DIRECT LEGISLATION IN ARKANSAS

ARKANSAS may be classed as a rock-ribbed Democratic state, since it always supports the Democratic party. No Republican has been elected governor since the overthrow of the carpet-bag régime in 1874. Few Republicans secure seats in the legislature, though occasionally some are elected to office in counties and towns normally Democratic. In 1904 (September), the vote for governor was 91,991 Democratic, 53,898 Republican, 3891 all others; for president (November), 64,434 Democratic, 46,860 Republican, 5127 all others. Since then there has been no great variation. In 1912 in the September election the vote stood: Democratic 109,825, Republican 46,440, Socialist 13,384. At the November election the Democratic electors received 68,938 votes, the Republican 24,467, the Progressive 21,673, the Socialists 8,153 and the Prohibitionists 898. In the gubernatorial race the Democrats polled 64 per cent of the vote in a total of 169,669 against 61 per cent in a total of 149,780 in 1904; in the presidential race 55 per cent, in a total of 124,029, the percentage being the same as in 1904.[1] This narrow margin, especially in the presidential election, would not seem to justify the statement that Arkansas is a rock-ribbed Democratic state. Yet, if all opposition parties were to combine, they would have practically no chance of carrying the state, for the thought of such a possibility would bring out a considerable reserve force of Democrats.

Arkansas is not commonly regarded as one of the so-called "progressive" states. Down to 1908 only eight amendments to the constitution of 1874 had been adopted. The first (1885) was an act of repudiation, the second required a poll-tax receipt as a qualification for suffrage, the third and sixth were administrative, the fourth empowered the legislature to correct abuses and prevent unjust discriminations by transportation companies,

[1] For election returns see Reports of Secretary of State (Little Rock) for the year indicated.

the fifth provided for a road tax, the seventh reënacted section 16 of the constitution providing pay of legislators, and the eighth increased the amount of taxes which may be raised for school purposes. Of these amendments certainly not more than two or three are of the type commonly denominated "progressive."

In recent years the chief issues in state politics have been the railroads, the state capitol, the deficit, state-wide prohibition, and the legislature. These have not been issues as between the Democratic and Republican parties; indeed, little consideration is given to what the Republicans want. The issues have hardly caused factions within the Democratic party, but they have been used as convenient tools in personal fights for office. The railroads have been pretty well excluded from the legislature since 1907, in which year the passenger and freight-rate reduction laws were passed. Everybody wanted a new capitol, but the politicians divided on the manner of its building. For years the expenditures of the state have exceeded its revenues. All candidates for governor have agreed that more revenue must be raised without increasing the taxes of the people, but each has denounced the specific proposal of the others.

The liquor question has come nearer being a real issue than any of the foregoing, though most candidates have declined to take a decided stand on the matter of state-wide prohibition. Every two years each county votes on the question of license or no license. For some time the total vote against license has been considerably in excess of that for it. Encouraged by this the prohibitionists tried several times to get the legislature either to pass a state-wide law or to submit a prohibition amendment, but the liquor interests were always able to defeat every such measure. This led to a demand for the initiative.

For several years there has been a growing dissatisfaction with the legislative output, both on account of its quantity and quality, and with the length and consequent expense of the sessions. In 1901 the legislature passed 218 general and local acts, 4 private acts and 28 resolutions and memorials, covering 413 pages, exclusive of the index. The following year there was a slight decrease in the number of bills enacted, but the number of pages required to print them rose to 486. In 1905

there were 350 general and local acts, 14 private, and 13 resolutions, covering 843 pages. Two years later they had risen to 460 general and local acts, 14 private, and 22 resolutions and memorials, covering 1273 pages. The session of 1909 gave a slight reduction in the number of acts and pages covered, but that of 1911, the last held under the old conditions, was a record breaker. This time the output was so great that it had to be collected in two volumes. One of them contains 300 local and special acts, and 40 resolutions and memorials, covering 1363 pages; the other contains 162 so-called general acts, though many of them are of a local or special character, covering 595 pages, making the total output 1958 pages.

That the gain has been in local and special acts is easily shown. Of the 218 acts passed in 1901, 109, or exactly half, may be classed as general acts, and these include appropriations. Since then the ratio has risen until in 1911 there were only 128 general acts as against 334 local, special, and private acts, resolutions and memorials. In 1901, 16 local acts were passed relating to school districts, and 6 relating to levee and drainage districts. In 1911, the figures were: special schools, 70; levee and drainage, 37; roads, 39, and this too, in spite of the fact that a general act was passed in 1909 empowering the county judge to manage the creation of special school districts. No subject seems to be too trivial for legislative action, whether it be prescribing the length of fish which may be caught out of Cabin Creek, or providing an extra stenographer for the circuit judge in the ninth circuit, or the size of a railroad caboose, or making four wires a lawful fence in one corner of Saline County, or raising the salary of the clerk of Washington County, or defining baggage and providing for its transportation and prompt delivery, though there is a state railroad commission.

While the last decade has seen no great change in the length of the sessions, there was a general feeling that the legislators stayed too long in Little Rock and spent too much money. The increase in cost was especially noteworthy about the end of the period. For the ten-year period, the sessions lasted about 116 days and cost from $115,000 to $125,000. Curiously enough, the most unpopular of all the sessions, that of 1905,

was the least expensive. The last of the practically unlimited sessions, that of 1911, cost nearly $200,000.

Another great cause of discontent was the widespread belief that the legislature was in the hands of the special interests and not responsive to the will of the people. This was especially true in the session of 1905 and to some extent in the sessions of 1907 and 1909. There undoubtedly was corruption in connection with the building of the state capitol, and the railroads were thought to be too powerful in Little Rock. Several members of the legislature, mainly from the Senate, found themselves under indictment for bribery.

All of these circumstances produced genuine discontent with legislative conditions. Yet there were no constructive evidences of this discontent until near the end of the period. Certainly there were no great signs of a revolution. The discontent lacked organized, constructive leadership. One of the first proposals for a remedy was a House resolution in 1905 for an amendment providing for quadrennial instead of biennial sessions. This received 40 affirmative votes, but the resolution failed, although only 37[1] votes were recorded against it, since 23 members failed to vote and it requires the vote of a majority of the elected members, 51, to pass an amendment. During the same session Mr. Wm. A. Anderson, of Benton County, proposed the initiative, referendum, and recall of judicial decisions. His resolution provided for local legislation by declaring that the legislative power of counties and towns "is inherent and shall be vested in the electors" thereof, subject to laws of a general nature and having uniform operation throughout the state. There were to be two kinds of referenda. First, one fourth the members of either house could, by petition filed with the secretary of state, force the reference of enacted or unenacted measures to the people. Second, 5000 electors could, by petition, compel the reference of acts. In either case the measures were to be become laws, if ratified by a majority of those voting on the measure. If the supreme court declared any act of the legislature unconstitutional, then the governor

[1] House Journal, 1905, p. 476.

must refer it to the electorate. If sustained by a majority vote, then the act should stand, the decision of the court to the contrary notwithstanding.[1] The resolution appears to have received scant consideration.

This proposal for the recall of judicial decisions is interesting, coming as it does several years before Mr. Roosevelt startled the country with his proposition, which most people regarded as both novel and radical.

Early in the session of 1907, Senator E. R. Arnold, of Clark County, introduced the initiative and referendum as finally passed two years later, except for the "joker" clause to be explained hereafter. Nearly three months later this proposal came to a vote and was defeated, 8 in favor to 15 against, 12 not voting, Senator Arnold among them.[2] In the House a proposition was offered to allow five amendments to be submitted at one time and to require for the adoption of any amendment only a majority of the votes actually cast. This proposition received 38 votes for it, 36 against it, 27 not voting.[3]

How much sincerity there was back of the legislative support of these propositions it is impossible to determine, but they undoubtedly were offered in response to a popular demand and pressure for some sort of reform. In his campaign for the gubernatorial nomination in 1907–8 the Hon. George W. Donaghey roundly denounced legislative corruption and championed the initiative and referendum, though the latter was by no means his chief issue. In the session of 1909 Senator Arnold reintroduced his resolution and secured its passage in the Senate. In the House a clause was inserted with the intention of providing for local legislation. The measure as finally submitted to the electorate is as follows, the House addition being printed in italics:

The legislative powers of this state shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but the people *of each municipality, each county and of the state*, re-

[1] House Journal, 1905, p. 559 *et seq.*
[2] Senate Journal, 1907, pp. 61, 311.
[3] House Journal, 1907, p. 484 *et seq.*

serve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls as independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly.

The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon.

The second power is a referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by the petition signed by five per cent of the legal voters or by the legislative assembly as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded.

The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular general elections except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon and not otherwise. The style of all bills shall be: "Be it enacted by the people of the state of Arkansas." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for the office of governor at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be basis on which the number of legal votes necessary to sign such a petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he and all officers shall be guided by the general laws and the acts submitting this amendment until legislation shall be specially provided therefor.

While this measure was before the people, the opponents of the initiative and referendum, among them some of the most distinguished members of the bar in the state, attacked it from every angle, but the chief attack was upon the so-called "joker" clause, which is here printed in italics. Ridicule was heaped

upon this clause and the assertion was freely made that, if it meant anything, it would allow counties and municipalities to repeal state-wide laws and even to amend the constitution, so far as applicable to the localities. This was denied by the advocates of the amendment, who, while not altogether pleased with its wording, insisted that it must be interpreted in harmony with the constitution and common sense. The result of the election was the passage of the amendment by a vote of 91,367 to 39,111.[1] It was commonly supposed that the view of its advocates had prevailed with the people when they voted. Since then, however, it has been seriously maintained that the people ratified the amendment for the very reason that it gave localities unlimited powers of legislation.[2]

The next session of the legislature, that of 1911, was notable by reason of its length, expense, output, and factional strife. The state was now facing a deficit of nearly $500,000. How to meet it presented the most important question before the legislature. The deficit was due in part to an unwise reduction of the levy in 1905 and to subsequent natural increases in expenditures, but more to the wretched system of assessment and collection, which was but little better than passing around the hat. Two years before, the governor had, after a hard fight, secured the creation of a tax commission. This commission, in consultation with him, now brought forward a revenue bill which passed the House. The Senate, however, now very much at odds with the governor, refused to pass it, and the legislature adjourned, after a session of 121 days, without having done anything for the revenue system beyond providing for county boards of equalization and enlarging somewhat the powers of the tax commission. Governor Donaghey soon called a special session, which sat nineteen days and finally passed a revenue bill, commonly called the Turner-Jacobson bill.

The regular session had refused to pass any law for carrying the initiative and referendum into effect. The special session now passed the so-called Enabling Act. This act provided that eight per cent of the legal voters of any county, or any city

[1] Report, Secretary of State, 1909–12, p. 68.

[2] Jacobson, in Brief for Appellees, Hodges *v.* Ringo, pp. 5–9.

or incorporated town, might propose any measure, not inconsistent with the general laws or the constitution of the state, applicable only to such county or municipality. This must be filed with the secretary of state. If the secretary should refuse to submit it to popular vote in the county or municipality affected, then any citizen might apply to the circuit judge for a writ of mandamus to compel him to act. If it should be shown that any petition was not legally sufficient, the judge should enjoin the secretary from submitting the proposed measure.

It is not within the province of this paper to discuss the merits of the Turner-Jacobson bill. Property on the tax books was assessed at from 10 to 100 per cent, and a large amount of property was not on the books at all. The main object of this act was to secure a better assessment. In order to prevent too radical an increase of taxes, a sliding scale was adopted, the rate to decrease as the total valuation rose above a certain sum. Unfortunately the state capitol tax, a temporary levy, was used as the basis of computation and the enemies of the measure said this meant that the capitol tax was to be permanent. The legislature had passed this half-way measure very unwillingly, and had not added the so-called emergency clause which excluded from the operation of the referendum such laws as might be deemed necessary for the immediate preservation of the public peace, health or safety. Opponents of the act now denounced it as increasing the tax burden of the people and invoked the referendum and before the expiration of ninety days had secured the necessary number of signatures.

However, the state tax commission insisted that the act was already in force. They had been doing their best to get the assessment of a certain corporation in Little Rock raised, but the county assessor refused to do their bidding. Having the support of the governor they now employed attorneys and asked the chancery court for a writ of mandamus against Assessor Moore, to compel him to recognize the Turner-Jacobson act as in force. At this juncture the attorney general, Hal L. Norwood, intervened and moved that the suit be dismissed. His motion was granted and the tax commission appealed. Their attorneys argued that the law was in force, for it was ap-

proved June 29, 1911, and specifically mentioned certain things to be done in 1911. If it could be held up by a referendum, it would not be possible to carry out these provisions, for the election would not take place until September, 1912. Further, the legislature had added: "This act shall take effect and be in force from and after its passage." At the time of its enactment there was no way to submit it to the referendum, the Enabling Act not having been passed. The attorney general contended that, since the legislature had not added the emergency clause, the act could not become effective until 90 days after the adjournment of the legislature, the time allowed by the recent amendment for filing reference petitions.

The suit was filed in the chancery court a few weeks after the act was approved. The supreme court rendered its decision March 11, 1912. Mr. Justice Kirby, speaking for the court, held that the recent amendment to the constitution providing for a referendum (No. 10) was self-executing, the amendment itself having provided that, in submitting measures, the secretary of state should be guided by the general laws and the acts submitting this amendment until legislation shall be specially provided therefor." This being true, no act could become effective until 90 days after adjournment of the legislature, unless declared "necessary for the immediate preservation of the public peace, health or safety." The expression that the act should take effect "from and after its passage" meant "no more than that such a law should be operative from the time when the formalities of enactment were actually completed," and could become effective under the constitution. "The fixing of dates in the act for the performance of certain things before the act could become operative under the constitution, unless within the exception, does not indicate an intent on the part of the legislature to put into effect a law necessary for the preservation of the public peace, health, or safety." Therefore the act could not take effect until 90 days after the final adjournment of the legislature, or after its approval by the people, in case the referendum was invoked.[1] For this reason the suit was dismissed.

[1] State *ex rel.* Arkansas Tax Commission *v.* Moore, 145 S. W. 199 *et seq.*

The constitutional amendment providing for the initiative having been adopted and the act for carrying it into effect having been passed, people who had been unable to get what they wanted from the legislature began to bestir themselves. There were fights on in several counties over the location of court houses. Certain voters in Dallas County drew up what they called "An Act" to remove the county seat from Fordyce to Princeton and preceded the first section by, "Be It Enacted by the People of the State of Arkansas," as amendment No. 10 directed, secured signatures to the petition exceeding eight per cent of the voters of the county, and filed it with the secretary of state for submission to the electorate of Dallas County. In Montgomery County about the same thing was done, the enacting clause there reading "Be It Enacted by the People of Montgomery County, Arkansas." Section 2041 of Kirby's Digest forbids the playing of baseball on Sunday. For several years unsuccessful attempts had been made to get the legislature to legalize Sunday baseball in Little Rock. A petition for this purpose bearing the signatures of eight per cent of the voters in the city was now filed with the secretary of state and he was asked to submit the matter to popular vote in the city of Little Rock. From Hot Springs came a similar petition for legalizing betting on horse races, though all such betting throughout the state was forbidden by Act of February 27, 1907. From Sebastian County came a petition in the form of an act fixing the salaries of the county officials. It bore signatures amounting to eight per cent of the legal voters of Sebastian County and was filed with the secretary of state for submission to the electorate of the county.

All of these measures, Earl W. Hodges, secretary of state, acting upon the advice of Hal Norwood, attorney general, refused to certify for submission to the localities concerned. The friends of the measures at once invoked their rights under the Enabling Act and asked the circuit court of Pulaski County for a writ of mandamus to compel the secretary of state to submit them to the voters. The writ was granted, whereupon the secretary appealed to the supreme court. His reasons for refusing were substantially the same in all cases. He held that

Amendment No. 10 did not contemplate the submission of any act not supported by signatures amounting to eight per cent of the total number of votes cast for governor in the entire state at the last preceding election. This was equivalent to holding that the section of the Enabling Act directing submission of any measure upon petition of eight per cent of the voters of the locality affected was null and void, though the secretary denied raising the question of constitutionality. He also held that the enacting clause in No. 10 applied only to the whole state. It was further objected that the proposed measures violated the Enabling Act itself under which he was asked to submit them, since they would contravene general laws or the constitution, in some cases both. For example, the Dallas County proposition would alter two sections of the constitution (section 3, article 13, and section 28, article 7) and repeal several general laws on county seats so far as they applied to Dallas County. The power to do such things, it was insisted, was an attribute of sovereignty, and counties and municipalities, never having been sovereign could not "reserve" such powers. The rest of the acts would repeal general laws or legislative acts of local application. But it never was intended to allow localities to repeal even local laws of the legislature, for they are the acts of the entire state and the entire state must be consulted about their repeal. For example, the state, through its legislature, had forbidden the sale of whiskey within ten miles of the state university and the whole state would be interested in the repeal of that law. All of the acts, being in contravention of the constitution or general laws, were not of such a character as to be submitted.[1]

Counsel for the plaintiffs maintained, on the other hand, that the secretary of the state was only an administrative officer and had no right to raise the question of constitutionality; that if the proposed measures violated the Enabling Act, then that clause of the Enabling Act forbidding the submission of measures contravening state laws was null and void, since this very

[1] Hodges *v.* Dawdy, Abstract and Brief for Appellant, pp. 6–7, 34–5; Hodges *v.* Ringo, Abstract and Brief for the Appellant p. 10.

right was vested in counties and towns by Amendment No. 10. One attorney said that the amendment was adopted with the understanding that it "would authorize the people of any county, any incorporated town or city, to change any provision of the general laws of the state or the constitution at pleasure."[1] In support of the proposition to legalize Sunday baseball in Little Rock it was argued that the legislature had the right to exempt any locality from the operation of a general law and that, since the adoption of Amendment No. 10, "the people" (of the locality) "can do the same."[2] The term "majority of the legal voters," it was held, meant a majority of those actually voting. A man might be a qualified elector, but was not a voter unless he voted.[3]

The supreme court upheld practically every contention of the secretary of state and his attorneys. They declared that "officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution." In this case, however, the secretary was merely exercising his judgment as to whether the proposed measures fell within the terms of the recent amendment and of the Enabling Act. He decided that they did not, on the ground that the insertion of "each municipality" and "each county" had added nothing to the meaning of the amendment. As for the campaign interpretations, they could have no more weight than if expressed now. "Nor can the fact that a majority of the voters of the state, as reason for adopting the amendment, are presumed to have accepted the interpretation placed upon it by its advocates, have any force with us in construing its meaning."

Having thus disposed of everybody's judgment except their own, the justices proceed to say: "Without limitation, those words mean that the people of any municipality or county may enact *any* law or constitutional amendment, however obnoxious to the other people of the state or inconsistent with general

[1] Hodges *v.* Dawdy, Brief for Appellees, pp. 23, 32.

[2] Hodges *v.* Ringo, Abstract and Brief for Appellees, p. 5.

[3] Hodges *v.* Dawdy, Brief for Appellees, p. 40.

laws." This, they said, would destroy the sovereignty of the state, would lead to an absurdity and must, therefore, be rejected. To give the words any rational meaning it would be necessary to insert words never included by the framers of the amendment and also to transpose clauses. For example, the enacting clause, as it stands, applies to the people of the whole state, "which is a clear indication that the reservation of power was to the people of the whole state and not to any particular part or subdivision." The eight-per-cent provision, not being modified by the words "each municipality" and "each county," calls for eight per cent of the voters of the whole state and must apply to all measures. It is evident, then, to the judges, that the words "each municipality" and "each county" were "inaptly thrust into the amendment as originally framed in a way that it expresses nothing and means nothing." All the proposed measures were found to be inconsistent with the general laws of the state and therefore not such as should be submitted "to the voters of the respective localities who have attempted to initiate them." [1]

While this decision was regretted by many, no other was possible, if the judges were to choose between the opinions offered by appellant and plaintiffs. The only other alternative was to blaze out a new trail, or rather follow that opened by some advocates of the amendment when it was pending, and adopted by the legislature in the Enabling Act, which appealed to many as a reasonable interpretation of the amendment. But the judges held that this would require too much judicial amending, though they would simply have been following the legislature. They therefore destroyed utterly the power of legislation by the localities.

The next tangle which the supreme court was called upon to unravel grew out of the enacting clause. The legislature of 1911 passed an act creating the Village Creek and White River Drainage District and preceded it by the words, "Be it enacted by the people of Arkansas." Thereupon some one who was opposed to the measure asked for an injunction against the

[1] Hodges *v.* Dawdy, 149 S. W. 656 *et seq.*

commissioners appointed under the act on the ground that it was null and void because not preceded by the enacting clause of the constitution of 1874, "Be it enacted by the General Assembly." Now the general appropriation bill had been adorned with this same modern enacting clause, which was now called in question. Consequently, when this case came before the justices, they modestly demurred to rendering an opinion, since they were personally interested in the outcome to the extent of their salaries as provided in the appropriation act. They therefore certified to the governor that they were disqualified. The same appropriation bill originally contained an item to pay the expenses of special justices, but it had been vetoed. But for this, the state might have been in the predicament of not being able to find any judges not personally interested in the decision. The special justices, however, could not claim disqualification and the governor found five men to serve and to depend on the legislature of 1913 for their reward.

In delivering the opinion of a majority of the court, Special Chief Justice Harrod said:

> What was the evil the initiative and referendum amendment was designed to remedy? It is well known that it was the failure of the legislative department of the state government to respond to the wishes of the people. This failure sometimes took one form, sometimes another. Sometimes it was the failure or refusal to enact laws the people wanted; sometimes it was in passing laws the people did not want passed. Now how were these evils to be remedied? By adding to existing legislative power the power of the people to pass laws they wanted and by diminishing the legislative power to the extent of permitting the people to pass upon and approve or reject laws enacted by the General Assembly. The evil to be remedied was not the style of the bills, but the substance of the bills. The people were not especially concerned with the style of [the] enacting clause, but they were profoundly interested in the provisions of the laws.

Amendment No. 10, the opinion continues, was "not intended to interfere with the ordinary powers of legislation." The expression "all bills" in the amendment refers only to bills originated by petition. The original requirement of the constitution for legislative bills is not repealed, but is still in force. To

the objection that this would mean two enacting clauses, one for the legislature and another for the people, a majority of the justices merely answer: "This is true, but what of it?" The legislature should have used the old formula, but the new was substantially in compliance with the requirements of the constitution. With the opinion expressed in the last clause Mr. Harrod did not concur.

Special Justices Hill and McCollum dissented, holding that all lawmaking in Arkansas had been "revolutionized" and "all of it vested affirmatively or negatively (save alone a limited class of emergency acts) in the people themselves." As long ago as 1871 this court had held that any act not bearing the caption prescribed in the constitution was void. The only caption now prescribed was that given in Amendment No. 10.[1]

Shortly before this decision was announced the first election under the initiative and referendum was held. Reference has already been made to the fact that the Turner-Jacobson tax bill was referred by petition. This went before the people as Act No. 1. The prohibitionists, despairing of getting anything from the legislature, now brought in a statewide measure and asked that it be submitted as Act No. 2. The liquor interests asked for an injunction to prevent the secretary of state from submitting this act on the ground that, while the petition contained the requisite number of signatures, the total was secured by adding those attached to petitions filed on different days, and because the act would set aside local-option laws; but the supreme court refused to grant the injunction.[2] A new election law, promoted by the minority party and designed to secure bi-partisan boards of election commissioners and judges, became known as Act No. 3. Act No. 4 was designed to provide uniform text-books and the furnishing of them free to school children by the state. This act is said to have been promoted by the Socialists, but there has been a growing demand for free text-books and a bill to provide for this was introduced in the legislative session of 1905.

[1] *Arkansas Law Reporter* (Little Rock), xxxii, No. 19, (January 8, 1913), pp. 665–677.

[2] Hammett *v.* Hodges, 149 S. W. 667.

While the legislature was in session, it submitted two amendments to the constitution. One of these, Amendment No. 11, was a somewhat crudely drawn suffrage provision, the chief feature of which was the so-called grandfather clause. A somewhat similar proposition had passed the House in 1907. The legislature of 1907 had submitted an amendment exempting from taxation for seven years all capital invested in cotton factories within ten years. This had been defeated and was now resubmitted as No. 12. Popular dissatisfaction with legislative conditions, especially with reference to the length and expense of the session and the character of the output, all of which were particularly exasperating in the session of 1911, found expression in Amendment No. 13, submitted by initiative petition in accordance with Amendment No. 10, limiting the sessions to sixty days with pay at the rate of six dollars per day and ten cents mileage and to three dollars per day and mileage for the first fifteen days of any session called by the governor. A petition providing for the recall of all elective officers was submitted as Amendment No. 14. When the carpet-bag government of Reconstruction days was overthrown, a new constitution was adopted forbidding the state, counties and municipalities to lend their credit, and prohibiting counties and municipalities from issuing any interest-bearing evidences of indebtedness except bonds for the payment of debts then existing. In 1908 an amendment allowing municipalities to issue bonds for improvements and for public utilities was voted down. This was resubmitted by petition as Amendment No. 15. The following table presents the results of the election.[1]

	VOTE		MAJORITY	
	FOR	AGAINST	FOR	AGAINST
Act No. 1	57,176	79,899		22,723
Act No. 2	69,390	85,358		15,968
Act No. 3	57,192	72,879		15,687
Act No. 4	64,898	73,701		8,803
Amendment No. 11	51,334	74,950		23,616
Amendment No. 12	66,919	51,469	15,450	
Amendment No. 13	103,246	33,397	69,849	
Amendment No. 14	71,234	57,860	13,374	
Amendment No. 15	76,660	53,098	23,562	

The total vote for governor at this election was 169,610.

[1] Report of Secretary of State, 1909–12, pp. 411, 415.

The highest vote on any of the measures submitted was 154,748 on state-wide prohibition, which is 91 per cent of the vote for governor. The nearest competitor was the limitation of legislative sessions to sixty days and on this was cast 80 per cent of the vote for governor. Little had been said about free text books, yet the vote on that was also 80 per cent. The lowest vote was 117,988, on exempting cotton mills from taxation, which was only 60 per cent.

Not a single one of the acts had received a majority of the votes cast on it. The suffrage amendment to the constitution also went down in the defeat, but the other four amendments carried a majority. The constitution of 1874 required that amendments should receive a majority of the total vote cast at the election and the highest vote cast for any state officer had always been taken for the standard. The sixty-day limitation on legislative sessions certainly had received a majority of the total vote, but the adoption of even this measure was to be called in question. No other amendment had received a clear majority of the votes cast at the elections, but many contended that the old rule had been altered by Amendment No. 10, and the supreme court was called upon to settle this question. The campaign for the adoption of No. 15, authorizing cities to issue bonds, had been spirited. Its defeat previously was attributed largely to the country vote. An effort was made to show the country voter that it would not affect him and that the development of the cities was hampered by lack of the bond-issuing power. The amendment received a good majority of the votes cast on it and a writ of mandamus was now asked for to compel the election commissioners to canvass the returns and declare the adoption of No. 15. To this the commissioners entered three pleas: (1) that they were without authority to do so, the duty developing upon the speaker of the house; (2) that No. 15 had been improperly submitted, as the constitution allowed only three amendments to be submitted at one time; (3) that No. 15 had not received a majority of the total vote cast.

Mr. Justice Kirby delivered the opinion, speaking for a majority of the court. He held that there were now two ways of amending the constitution, by legislative proposal and by

popular initiative. Amendment No. 10, providing the latter, gives no intimation of any intention to propose or adopt amendments independent of the constitution. The amendment abrogates only such provisions as are repugnant to it. "No interpretation of the amendment should be allowed, which would conflict with any other provision of the constitution, or which is not absolutely necessary to give effect to the amendment." The constitution of 1874 had limited the number of amendments to three. Amendment No. 10 had altered the method of submission, but not the limitation to three, which is as binding upon the people as upon the legislature. This being true, No. 15 was improperly submitted and could not have been adopted. It was therefore unnecessary to pass upon the question of the majority necessary to adopt.

Justices Wood and Smith dissented in strong and convincing language. They call attention to the fact that the amending clause of the constitution of 1874 was held not to be self-operative and summarize the act of the legislature for carrying it into effect. Amendment No. 10 had specifically provided for further legislation and the legislature of 1911 has passed an enabling act. This provides in detail the method of originating and submitting petitions. The speaker of the house is directed to declare the result. It even provides for the case of two conflicting amendments submitted at the same time, declaring that the one receiving the highest number of votes shall be paramount in all cases where there is a conflict and requiring the governor to make proclamation of which is paramount. The governor is to issue a proclamation declaring adopted any measure approved by a majority of those voting thereon.

A comparison of section 22 of article 19 of the constitution and its enabling act with Amendment No. 10 and its enabling act, they continue, will discover "two radically different and wholly independent plans for the submission and adoption of amendments to the constitution." Unless there is something in No. 10 itself clearly implying that the people, in adopting it, intended to limit themselves to three, then "it is not within the power of the court to supply that language." Not only is no such limitation found in the amendment, but "the people re-

serve to themselves the power to propose laws and amendments to the constitution" without any limitation whatever. No rule of construction will "warrant the court in segregating the clause, 'but no more than three amendments shall be proposed or submitted at the same time,' from all the other language of section 22 of article 19 of the constitution, where it applies solely to amendments proposed by the legislature and reading that language into No. 10, which applies solely to amendments proposed by the people." To do so would make the people, not "independent of the legislature," but absolutely subservient to it, for, if the legislature should submit three amendments, the people would be precluded from submitting any at all. Else, they must run a race with the legislature and get there first. On the question of the majority necessary to adopt, they merely quote from No. 10: "Any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon."[1]

Amendment No. 12, which was submitted by the legislature, received a majority of the vote cast on it, but not a majority of the total vote. It was not declared adopted and no one was sufficiently interested in it to take the matter into the courts.

Shortly after the legislature of 1913 met, a member of that body asked the chancery court of Pulaski County for a writ of injunction to prevent the speaker of the House of Representatives from declaring, as directed by law, the adoption of Amendment No. 13, limiting legislative sessions to sixty days. The writ was denied and appeal was taken to the supreme court. Attorneys for the appellant argued that the amendment had not been adopted, for two reasons. First, it had not been advertised for six months prior to the election of September, 1911, as the constitution of 1874 directed. Second, the constitution of 1874 allowed only three amendments to be submitted at one time, but five had been submitted. More than three having been submitted, none had been properly submitted and all were void. The attorney general and counsel for the speaker argued that the chancery court had no jurisdiction in the matter.

[1] State *ex rel.* City of Little Rock *v.* Donaghey, 152 S. W. 746–752.

They also maintained that the time requirement of the constitution of 1874 had been changed by Amendment No. 10, the requirements of which had been complied with. The mistake of the secretary of state in submitting five amendments did not vitiate the first three submitted. The amendment in question was one of these, had received a large majority of the votes cast and had become a part of the organic law.

The supreme court upheld the contention of the attorney general that the chancery court was without jurisdiction. No method had been provided in the constitution for determining the adoption of amendments, but the speaker had been directed by law to make announcement of such changes. His proclamation was not final, but the question "whether an amendment has been properly adopted according to the requirements of the existing constitution is a judicial question. It follows, then, that the plaintiff could suffer no injury by the speaker declaring that the amendment has been adopted, and the court had no jurisdiction to hear and determine the cause." [1]

Having thus decided that there was no case before it the court continues:

> The General Assembly of the state is now in session and the question of the adoption of Amendment No. 13 is one that indirectly, at least, affects the interest of all the people of the state. On this account the attorney general has requested a decision on the case on its merits, and we have concluded to accede to his request in order to prevent the confusion and injurious consequences which might result to the people of the state if we do not determine the question.

The contention that the amendment had not been published six months, as required by section 22, article 19, of the constitution, was disposed of by saying that amendments supersede parts of the original constitution with which they are in conflict, and that to give effect now to section 22, article 19, would render "nugatory that part of Amendment No. 10 which provides that initiative petitions shall be filed with the secretary of state in less than four months before the election at which they

[1] *The Arkansas Gazette*, Feb. 4, 1913, p. 3.

are to be voted upon." The legislature was clearly given power in Amendment No. 10 to direct how amendments originating by petition should be submitted. The legislature of 1911 had given these directions, requiring publication for six weeks, and the secretary had complied with them. Whether this law or section 22, article 19, would apply to amendments submitted by the legislature was not before the court.

The question whether or not the submission of five amendments by the secretary of state, when the constitution forbade the submission of more than three, had the effect of invalidating all, had in effect been already decided in a previous case. In passing upon the adoption of Amendment 15 the court has held that

> the first three amendments that were proposed, whether by the legislature or by the people, or by both, should be submitted, and that when three amendments were submitted, the power to submit amendments was exhausted until after the next election at which these amendments were to be voted upon. The action of the secretary of state in submitting more than three could not invalidate all of them. . . . To so hold would be to put in the power of the secretary of state, and a small per cent of the people of the state to prevent the submission of any amendments . . . and thus nullify the constitution.

Amendment No. 13 was one of the first three, and therefore was legally submitted.

The contention of appellant that Amendment No. 10, under which Amendment No. 13 originated, is void for uncertainty, because, when considered as a whole, it is not susceptible of a reasonable interpretation, had already been decided adversely. Therefore Amendment No. 13 was legally adopted.[1]

It is interesting to compare this decision with that of Hodges *v.* Dawdy and the four others decided at the same time. In this case the court argues ably that effect must be given to constitutional provisions where it is possible to do so by a reasonable interpretation. In Hodges *v.* Dawdy the same court, consisting of five members, declared a clause in Amendment No. 10 meaningless and therefore void, although 91,367 had

[1] Grant *v.* Hardage, 153 S. W. 826 *et seq.*

voted their confidence in those who said it was susceptible of a reasonable interpretation while only 39,111 had agreed with those who said it was not.

Having been defeated in the courts, the legislators made one more effort to free themselves from the sixty-day rule. A concurrent resolution was adopted requesting the attorney general to render an opinion on the question whether the legislature must adjourn sixty days from the time it convened or sixty days from the time the amendment was declared adopted by the speaker.[1] This he did by saying that they must get out in sixty days from the time of meeting. At the end of that time they folded their tents and somewhat grudgingly stole away.

Did the people suffer in consequence of the short session, as some of the legislators said that they would? As already noted, the long session of 1911 cost approximately $200,000. The sixty-day session of 1913 cost about $76,000. The saving of $124,000 to an empty treasury is not a matter of little consequence. The shortening of the session also seems to have resulted in "speeding up," for in 60 days, 368 acts, resolutions and memorials, were passed, covering 1560 pages, as against 502 covering 1958 pages in 140 days in 1911. In other respects the results are at least questionable. Of the 115 acts which can in any sense be said to be general, 33 are for appropriations and several are of an administrative character. Seventy-two acts showed dissatisfaction with previous work by amending or repealing certain acts, some of them general, some local. A few bills were passed dealing with important subjects, such as the liquor business, labor, water power, assessments, etc. How carefully most of them were drawn remains to be seen. Two acts were passed relating to the erection of power dams and two to prevent the introduction and spread of insect pests, in the latter case two different boards being created to carry them out. The appropriation bills were rushed through in the closing days of the session and were ruthlessly mutilated by the "battle-axe brigade." But that is the usual method. Since the legislature adjourned, it has been discovered that the general

[1] *Arkansas Gazette*, Feb. 19, 1913, p. 3.

appropriation bill was not passed by both houses in the same form. There was some talk of an extra session to correct this, but that has subsided and the auditor probably will honor warrants for all sums agreed to by both houses. Within six months the state had four governors. Two of them engaged in a lawsuit to see which should have the office. Six years ago there were three governors in a few weeks, but no lawsuit. To provide against such contingencies in the future, the legislature of 1913 submitted an amendment to the people providing for a lieutenant governor. Some contend that this amendment is far worse jumbled than ever No. 10 was. Indeed, they say that it cannot possibly be made operative. Whether this is due to haste consequent on the shortened session or to some other cause may be a debatable question. Of one thing there is no doubt, that the state is badly in need of expert aid in the drafting of bills, such as is furnished by the legislative reference bureaus already in operation in several states. This probably would relieve the courts somewhat and save interested parties from expensive litigation.

The Enabling Act of 1911 made provision for the ballot title for all measures referred to the people, separating them into three classes as referred by the legislature, by petition, and by initiative petition, and directed that all acts and amendments submitted should, beginning at least three months before the election, be published for thirty days in one newspaper in each county.[1] The fees for such printing were not to exceed one half the fees then allowed for the publication of legal notices. Now the constitution of 1874 directed that amendments should be published for six months, but, although the Enabling Act of 1911 had reference to all measures, the secretary of state separated them and had the two amendments submitted by the legislature published for six months, the others for thirty days, thus seeming to obey neither the constitution nor the law. The publication of the two legislative amendments cost $16,807, something more than it would have cost for only thirty days. The cost for the other measures was approximately $60,000,

[1] Acts of Arkansas, 1911, pp. 251-2.

making a total of $76,807. Had all the measures been printed in pamphlet form and distributed to the voters of the state, the entire cost, according to the estimate of a reputable printer, would not have exceeded $1200. At the session of 1913 a bill was introduced to provide for this kind of publication. But the secretary of state had exercised freely the power of interpretation. The law had said the measures should be published in one newspaper in each county, but he interpreted this as not forbidding him to publish in more than one and actually had them published in one hundred and sixty-nine papers, although there are only seventy- five counties in the state. The amounts received by these papers ranged all the way from $35 to $805. Now when the act to provide for publication in pamphlet form came up for consideration the newspapers bestirred themselves and, having several representatives in the legislature, easily defeated it.[1]

As soon as the decision against the adoption of the amendment allowing municipalities to issue bonds was announced, the friends of the measure started another petition and soon had it filed with the secretary of state. By reason of that fact, it stands first in the list of amendments to be voted on in September, 1914. The legislature submitted two, one providing for a lieutenant governor and one putting legislators on a salary of $750. Thirteen other resolutions for amendments were introduced, some of which passed one house and some of which were defeated. One provided for woman's suffrage, one for the resubmission of the recall, one for the resubmission of the suffrage amendment, one for giving counties the right to vote on certain local legislation and one giving the people and the legislature each the right to submit three amendments.

Encouraged by their success in defeating state-wide prohibition and frightened by an act of the legislature soon to be mentioned, the liquor interests filed a petition with the secretary of state asking for an amendment providing for local option. But they came too late and are shut out under the rule of three. Whether their petition can lie over and take first place in 1916

[1] *Arkansas Gazette*, February 19, 1913, p. 3.

may become another question for the courts to decide. The legislative act which frightened them was one forbidding the granting of license in any incorporated town unless a majority of the adult white inhabitants (including women) sign a petition for it. The petition and all signatures must be published. In order to avoid interfering with licenses already issued and to give the liquor people time to adjust themselves to the provisions of the law, its operation was postponed until January 1, 1914, but the emergency clause, minus the word "immediate" was attached. The liquor people at once bestirred themselves and soon presented a referendum petition to the secretary of state. The attorney general, Wm. L. Moore, being asked for his opinion, ruled that the act was not subject to the referendum. The liquor people contended that the legislature had no right to attach the emergency clause to an act and then postpone its operation for nearly a year, and they at once asked the circuit court for a writ of mandamus to compel the secretary of state to submit the statute to a referendum, but the court refused the writ and an appeal was taken to the supreme court. Certain labor interests expressed a fear that the very existence of the referendum was at stake, and the state federation of labor, with the exception of the printers' union, joined the liquor interests in the effort to secure a reversal of the decision.

The two questions considered by the court were: First, is the determination that an emergency exists for putting an act immediately into effect a legislative or a judicial question? Second, if legislative, has the legislature, in this case, properly evidenced its finding that an emergency existed and so expressed its finding as to exclude the act from the referendum? On the first question the court cited the case of Wadderly *v.* City of Portland, where the same question was discussed in respect to the Oregon referendum, and agreed with the Oregon court that it was a matter for the legislature to determine. The intent of the legislature in the case at bar, said the court, is clear. It did not use the old formula, but undertook to use substantially the language of the emergency clause in Amendment No. 10. The omission of the word "immediate" and the postponement of the day for the law to become operative did not affect its validity.

Having the emergency clause attached, it became a law the moment it was signed by the governor, since this clause of Amendment No. 10 expressly excludes from the operation of the referendum all "laws necessary for the immediate preservation of the public peace, health, or safety." That the provisions of the act were not enforceable until after December 31, 1913, was held to make no difference. Said the court:

> One purpose of Amendment No. 10 was to confer upon the legislature the power to pass laws that were necessary for the immediate preservation of the public peace, health or safety, without reference to the people under the referendum. Immediate, in the sense of this amendment, means those laws that should take effect in order to conserve this purpose before the time when the people under the provisions of the amendment would have the opportunity to vote upon them. In other words, such laws as the legislature deem necessary for the immediate preservation of the public peace, health or safety, they may so find, and declare, and put in force, at any time before the next general election. The framers of Amendment No. 10 and the people who adopted it, did not intend that laws necessary for the immediate preservation of the public peace, health or safety should wait the slow processes of the referendum; hence the amendment provides that the legislature could enact such laws and put them in force before the time required for the people to pass on them under the referendum.
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> But the amendment does not require that laws which the legislature determine and declare necessary for the immediate preservation of the public peace, health or safety shall be put into effect immediately. In the absence of such requirement a law should not be held unconstitutional because the legislature, acting upon the facts before them, in their judgment and discretion, deemed it wise to postpone the time for the law to take effect until some future date.[1]

The present situation may be summed up as follows. Within three years after the adoption of the initiative and referendum, the supreme court has handed down seven different decisions involving eleven different cases. These decisions have so interpreted Amendment No. 10 that it applies to state-wide measures only. The legislature of 1913 provided by statute for the referendum of ordinances of town councils by petition, but did not

[1] Hanson *v.* Hodges, *Arkansas Gazette*, October 14, 1913.

provide for the initiation of such measures in the same way. The same session re-submitted one of its own local laws to the voters of Hot Springs County. An indefinite number of acts may be submitted at one time, whether referred by the legislature, by petition, or by the initiative, but only three amendments to the constitution, whether originated by the legislature or by the initiative or by both. The legislature may prevent the reference of its acts through petition by simply adding the emergency clause, and this may be done even though the operation of the acts be postponed for a year or more from the time of enactment. The last legislature manifested a strong tendency to prevent reference, though it is hard to discover any fixed principle in the use of the emergency clause. For example, it was attached to acts requiring railroads to screen their cars, enlarging the powers of the board of health, regulating the practice of trained nurses, the blue-sky law, acts requiring employers to provide seats for female employees, to prevent corrupt practices, and to provide a bureau of labor. It was not attached to statutes regulating campaign expenses, regulating water-power rights, acts to prevent fraud in bulk-sales, and to provide for the taxation of certain public utility corporations. Two important questions raised by the recent litigation have not been settled, namely, whether the method of advertising measures prescribed in the Enabling Act applies to amendments submitted by the legislature as well as to those originated by petition, and whether an amendment, to be adopted, must receive a majority of the total vote or only a majority of the vote cast on it.

But the initiative and referendum is in active operation. As already indicated, a constitutional amendment originated by petition is now pending. The legislature shows some disposition to refer local measures of its own. Initiative petitions are now being circulated, one of them to provide a child-labor law which the last legislature refused to enact.

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RECENT DEVELOPMENTS OF PROPORTIONAL REPRESENTATION

IF a political student compares 1913 with 1813, perhaps the most striking change that he observes is the growth of parliaments. In one form or another representative institutions are now to be found in every country where men wear clothes, except among Esquimaux. Russia, India, Japan, China, Egypt, Persia, Turkey—there is nowhere a despotism so firmly rooted that it has been strong enough to deny elected representatives of the governed at least some small partnership, or share of partnership, in the business of government.

So far, in spite of this growth of parliaments, practical statesmen and ordinary citizens have given small attention to the methods by which representation is accorded. The great thing has been to get representation; the machinery has seemed less important. But there are now everywhere signs of a change. Experience has begotten disillusion. Representative assemblies do not truly represent. Minorities are often ignored. Majorities are often distorted and sometimes again turned into minorities. Large numbers of citizens have no representation, unless it be representation to have for one's mouthpiece a person diametrically opposed to the elector. Men of light and leading are not welcome unless they swear adherence to a party and satisfy the demand of the party manager for a "safe" candidate.

The civilized world, for the most part unconsciously, repeats Walt Whitman's complaint of the shortcomings of "elected persons"; some men turn aside from parliamentary institutions in disgust, looking to syndicalism and other vain imaginings; others, convinced that self-government must be representative government, search in a more patient spirit for a remedy.

In the history of physical science it is a commonplace that the great inventions occur almost simultaneously to many men. The human race is like a great army advancing on a broad front: it meets and it must surmount a series of far-stretched barriers. At almost the same time these barriers are broken