There is nothing in our experience to show that this, with the provisions we have for removal, is not a sufficient safeguard.

It would be a burdensome and unnecessary multiplication of our duties to compel us, from time to time, to hold intermediate elections at public expense to determine whether an official duly chosen shall be allowed to serve out the short term for which he has been elected, particularly so when we may otherwise provide as will presently be suggested.

While their terms are longer there is a more serious objection to the recall when applied to the judiciary.

Our judges are not more sacred than other officials. They do not claim to be, nobody else claims that they are, but their services are far more important than those of any other class of officials; and it is important to us, rather than to them, that we should have in the manner in which they discharge these duties the highest possible efficiency. Our experience has demonstrated that our fathers were wise in making our three departments of government separate, independent, and co-ordinate; particularly were they wise in making the judicial department separate and independent.

There never had been a judiciary, in any country under any government, before their time, independent as they are, not only to administer justice as to private controversies, but also to check all encroachments upon the fundamental law of the land.

That department was made separate and independent, not only because of the subserviency of the English judges when they held office only by the favor of the king, but because it was realized that we must not only have impartial tribunals for the adjudication of controversies between private litigants, but that, if our written constitutions were to stand, there must be a power lodged somewhere to compel the observance of their limitations—a power that could check the encroachments of both the congress and the executive. Only a separate, distinct, independent department of unquestioned authority and power, beyond the control of either of the other departments, could be sufficiently independent and fearless to perform this high service. The federal constitution led the way in making this reform, and all the older states followed, not so much from compulsion as from choice. What has been the result? In neither state nor nation have we had any thing of which to make serious complaint, but only cause for sincere pride and congratulation.

But we are told that the experience has been different in other states, and that our experience may not be so satisfactory in the future, and that for such reason the recall should be adopted and be made to apply to judges as well as to other civil officers.

All are agreed that there should be some way of removing officials from office, including judges, on account of such offenses as are now made the subject of impeachment.

It is accordingly provided in the federal constitution that they should be subject to impeachment, and provided in a general way what the procedure should be.

With some variance as to the grounds most of the states have adopted similar provisions.

In the Ohio constitutions of 1802 and 1851, it was

provided that they might be removed by impeachment for "misdemeanors in office."

We have had little occasion to consider the efficiency of this remedy, but it may be justly criticised as too cumbersome and not easily available.

Articles of impeachment can be presented only by the house of representatives, and they can be tried only by the senate.

To set this machinery in motion would ordinarily be a considerable undertaking, even when the senate and the house are in session; but the legislature now holds only one regular session biennially, and that is rarely longer than three or four months. The result is that five-sixths of the time, or possibly twenty months out of twenty-four, impeachment proceedings are wholly impossible; and, during the short time they are available the machinery is so unwieldy that only an extraordinary case would induce a resort to it; and then in most instances the time of the general assembly might be better employed. For having only one session every two years the ordinary demands for legislation leave but little time to the legislature while in session for anything else.

In consequence the remedy by impeachment as now provided would be found well-nigh no remedy at all, if we should have occasion to invoke it.

But this does not show a necessity for the recall as proposed, but rather that we should make suitable provision in some other way for a simpler method of preferring charges and a more available tribunal before which to try them, with a less cumbersome proceeding according to which the trial should be conducted.

It is not within my province or privilege to formulate a proposal for your consideration, but I suggest that it might be made the duty of the attorney general to receive and examine charges against judges and other public officials now subject to impeachment, and if he shall find them sufficient in law, and that there is probable guilt, to put them into proper legal form and report them to the governor with a recommendation that impeachment proceedings be had; in which case it shall be the duty of the governor to summon an impeachment court, consisting of such number of members as he shall determine, not less than three nor more than fifteen, to be selected by him from judges on the bench and other citizens of the state, in such proportion as he may determine; which court shall be convened at a time and place to be designated by him, and then and there proceed to hear and determine, upon the law and the evidence, the charges preferred—the attorney-general representing the state, and the impeached official defending in person or by attorney. If charges be preferred against the governor or the attorney-general, the chief justice of the supreme court might be authorized to act in his stead.

All the details of such a proceeding should be left to the legislature.

I am only suggesting that it is an easy matter to provide a tribunal that can be invoked at any time, with but little cost, to hear, in an orderly way, and protect all rights involved, any charges that may be brought upon which there should be a trial; and that through the attorney-general and the governor there would be an assurance that no such proceeding would be had on

## Address of J. B. Foraker—Resolution on Death of Judge James L. Price.

frivolous or trivial charges, or except upon lines that would protect the public and secure equity and justice to all concerned, with but slight expense and without annoying the entire electorate concerning a matter for which ordinarily it has neither time nor disposition.

With a remedy, so easily provided, for whatever may be lacking in our present procedure it does not seem wise to resort to the practically untried experiment of the recall, with all its expenses, trouble and annoyance.

Certainly it is not necessary to call upon the 1,200,000 voters of Ohio to sit in judgment upon a charge against some one of our judges that he has committed some kind of a "misdemeanor in office." Certainly it can be better done by a competent tribunal appointed for that purpose. Then why longer consider the recall?

There is only one answer, and that is not a good one—for that answer is: Because the recall is designedly broad enough, where it has been put into operation, to embrace within its scope other purposes than the ascertainment of truth and justice.

Under the constitutions of all the older states the grounds for impeachment are specifically named; they consist of crimes, misdemeanors in office, oppressions in office, conduct involving moral turpitude, gross immorality, and other offenses of the same general character. But in Oregon, where they have instituted the recall, no specific ground is necessary. The language of the statute being, referring to the petitioners who ask for the recall, "They shall set forth in said petition the reasons for said demand,"—their reasons,—not reasons named in the constitution or the laws, for there are nowhere in the laws of that state any limitations upon the number or the nature of the reasons the petitioners may assign. The test, therefore, becomes one of personal popularity, pure and simple, and it is so intended.

In consequence, if a judge by an unpopular decision sets this machinery in motion against him, he is liable to lose both his office and his good name as a penalty, not for any wrong he has done, not for any error he has committed, not for any violation or disregard of law, but, on the contrary, it may frequently happen, because he has ably and conscientiously done his duty under the law and according to the law he is sworn to uphold.

There can be but one purpose of thus broadening the method of calling judges to account, and that is to take away from the judiciary that independence and that fearlessness so essential to the important place they are intended to fill in our form of government; to substitute dependence for independence; timidity for courage, with the inevitable result of the loss of that respect our judges have always enjoyed.

It was to escape such possibilities that our judicial system was adopted, and our judges were given the great powers they are authorized to exercise.

All the great statesmen of the formative stages of our republic, including not only men who framed the constitution, but those like Jefferson, Marshall and Webster, who put our government into successful operation and developed its powers—the very men we revere most for their wise, unselfish, patriotic devotion to the great problem of American self-government, have recognized in the independence of our judiciary, the very keystone of our national arch; and all have admonished us to jealously guard and preserve it.

To turn our backs upon what these men taught and upon our own experience, by adopting a method of calling judges to account according to the unbridled whim of the requisite number of petitioners, would be to destroy that feature of our system that has made it most useful and inspired us with the greatest confidence that in the fiercest storms that may come it will prove our sheet anchor of safety. Let the judge remain secure, therefore, in his great office from assault and molestation from any and every cause, except his own personal and official misconduct. And should he commit error in his rulings and decisions, it would be only to make a bad matter worse to appeal therefrom to the people themselves, sitting as a high court of review.

A court composed of all the voters of the state, not acting under the obligations of an oath, and necessarily in large part without many essential qualifications, would be a strange and unfit kind of tribunal to determine great constitutional questions, involving human rights, human liberty, human progress, and possibly, yes, surely, in time, involving the preservation itself of our institutions.

Instead of seeking new and strange ways in which to get away from ancient landmarks, let us rather take renewed confidence in what our fathers gave us, and strive by improving, strengthening and fortifying, to go forward to an assured destiny, full of glory, and honor for the nation; and full of peace, happiness and prosperity for the state.

Mr. KING: I move that the thanks of this Convention be extended to the Hon. J. B. Foraker for the able and instructive address which he has given to us.

The motion was carried.

Mr. LAMPSON: A number of the delegates have said to me that they want to go home this evening and as there is no likelihood of a very large attendance tomorrow morning I therefore move that we recess until seven o'clock Monday evening.

Mr. JOHNSON, of Williams: I demand the yeas and nays on that.

The PRESIDENT: Before that motion is put the member from Allen [Mr. HALFHILL] has a resolution.

The resolution was read as follows:

Resolution No. 86:

WHEREAS, Judge James L. Price, of Lima, Ohio, departed this life on March 11, 1912, being at the time of his decease, and for ten years past, a judge of the supreme court of Ohio, and known to all as an exemplary man of unimpeachable character and a learned, fearless and upright judge, therefore,

*Be it resolved by the Fourth Constitutional Convention of Ohio, Now in session in Columbus, that in the death of Judge Price the state of Ohio loses both a citizen of sterling integrity and a public servant of acknowledged ability and great worth to the commonwealth.*

*Resolved, further, That this Convention tender the bereaved family of the deceased its sympathy, and deliver to each his widow and his son, Charles F. Price, a copy of this resolution signed by its president and attested by its secretary.*

Resolution on Death of Judge James L. Price.

The chair recognized the delegate from Marion [Mr. NORRIS].

Mr. NORRIS: I knew Judge Price well. I was associated with him for four years on the circuit bench in the third circuit of this state. Men in such service consulting together, where the human judgment and the human conscience is challenged upon every hand, become acquainted with every phase of the character of their colleagues and I knew Judge Price very well. He was wise and prudent, impartial and just; and he possessed that quality which, when it seasons justice, makes justice most like God. He had the quality of mercy. He believed that while men could sin, that they yet might be sinned against; that while men might break human law and forfeit their rights for the breach of it, they were still clothed even in their misfortunes with attributes that human power might not evade.

Judge Price was a firm friend. The friends of tried adoption he grappled to his soul and was ever ready to serve them in the manner that friendship demanded. He was not an obtrusive man. He was modest, retiring and diffident. It required close acquaintance with him to fully know and fully appreciate his truly great qualities, and his truly great character.

Withal, every person, high or low, who knew him thus, as men should know each other, have fullest reason to feel that they have lost a friend, and that the people of Ohio, when this man's life was taken from the earth, have lost a member of the highest tribunal of this state who was in all respects a wise, faithful and conscientious servant.

The resolution was adopted.

Mr. LAMPSON: I move that we recess until seven p. m., Monday night.

The yeas and nays were demanded by several members.

Mr. DOTY: I object to the yeas and nays until the room is cleared. If we are going to transact business let us have quiet.

Mr. JOHNSON, of Williams: Last week we passed a rule to have a Friday session and I don't like to go home to my constituents now with the proposition that we don't want it. But if the other gentlemen feel that

they must have it I will withdraw the demand for the yeas and nays.

Mr. PECK: Well, we still demand the yeas and nays.

The PRESIDENT: The question is on recessing until seven o'clock Monday evening. The yeas and nays have been demanded and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 55, nays 51, as follows:

Those who voted in the affirmative are:

Baum,	Johnson, Madison,	Riley,
Bowdle,	Jones,	Roehm,
Brattain,	Kehoe,	Rorick,
Brown, Highland,	Keller,	Shaffer,
Cassidy,	Kilpatrick,	Shaw,
Colton,	King,	Smith, Geauga,
Cordes,	Knight,	Solether,
Crites,	Kramer,	Stalter,
Crosser,	Lampson,	Stamm,
Doty,	Leslie,	Stokes,
Dwyer,	Ludey,	Tallman,
Elson,	Marriott,	Wagner,
Halfhill,	McClelland,	Walker,
Harris, Ashtabula,	Norris,	Weybrecht,
Harris, Hamilton,	Okey,	Winn,
Harter, Stark,	Partington,	Wise,
Henderson,	Pettit,	Worthington,
Hoffman,	Pierce,	
Hoskins,	Read,	

Those who voted in the negative are:

Anderson,	Fluke,	Miller, Ottawa,
Beatty, Morrow,	Fox,	Moore,
Beyer,	Halenkamp,	Nye,
Brown, Pike,	Harbarger,	Peck,
Cody,	Harter, Huron,	Peters,
Collett,	Holtz,	Rockel,
Cunningham,	Hursh,	Smith, Hamilton,
Davio,	Johnson, Williams,	Stevens,
DeFrees,	Kerr,	Stewart,
Donahey,	Kunkel,	Stilwell,
Dunlap,	Lambert,	Taggart,
Earnhart,	Leete,	Tannehill,
Fackler,	Longstreth,	Tetlow,
Farnsworth,	Malin,	Thomas,
Farrell,	Marshall,	Ulmer,
Fess,	Miller, Crawford,	Watson,
FitzSimons,	Miller, Fairfield,	Woods.

The motion was agreed to.  
So the motion to recess was carried.