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The Initiative and Referendum in Oregon: 1938-1948

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FOREWORD

224. / 2
The monograph to which this is a foreword is concerned with some features of the policy-making process in the United States. It opens up some wider questions than are surveyed, and its contribution to the understanding of that process is mainly to analyze and describe one feature in the total situation. The main importance of this study is in its refutation of some of the judgments that pass for current knowledge about the initiative and referendum processes of making laws. Another contribution emerges in considerable measure from the findings. This study, which supports the findings in other studies of this method of making laws, ought to compel the students of the process of policy making to make a search for new hypotheses and premises on which to base their investigations. Insofar as this study makes a contribution in that direction it is to be found in the suggestion concerning the role of group pressures in the making of rules to control human activity. It is only fair to Mr. LaPalombara to add that he did not undertake to press the suggestion he makes to any great distance. He did not undertake the study with any such end in mind.

224. / 2
The study started out as an examination of the operation of the direct law-making process (initiative and referendum) in the state of Oregon, and he studies intensively the activities of the ten-year period 1938-1948. There is nothing peculiar in that period, so that an intensive survey would furnish some more detailed knowledge than the usual type of generalization about the voter and referenda on issues of public policy. The method of the study is to survey in detail the statistical results and other data as far as they were available and then to compare these data with the alleged "qualities" of such direct participation in the process. His findings, and they are the same that other students have found in other states,¹ are that there is little difference between the "decisions" so made by the electorate and the "decisions" made by the representative assembly. In detail he points out that none of the alleged peculiarities of the voters are to be found in the Oregon results.

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With this result Mr. LaPalombara suggests then that the premises on which most students of the political process have proceeded need to be re-examined, and more particularly he suggests that the method of group analysis of the political community ought to be looked at with these problems in mind. The study does not go further than this. It demonstrates in a compelling fashion that the assertions of the opponents to the initiative and referendum

¹V. O. Key and W. W. Crouch, *The Initiative and Referendum in California* (Berkeley, University of California Press, 1939); J. K. Pollock, *The Initiative and Referendum in Michigan* (Ann Arbor, University of Michigan Press, 1940); C. O. Johnson, "The Initiative and Referendum in Washington," *The Pacific Northwest Quarterly*, vol. 36, pp. 29-63 (January, 1945).

INITIATIVE AND REFERENDUM IN OREGON

have no basis in the Oregon experience. The voters, he seems to be saying, have about the same attributes as the other organs of government. The hypothesis that the political community consists in underlying groups who manifest themselves in the process of decision making would in his view offer a better base from which to examine the process of policy making.

It is important to examine the implications of this suggestion, and I should like to present some aspects of that implication. I am not sure that Mr. LaPalombara would go all the way with what I am going to say here, and there is language in his study which indicates that he is operating from a different base.

He is not the first student of the process of lawmaking to become disturbed at the divergence of results from the supposed premises on which public decisions are made. The most detailed critique of the characteristic studies in the process of public policy making is to be found in Arthur F. Bentley's *Process of Government: A Study in Social Pressures*.² This study first published in 1908 adumbrated most of the perplexities that still pervade the systematic study of the governmental process. In subsequent studies Bentley pressed his analyses in different directions, but the main outlines of his proposal in the early volume still stand. This volume is frequently cited but little read. For on any calculation, the methodological principles of the *Process of Government* have found little significant influence with the practitioners of political science, yet it was precisely the purpose of that volume to make the study of the governmental process more scientific.

I should like to take this opportunity to make a plea for a trial of the method outlined in the *Process of Government*. The study of political science in the United States is mainly a twentieth century phenomenon. It has been concerned with structures of governmental organs and with other formal features of the governmental structures. The theory that there could be a mechanical distribution of political power and that the mechanical distribution so started would continue to operate had general acceptance. Studies have considered what would be the "best" distribution. If the distribution is on the same plane of government, it is called *separation of powers* and if the distribution is on different levels it is concerned with *confederation* or *federation*. The studies of power distribution have been succeeded by descriptions of the operation of the organs. In particular, attention has been paid to cooperation and to competition between the constitutional organs. The failure of the members of one organ to leave the activities of other organs alone raised problems of "interference" with the "legitimate" activities of other organs. The formation of political parties with the intention of the

²Chicago, University of Chicago Press, 1908.

FOREWORD

party eradicating the functional distribution through placing individuals with similar views in the different organs was a deliberate frontal attack on the mechanical distribution of "power" as a feasible plan of government. The incapacity of the parties to unify individuals on all issues invites attention to other means of evading the consequences of the distribution of "power." "Pressure groups" became a theory to explain the existence of public policies that denied the hallowed "general welfare." "Lobbyists" and "special interests" became the evil forces which ousted the good forces which were overcome in the political struggle. It was in this atmosphere that Bentley wrote his treatise.

He proposed an essentially simple thesis. It was that groups, meaning unified activity in a given direction, are constantly struggling with one another in the process of policy formation. Government is merely the organs through which this struggle manifests itself. In any given policy issue there are two sides: the pros and the cons; each will use whatever means is available to it on the way to achieve its ends. The controversy within any particular organ reflects this underlying group contest, although the verbal formulae through which the contest takes place will vary with the context in which the struggle is formulated. For example the contest in the legislature or in a political party convention becomes a debate on which of two programs will promote the "general interest" and one or the other group wins. If one group succeeds in getting an act of the legislature the other may seek to frustrate the goal within the administrative activity. The loser at that stage still has the possibility of using the courts in his behalf. If this method of analysis is used, the initiative and the referendum merely insert another or an alternative stage on which the group contest may be manifested. A group is more or less the victor in the degree to which it is able to get its program adopted into action. The struggle does not end with adoption in all the requisite agencies, for the underlying opposition group may still attain its effective result even though the symbols of victory go to the other side.

If this method of analysis is used, *bribery*, *efficiency*, and most of the other traditional terms of description in political science take on new content. They are not verbal formulae of existing objects but are ways of describing a relation between persons and with no particular moral overtones or undertones. Other general conclusions emerge. There is no entity or thing entitled to be called the "general interest," but there are particular interests which are represented in the activity of individuals. More or less of the population may be "interested" in this sense in a given issue. Any close examination of the legislative product or any other part of the process of policy making would show that one or another group, i.e., activity, was successful in any given stage. The process of government is the group struggle which provides a set of adjustments.

INITIATIVE AND REFERENDUM IN OREGON

Since there is a body of literature which may be loosely denominated "pressure-group literature" it is the better part of caution to insist that the view here espoused is not that characteristically embodied in such studies. Most of the studies that would be characterized as pressure-group studies make of the group a kind of enlarged entity instead of a set of relations that are manifested in activity. One might almost call them the individual of the traditional literature writ large. By that I mean that the boundaries of the pressure are fixed by some criterion more or less precise and that the pressure groups have a rather tight organization. In this sense there is a "silver bloc" of fourteen senators which somehow compels the Congress to give in to its demands, or there is a western group of Congressmen who succeed in beguiling the remainder of Congress and the President and the Courts into evacuating the American citizens of Japanese ancestry from the west coast. Or an author seeks to trace a bill through Congress and finds that it is almost impossible to discover who is "responsible" for the legislation.³

Usually this kind of study finds itself in a quandary. The process is supposed to produce a result which shows the consequences of reasonable and responsible discussion which has searched for a general welfare. The outcome often violates all the canons which the author of such a study has for determining what is or what is not reasonable. He then is in the position of defending a process as rational which produces in his judgment a product that is irrational, i.e., the mechanical distribution of power renders up a deformed commodity. It has seldom occurred to such writers to reexamine the bases on which they have undertaken their study.

In a way this is what LaPalombara has suggested, and in order to reach that end he has examined in considerable detail one body of human experience and that experience fails to support one group of presuppositions. In short, he has done what Einstein once did; he has reexamined an axiom, and if new lines of investigation can emerge from that step, our students ought to be encouraged to do more of it. Herewith I extend to him encouragement for greater experimentation with the line he has opened.

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³Allan S. Everest, *Morgenthau the New Deal and Silver: a story of pressure politics* (N.Y., King's Crown Press, Columbia University, 1950); Morton Grodzins *Americans Betrayed: politics and the Japanese evacuation* (Chicago, University of Chicago Press, 1949); Stephen K. Bailey, *Congress Makes a Law: the story behind the Employment Act of 1946* (N.Y., Columbia University Press, 1950).

TABLE OF CONTENTS

Chapter	Page
I. The Origins of the Initiative and Referendum in Oregon	1
II. The Legal Aspects of the Oregon State-Wide Initiative and Referendum	12
III. Direct Legislation in Oregon: 1938-1948	37
Regular General Election: November 8, 1938	38
Regular General Election: November 5, 1940	46
Regular General Election: November 3, 1942	50
Regular General Election: November 7, 1944	53
Special Election: June 22, 1945	58
Regular General Election: November 5, 1946	59
Special Election: October 7, 1947	63
Regular General Election: November 2, 1948	64
IV. Electoral Behavior: 1938-1948	74
The Use of Direct Legislation	74
The Types of Issues Submitted	83
Popular Participation— Measures and Public Officers	88
Constitutional Amendments Submitted by Initiative or Legislative Reference	88
Statutory Measures Submitted by Initiative, Obligatory Referendum, Optional Referendum	90
Amendments and Statutory Measures	94
The Influence of Ballot Position	95
Majority and Minority Adoptions	97
Special Elections	99
Expertness in Drawing Up Proposals	100
V. Evaluation and Conclusion	120
The System of Direct Legislation Assessed	101
The Attack Upon the Initiative and Referendum	101
The Defense of the Initiative and Referendum	117
Appraisal	120
Suggested Reforms	121
Bibliography	126
Appendices:	
A Direct Legislation in Oregon: 1938-1948	130
B Constitutional Provisions Regarding Direct Legislation in Oregon	133
C Initiative and Referendum Petition Forms	136

LIST OF TABLES

	Page
1. Adoption of Direct Legislative Proposals, 1938-1948	82
2. Direct Legislative Proposals Accepted and Rejected, 1938-1948	82
3. Popular Participation on Direct Legislative Proposals, 1938-1948	87
4. Comparison of Popular Participation on Amendments, Statutory Measures, and Total Proposals, 1938-1948	87
5. Effect of Ballot Positions and of the Number of Proposals Presented on Voter Participation and Reaction	96
6. Effect of Position on Ballot on Total Vote Cast on Proposals	98
7. Disposition of Proposals by Majority or Minority Vote	98

LIST OF FIGURES

	Page
1. Total Number of Direct Legislation Proposals in Oregon: 1902-1948	75
2. (a) Total Number of Statutory Measures Proposed by Initiative: 1902-1948; (b) Total Number of Constitutional Amendments Proposed by Initiative: 1902-1948	77
3. (a) Total Number of Referendum Proposals by Two-Year Intervals: 1902- 1948; (b) Total Number of Initiative Proposals by Two-Year Intervals: 1902-1948	78
4. (a) Total Number of Referendums Ordered by the Electorate Through Peti- tion: 1902-1948; (b) Total Number of Referendums Ordered by the Legis- lative Assembly: 1902-1948	79
5. Average Number of Those Voting at Elections Participating on Proposed Amendments: 1938-1948	89
6. Average Number of Those Voting at Elections Participating on Statutory Proposals: 1938-1948. (Special Elections of June 1945 and October 1947 omitted)	91
7. Average Number of Those Voting at Elections Participating in Direct Legis- lation: 1938-1948	92
8. Relationship of Ballot Position to Adoption of Proposals: 1938-1948	96

THE DEPUTIES OF THE PEOPLE . . . are not and cannot be its representatives; they are only its commissioners and can conclude nothing definitely. Every law which the people in person have not ratified is invalid; it is not a law. . . . The idea of representatives is modern; it comes to us from feudal government, that absurd and iniquitous government, under which mankind is degraded and the name of man dishonored.

—Rousseau



A GENERAL SURVEY of this branch of our inquiry leads to the conclusion that the people of the several States, in the exercise of their highest function, show little of that haste, that recklessness, that love of change for the sake of change, with which European theorists, both ancient and modern, have been wont to credit democracy; and that direct legislation by the people, liable as it doubtless is to abuse, causes, in the present condition of the States, fewer evils than it prevents.

—James Bryce



The Initiative and Referendum in Oregon: 1938-1948

I

THE ORIGINS OF THE INITIATIVE AND REFERENDUM IN OREGON

When the work of the state constitutional convention which was held at Salem, Oregon, in the autumn of 1857 came to an end, the first section of the first article of the constitution was devoted to an expression of that political theory that had permeated the thinking of the thirteen original states at the time of the American Revolution—the idea that the governors should exercise authority at the will and consent of the governed and that the latter are free to extend or restrict authority from time to time as they see fit. This section of Oregon's organic law reads:

Principles of Social Compact. We declare that all men, when they form a social compact, are equal in right; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such a manner as they may think proper.¹

Approximately one-half century after the drafting of this provision, the electorate of the state, by an overwhelming majority, decided to exercise the prerogative of restricting the authority of their elected representatives through the inauguration of the state-wide initiative and referendum processes.

A great deal of space has been devoted, both prior to and after enactment, to the discussion and analysis of this system of direct legislation, which was formally introduced in South Dakota in 1898 and elaborated and extended in Oregon shortly following the turn of the present century. As is always the case in the advent of new political institutions, many of the discussions have been characterized by the fervor and fallaciousness of extreme positions. On the one hand one finds those avid supporters of the system who subscribe to the thesis that the initiative and referendum, in their modern forms, constitute panaceas for all the ills which have befallen representative democracy in the past and are effective barriers against the pitfalls to which the system might become exposed in the future. At the other extreme is found the fac-

¹"Constitution of Oregon," *Oregon Blue Book 1947-1948* (Salem: State Printing Office, 1948), p. 314.

tion that gives vent to what some observers have labeled the doctrinaire position that representative democratic government is a sacred institution which should be kept forever inviolable against the modifications or alterations which might be forced upon it by the hasty action of an unruly majority. That both of these positions are untenable will be pointed out in due course. The important factor to be noted at the outset is that, regardless of the approach used by those authors who have dealt with the subject, there exists almost complete unanimity in the conviction that the advent of the initiative and referendum must be regarded as one of the most important landmarks in the history of American political institutions within the twentieth century. In this regard Professor W. B. Munro has remarked, "There has been no more striking phenomenon in the development of American political institutions during the last ten years than the rise to prominence in public discussion and consequently to recognition upon the statute book, of those so-termed newer weapons of democracy—the initiative, referendum and recall."²

The impact of these innovations in the field of political science was immediate and forceful, as evidenced by the tremendous amount of literature published on the subject from 1902 to 1915. Aside from the many analyses of the relative merits and defects of the system and the prognostications of its future effects on American political institutions, a great deal of time and space has been devoted to the task of tracing the origins of the initiative and referendum in their present forms. This study will be devoted primarily to an investigation of the legal aspects of the initiative and referendum in Oregon, and to an analytical evaluation of the arguments that have been submitted in opposition to and in support of these political institutions in the light of historical experience. In this latter regard, special emphasis will be given to the period beginning with the general election of 1938 and terminating with the last general election of November 2, 1948.³

It appears proper, however, to preface the analysis with a brief historical sketch of the genesis of the initiative and referendum in Oregon. No attempt

²W. B. Munro, *The Initiative, Referendum and Recall* (New York: D. Appleton and Company, 1912), p. 1.

³The operation of the initiative and referendum in Oregon from 1902 to 1938 has already been carefully and ably analyzed, and, although one of the studies was primarily historical in character, the period prior to 1938 could not be treated without needless repetition. References to measures submitted to the Oregon electorate in this period therefore will be made only when necessary to illustrate or to elaborate a particular point. Some of the works of the early period include an excellent study by Professor J. D. Barnett, *The Operation of the Initiative, Referendum and Recall in Oregon* (New York: The Macmillan Company, 1915); Waldo Schumacher, "Thirty Years of the People's Rule in Oregon: An Analysis," *Political Science Quarterly*, vol. 47 (June, 1932), pp. 243-258; and an unpublished historical study by P. T. Culbertson, *A History of the Initiative and Referendum in Oregon* (Doctoral thesis, Eugene: University of Oregon, 1941).

will be made to summarize or to evaluate the various interesting theories which have been formulated regarding the evolution of direct legislation at the world level or within the United States.⁴ This study is concerned with the one state which was to adopt a system of popular government destined to influence political institutions in many other parts of the nation.

There exists no agreement as to the date upon which agitation for the initiative and referendum began in the state of Oregon. One author has placed the credit for the inauguration of the movement with a newspaper called *The Vidette* which was published in the city of Portland from 1885 to 1888.⁵ Another writer has suggested that, "The initiative and referendum was first promoted by joint representatives from the Farmers' Alliance, State Grange, Federated Trade Council of Portland and the Oregon Knights of Labor. . . ."⁶ It is true that these organizations were highly active in the promotion of direct legislation. Most of their efforts, however, were concentrated between 1892 and 1898 during which time the famous Direct Legislation League was formed from representatives of all of these organizations.⁷

The proposals can be traced beyond both of these dates, however, to the constitutional convention which met in 1857. In addition to various motions to make questions such as slavery, prohibition, and the location of county seats subject to the popular ratification of the electorate, one George H. Williams actually proposed that the original constitution be made to include a provision for the optional referendum. His proposal was not accepted, but it

⁴Able and comprehensive studies of the evolution of direct legislation have been conducted by C. S. Lobingier, *The People's Law* (New York: The Macmillan Company, 1909) and E. P. Oberholtzer, *The Referendum in America* (New York: Charles Scribners Sons, 1911). Early experiments in popular assemblies are also discussed by A. L. Lowell, *Public Opinion and Popular Government* (London: Longmans, Green and Company, 1914), p. 152, and H. Walker, *The Legislative Process* (New York: The Ronald Press Company, 1948), p. 445. For other interesting comments on the history and theory of direct legislation, see J. J. Rousseau, *The Social Contract* (New York: Hafner Publishing Company, 1947); Thomas Jefferson, "Notes on the State of Virginia," *The Complete Jefferson*, ed. by S. K. Padover (New York: Duell, Sloan and Pearce, Inc., 1943); F. G. Wilson, *The American Political Mind* (New York: McGraw-Hill Book Company, Inc., 1949), pp. 103-107; Culbertson, *op. cit.*, Chapter I; C. A. Beard and B. E. Schulz, *Documents on the State-Wide Initiative Referendum and Recall* (New York: The Macmillan Company, 1912); and an article by A. L. Lowell published in the June, 1911, number of the *Quarterly Review* and reprinted in Munro, *op. cit.*, pp. 126-138 under the title, "The Referendum in the United States."

⁵Address by Joseph N. Teal presented at the 1909 meeting of the National Municipal League and reprinted in Munro, *op. cit.*, p. 217.

⁶G. L. Hedges, *Where the People Rule* (San Francisco: Bender-Moss Company, 1914), p. 29.

⁷The League was officially formed in the spring of 1891. See C. J. Thompson, *The Origin of Direct Legislation in Oregon* (Master's thesis, Eugene: University of Oregon, 1929), p. 26.

serves to indicate that there were some people who were thinking about direct legislation full forty-five years before its formal adoption.⁸ The constitution as finally adopted contained a provision for the obligatory referendum as applied to constitutional amendments which were passed in both houses of the Assembly and to certain legislative enactments at the local level.⁹

The second phase of the movement for the initiative and referendum is usually associated with the rise of the Populist Party in America, which had its origins among the anti-railroad farmers of the mid-western states and which spread rapidly to the Pacific Coast. It was as early as 1874 that representatives of the Farmers' Party held a convention at Salem, Oregon, where they went on record as being violently opposed to all monopolies. These farmers eventually joined with the free-silverites, laborers, and all who opposed the moneyed powers of the East in forming the Populist Party.

Instrumental in influencing the Populist Party's stand on direct legislation was the Farmers' Alliance and later the Direct Legislation League mentioned above. The formation of the League was the result of the work of the Luelling family of Milwaukie, Oregon, which family made a tremendous contribution to the cause of the initiative and referendum in Oregon. It was into this group that Mr. William S. U'Ren, who is considered by many to be the father of the Oregon System, was introduced. U'Ren, who happened to come to Oregon during his wanderings, represented himself as a spirit medium to the Luellings, who were spiritualists. The astute and ambitious U'Ren soon became the business partner of Seth Luelling.¹⁰

Under the leadership of U'Ren, the Direct Legislation League concentrated its early efforts on the idea of getting the state legislature to call a constitutional convention where it was hoped that the initiative and referendum would be included in a revised document. Apparently it was felt that this approach was a more feasible one than that of securing an amendment to the basic law. In the legislative session of 1895 the group almost succeeded in its program when a motion to call a convention met with a tie in the Senate and was defeated by the margin of only one vote in the House of Representatives.¹¹ U'Ren, who had worked diligently to get the motion passed, was not

⁸*Proceedings and Debates of the Constitutional Convention of 1857*, ed. by Charles H. Carey (Salem: State Printing Department, 1926), pp. 173-176; 327-328; 329; 331-332; 336-341.

⁹*Constitution, op. cit.*, Article XVII, sections 1, 21.

¹⁰Thompson, *op. cit.*, pp. 11-13. It was at one of the many meetings at the Luelling residence that someone read from a book describing direct legislation in Switzerland, thus causing these farmers to become interested in the system.

¹¹Teal, *op. cit.*, p. 217. See also Thompson, *op. cit.*, pp. 48-51. U'Ren lobbied vigorously at this legislative session armed with a petition signed by 14,000 of the 80,000 qualified voters in the state.

too disappointed at this result because he had become convinced that direct legislation could be introduced through a constitutional amendment rather than through the use of a state convention.¹²

This growing conviction on the part of U'Ren had caused him to become affiliated with Oregon's Populist Party shortly after the Direct Legislation League was formed. It was the driving force of this phenomenal personality, who had become secretary of the party's state committee, that was largely responsible for the Populist endorsement of the initiative and referendum at their state convention of 1894.¹³

Not satisfied with only this endorsement, the friends of popular law-making attempted to get the other two parties in Oregon to endorse the system. The efforts met with success in the case of the Democratic Party, which adopted the initiative and referendum platform plank at its state convention. The Republican Party did not endorse it, however, and, in spite of U'Ren's efforts to cause the fusion of the Populists and Democrats, the Republicans won the state election by a landslide.¹⁴

This defeat did not discourage the advocates of reform. The revised plan of action called for the passage of a proposed initiative and referendum amendment in two consecutive sessions of the legislature in order to conform to the constitutional requirement that only under these conditions could such a proposal be submitted to the electorate for its judgment. There was little fear of the fate of such a proposal at the polls. The members of the Direct Legislation League had become masters of propaganda and they were confident that their efforts in appealing to the public could not be other than successful.¹⁵

¹²Thompson, *op. cit.*, p. 51, has wisely suggested that U'Ren's change of tactics might well have been caused by the opposition to the idea of a new constitution expressed by the powerful *Portland Morning Oregonian*. Furthermore, the newspaper was violently opposed to the bill providing for the convention because it contained a provision that would have required *all laws* to be submitted to popular ratification before being considered valid. This objection might also have caused the shift in emphasis from the obligatory to the voluntary referendum.

¹³*Ibid.*, p. 38.

¹⁴*Ibid.*, pp. 41-42. Again the tremendous opposition of the *Morning Oregonian* was instrumental in defeating this effort. This same paper was, however, destined to be one of the most avid and effective supporters of the direct legislation amendment.

¹⁵An indication of this committee's effectiveness is to be seen in the fact that in the period 1892-1898 it distributed approximately 400,000 pieces of literature in addition to securing the 14,000 signatures mentioned above and carrying on an incessant stream of lobbying activities in the legislature, political parties, and other important places. Culbertson, *op. cit.*, p. 55.

Immediate tactics called for running Populist candidates for the state legislature in the election of 1896.¹⁶ The election results found the Populists with thirteen of the fifty-eight assemblymen, the Democrats with one, and the Republicans with the remainder. In the Senate the Democrats and Populists each elected three of the ten senatorial candidates they ran. U'Ren was one of the Populists from Clackamas County elected to the lower house; this event was to put into motion one of the bitterest political battles in the history of Oregon politics.

The famous "holdup session" met on January 11, 1897. The Senate proceeded to organize itself, but the lower chamber failed to do so. The Republican Party had split wide open on the question as to whether a silverite should be sent to the United States Senate in view of the fact that the Republican National Convention of 1896 had gone on record in favor of the gold standard.

U'Ren, who was certainly a practical as well as a theoretical politician, saw in this schism an opportunity to win support for the proposed amendment for the initiative and referendum. His first attempt at bargaining was a failure since the faction with which he elected to side concluded shortly that its part of the bargain could not be kept. U'Ren then shifted the Populist faction in support of Jonathan Bourne. This group proceeded to serve notice on the opposition that if it did not agree to the proposal of the sought-for amendment, there would be no session convened that year. Mitchell, the leader of the opposition, would not come to terms, and on February 26, 1897, the unorganized legislature adjourned without having passed one piece of legislation.¹⁷

The Populist Party, and particularly W. S. U'Ren, was severely criticized for having participated in the most vicious type of political intrigue. Now the indictment of corruption and political anarchy was directed at the "reformers." Here, indeed, was a situation where those who sought to correct the evils of government actually participated in those evils to the detriment of the people of the state in general. The reply, or rationalization, of the friends of direct legislation was that it had become necessary "to fight the devil with fire."¹⁸ The excuse was not enough to appease the critics, however. Most of the Populists who had participated in the "holdup ses-

¹⁶It should be noted that in this same year W. J. Bryan tried to have the initiative and referendum included as part of the national Democratic Party platform. The effort failed at that time, but four years later the Democratic Convention, which met at Kansas City, did adopt a qualified version of the plank, pointing out that the system of direct legislation should be instituted whenever practicable. *Ibid.*, p. 26.

¹⁷For an interesting discussion of this unfortunate fiasco, see Thompson, *op. cit.*, pp. 55-68.

¹⁸Culbertson, *op. cit.*, p. 61.

sion," including U'Ren, were not returned to the legislature at the next election.

The Populist Party's unsuccessful venture in the "holdup session" necessitated a quick change of strategy if the reform movement was to be saved. It was concluded, and not without reasonable justification, that a partisan label attached to the initiative and referendum drive would tend to work toward its defeat in a state legislature which was itself highly partisan in nature. Accordingly, the friends of the movement proceeded to reorganize the Direct Legislation League into the Non Partisan Direct Legislation League. This change-over was completed at Salem, Oregon, in September, 1898.¹⁹

Again it was the ambitious and able Mr. U'Ren who reappeared upon the scene as the secretary of this "new" organization. It was in this capacity that he was really able to prove his ability and worth as a master of propaganda and organization. Working through the League, he was successful in extracting solemn commitments from many of the prominent legislative candidates to the effect that they would lend their support to the proposed amendment, regardless of their personal feelings, in order that the sovereign body politic could be given an opportunity to express its opinion in the matter. Mitchell, who had been partially responsible for the tragic "holdup session" through his flat refusal to come to terms, now expressed a willingness to support the amendment in return for his re-election to the United States Senate. Jonathan Bourne was also brought into the fold, and from here he entered upon a career that was destined to make him one of the most forceful and articulate defenders of the Oregon experiment.

Not wanting to miss any opportunity to enhance the fortunes of the proposed amendment, U'Ren was persuaded to make a bid for the upper legislative chamber. Although this attempt met with defeat, he was to find that his presence at Salem in the capacity of a legislator was not essential to the acceptance of the proposed change.

Thus it was that the Twentieth Legislative Assembly of 1899 met under a political atmosphere decidedly more favorable to direct legislation than had been the case in the preceding session. This situation was the result not only of the very efficient campaign of the Non Partisan League but also of the growing decline of Populism, with which faction the reform had been closely identified. The "nonpartisan" character of the proposal was beginning to rally the assistance of the Republican Party as well as the support of some of the state's most powerful and influential newspapers.

¹⁹Thompson, *op. cit.*, p. 26.

133
"On January 9, Mr. L. J. Kruse, of Clackamas County, introduced House joint resolution No. 1, or the Initiative and Referendum resolution."²⁰ Hedges points out that the measure was not treated as anything of tremendous import at the time, but he goes on to observe that this action ". . . marked the beginning of a new political system which was destined to revolutionize the legislative methods of a sovereign state and make the people themselves the final judges of the laws which should govern them."²¹ The proposal was passed in the lower chamber by a vote of forty-three to nine, and upon submission to the Senate, it was accepted without significant opposition by a vote of twenty to eight.²²

In conformance with the provisions of the Oregon Constitution mentioned above,²³ the resolution was held in abeyance for reintroduction into the next legislative session where another favorable vote was necessary in order to insure its submission to the electorate. One may readily assume that the efforts of the Non Partisan Direct Legislation League did not decrease during this crucial period.

The success of the previous session was repeated shortly after the Twenty-first Legislative Assembly convened. Mr. Kruse again introduced the measure in the lower house where it was accepted by a vote of fifty-eight to none with two members not being present. On January 16, 1901, Senator Brownell of Clackamas County brought the resolution before the Senate, where it was accepted with only one dissenting vote.²⁴

One remaining obstacle had now to be surmounted. The proposal had to receive the approval of the voters at the next general election. Again Mr. U'Ren proved himself more than equal to the task at hand. Prominent members of both political parties were persuaded to speak for the amendment. What newspaper opposition there did exist was negligible since most of the influential news organs were aligned solidly behind the plan. In this regard it is interesting to note that a majority of the papers had been rallied to the support of the amendment on the grounds that it constituted an economy measure since it would obviate the necessity of calling constitutional conventions.

A major victory for the advocates of the amendment was secured when both the Republican and Democratic state conventions of 1902 endorsed the program in their respective platforms. Without the approval of both parties,

²⁰*Ibid.*, p. 52. See also *House Journal* 1899 (H.J.R., No. 1), p. 326.

²¹Hedges, *op. cit.*, p. 1.

²²*Senate Journal* 1899 (S.J.R., No. 1), p. 383.

²³*Constitution, op. cit.*, Article XVII, section 1.

²⁴*House Journal* 1901 (H.J.R., No. 1), pp. 27-28; *Senate Journal* 1901 (S.J.R., No. 1), p. 4.

which helped to give the amendment a true nonpartisan character, the amendment would have had a more difficult time at the polls.

There seems to have existed no organized opposition to the amendment. In addition to the support of newspapers and the major political parties, the Oregon Grange and labor groups were very favorable to it.²⁵ On June 2, 1902, the voters of Oregon overwhelmingly adopted the amendment, 72.8 per cent of the total vote having been cast in favor of the proposal.²⁶

Several theories have been formulated regarding the reason, or reasons, for the rise to popularity of the initiative and referendum in Oregon and elsewhere. The conclusive cause is difficult to establish, since most of the arguments establishing one causal relationship or other are plausible at least in part.

J. Allen Smith looks upon the advent of direct legislation as ". . . the logical outcome of the struggle which the advocates of majority rule have been and are now making to secure control of our state and municipal governments."²⁷ To Smith the struggle was an inevitable one, growing out of the existence of governments which, according to his point of view, precluded the operation of popular sovereignty. Professor Beard, after having discussed the practice among the American states of compelling the submission to popular vote of constitutional amendments and other legislative propositions, concludes that direct legislation constitutes no more than a logical extension of these practices.²⁸ Professor W. B. Munro makes the rather novel suggestion that the movement was actually supported by the state legislators themselves who saw in the referendum a device whereby they could relieve themselves of responsibility by referring to the people those measures of highly controversial nature.²⁹

Another suggestion that would appear to be plausible comes from Professor A. L. Lowell. He contends that the electorate saw in the initiative and referendum an opportunity to separate specific legislative issues from political parties. Direct legislation would, then, provide a means whereby the people could reject individual measures even though they were enacted by the political party with which they generally found the most favor.³⁰

²⁵Culbertson, *op. cit.*, pp. 68-69.

²⁶The official vote was 62,024 for the amendment and 5,668 against it. See *Oregon Blue Book 1947-1948*, *op. cit.*, p. 246.

²⁷J. Allen Smith, *The Spirit of American Government* (New York: The Macmillan Company, 1907), p. 352.

²⁸C. A. Beard, *American Government and Politics* (New York: The Macmillan Company, 1935), p. 522.

²⁹Munro, *op. cit.*, pp. 2-4.

³⁰Lowell, *Public Opinion and Popular Government*, *op. cit.*, p. 157.

There is, however, good reason for doubting that this type of reasoning was a controlling factor in the state of Oregon.

The most important single cause for the advent of direct legislation is to be found in the declining popular trust in the judgment and integrity of the elected representatives of the people. The people became more and more convinced that powerfully organized, self-seeking pressure groups operating in the legislature prevented public opinion from finding accurate or adequate expression through the assembly.³¹ Theodore Roosevelt, in his analysis of the Oregon system, remarked that "The movement for direct popular government in Oregon . . . was in part the inevitable consequence of the betrayal of their trust by various representatives of Oregon in the national and state legislatures."³²

In spite of the fact that many of the charges made against the state legislature would be difficult to document, Oregon's early history as a state is replete with accounts of extreme political corruption. One student of the period makes the flat assertion that "Oregon enjoyed the unenviable reputation of having one of the most corrupt and inefficient governments to be found north of Mexico and west of Pennsylvania."³³ In substantiating this indictment this same writer points out that "As soon as the legislature convened a troop of prostitutes quite regularly convened at Salem—the law-makers, in some cases, attaching them to the state payroll. Drunkenness and debauchery commonly prevailed throughout the whole legislative session."³⁴ The statement of one of Oregon's former governors to the effect that the testimony of men engaged in Oregon politics points to the fact that the political morality of the state had reached a low ebb during the last two decades of the nineteenth century lends credibility to this observation.³⁵

Another Oregon governor, during the inaugural ceremonies of 1903, commented on the advent of direct legislation in Oregon. In this regard he said:

The people have seen fit to adopt an amendment to the constitution for the initiative and referendum. Official extravagance and a disregard for the best interests of the commonwealth by legislative bodies originated the demand for this innovation. Legislative contests over the election of United States Senators, and lobbies in the interest of railway and other corporations have so obstructed legislation in years gone by, that many laws actually demanded have failed of enactment, while others absolutely without merit and vicious in their tendency have found lodg-

³¹See Munro, *op. cit.*, pp. 15-16.

³²Article by T. Roosevelt included in Munro, *op. cit.*, p. 62.

³³Thompson, *op. cit.*, p. 15.

³⁴*Ibid.*, p. 16.

³⁵T. G. Geer, *Fifty Years in Oregon* (New York: Neale Publishing Company, 1912), pp. 476-477.

ment in the statute books. As a means to check these evils—sins of omission and commission—the initiative and referendum is to be attempted and there is no question but that the effect will be beneficial.³⁶

Granted the existence in Oregon of extremely undesirable conditions, it should be noted that something more than their mere existence is necessary to revolutionary change. Even more important, perhaps, is the existence of an alert, vigorous, and able leadership with a definite plan of action at its disposal. The advocates of change in Oregon were indeed fortunate in having several such leaders, the most prominent of whom was W. S. U'Ren. No better tribute to his contribution to the success of the Oregon movement has been paid than the one which follows:

While the original movement in Oregon is in general the work of many minds, its propaganda was almost solely the work of one man, who but for his dogged perseverance and unyielding courage might have been worn out with delays and financial difficulties. To W. S. U'Ren . . . is due the honor and credit of following up this movement—call it reform or what you please—year after year, through good and ill report and against all sorts of opposition, from secret enmity of political bosses to open ridicule of scholastic wiseacres, until the great mass of the voters were informed and converted to the support of the principles of direct legislation by the popular vote of electors.³⁷

Whatever the cause, or causes, which led to the adoption of these measures in Oregon, the system of 1902 as elaborated by subsequent legislation remains intact today. The following chapters will make some attempt at determining whether or not the treatment has turned out to be worse than the disease it was designed to cure.

³⁶G. E. Chamberlain, *Inaugural Address, 1903* (Salem: State Printing Department, 1870-1915), p. 33.

³⁷Joseph Gaston, *Portland: Its History and Builders*, 3 vols. (Chicago: J. J. Clarke Publishing Company, 1911), vol. 1, p. 565.

II

THE LEGAL ASPECTS OF THE OREGON STATE- WIDE INITIATIVE AND REFERENDUM

Because of the structural and procedural differences in the initiative and referendum processes existing within those states that have adopted popular lawmaking, some attempt at defining the various features of the Oregon system, together with a consideration of the legal aspects of the system as interpreted by the Supreme Court of the state, appears to be in order.¹

Although the terms "initiative" and "referendum" are usually coupled together in one phrase, it is important to note that they are akin only in the sense that they are devices whereby the electorate is enabled to render its decisions on laws and/or constitutional amendments which have been proposed either by the legislative assembly or by a specified percentage of the qualified voters of the state. Professor J. D. Barnett, in attempting to point out the basic differences between the two institutions, quotes from one of the Oregon newspapers as follows:

There is a difference between the initiative and the referendum—a vast difference. . . . The initiative is an instrumentality of popular government through which the people propose and enact laws or adopt constitutional amendments without regard for any legislature or any other representative body. The referendum is a plebescite by which the people as a whole approve or reject any measure previously adopted by the legislature, or referred to them by the legislature. All measures under the initiative are a demonstration of the original law-making function. All measures under the referendum are a demonstration of the law-approving or law-rejecting function.²

This definition, which has reference to the Oregon system, is not a satisfactory explanation of the popular initiative. A more correct definition is offered by the late Professor C. A. Beard, who indicates that, "In principle the initiative is a system which permits any person or group of persons to draft a bill or proposal of law and, on securing the signatures of a certain

¹Beard and Schultz, *op. cit.*, offer an interesting comparison of the special features contained in the direct legislative processes in force at the time the work was written.

²Barnett, *op. cit.*, p. 5. Quoted from the *Portland Oregonian*, October 15, 1913, p. 10, col. 2. Beard and Schultz, *op. cit.*, p. 20, point out accurately that the initiative and referendum are by no means definite and stereotyped. They do suggest, however, that, "Defined in general, the initiative is a scheme whereby a small percentage of voters may initiate a law and secure adoption upon ratification by popular vote; and the referendum is a plan whereby a small percentage of the voters may require the reference of an act of the legislature to the electorate for approval or rejection." Consult *American Juris-Prudence* (San Francisco: Bancroft-Whitney Company, 1940), vol. 28, p. 153, for an excellent definition of the statutory referendum.

number or percentage of voters, to force the submission of the same, with or without legislative intervention, to the voters for their approval or rejection."³ This same idea was expressed recently by a writer who defined the initiative as "... that right under which a specified number of the electorate may jointly propose laws [or constitutional amendments] to the legislature or directly to the people for their approval or disapproval at an election."⁴

In order that the initiative process may be clearly understood, it is quite necessary that a distinction be drawn between the constitutional initiative and the initiative on statutes. There are a number of states in which the initiative is restricted by law to only those measures which are statutory in nature, whereas in other states, the voters are free to initiate either a law or a constitutional amendment at their own discretion, although the number of signatures required to put the constitutional initiative into motion may be higher than would be the case regarding statutes.⁵

There is also a significant difference to be noted in the amount of legislative intervention permitted in the initiative process. In some states the proposed law must be submitted by the petitioners to the legislative assembly for its consideration. If, after the lapse of a specified period, the legislature does not put the measure into operation, the people are permitted to decide the issue at the polls. This may involve only the submission of the initiated measure, or the submission of a competing legislative proposal with the measure proposed by initiative petition. The second method followed permits of no legislative interference in the sense that all popularly initiated proposals are submitted directly to the people without any consideration by the representative assembly. In those states which permit both the constitutional and statutory initiative, the first scheme would not be feasible, since all proposed constitutional changes must be submitted to the electorate, unless a different procedure were to be provided for both types of initiative proposals.

³Beard, *American Government and Politics*, *op. cit.*, p. 522. Cf. Oberholtzer, *op. cit.*, p. 384, who includes within his definition the process which is herein treated as the obligatory referendum. In this regard, he remarks that, "The right of the initiative includes the right to demand a vote of the people, not only on laws already proposed or passed by the representative legislature but also on new measures. The right of the initiative is the right to initiate the law as well as the election for and against the law. It is a democratic agency by which a minority party and elements which are without representation in the legislature may force the latter's hand and compel it to submit any desired measure to popular vote."

⁴A. B. Coigne, *Statute Making* (New York: Commerce Clearing House, 1948), p. 29.

⁵States permitting only the statutory amendment include Maine, Montana, South Dakota, Utah, and Washington. The thirteen states in which both the constitutional and statutory initiative are allowed include Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, and Oregon. Walker, *op. cit.*, p. 449.

The constitutional amendment adopted in the summer of 1902 established both the statutory and the constitutional initiative in Oregon, this state being the first one to extend the initiative device to include changes, amendments, or additions to the organic law. That part of the constitution dealing with the initiative provides that:

The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly. . . .⁶

The last part of this provision serves to indicate that the framers of the amendment did not anticipate that the legislature would be given any opportunity to intervene in the initiative procedure for the purpose of preventing its operation. This feature will be discussed, together with the analysis of the other elements of the system.

Generally considered, the referendum is a procedure whereby an act passed by the legislative assembly or a proposed amendment to the basic law is submitted to the electorate for its approval or rejection at an election. The historical examination of direct legislation cited in the preceding chapter serves to point out that the practice of submitting certain classifications of legislation and projected constitutional amendments to the electorate is not something new in Oregon or among American states in general.⁷ The somewhat novel aspects of the system adopted in Oregon are to be explained by the fact that the referendum process has been made to apply to all but emergency legislation and that the process can be put into motion under the mandatory instructions of the organic law, by way of a petition signed by a specified percentage of the qualified voters of the state, or at the option of the legislative assembly.

A proper understanding of the Oregon system would necessitate a differentiation between the *obligatory* and the *optional* referendum. One author has defined the optional referendum as ". . . the right of the legislature in its discretion to submit laws to the people for their approval or veto. . . ."⁸ The obligatory referendum, on the other hand, has been described as ". . . a provision requiring the submission of a proposition to the people under certain circumstances. . . ."⁹

⁶*Constitution, op. cit.*, Article IV, section 1.

⁷Under the Oregon Constitution of 1859, the referendum on all constitutional amendments and on specific types of legislation was obligatory. See, for instance, A. H. Eaton, *The Oregon System* (Chicago: A. C. McClurg and Company, 1912), pp. 8-9.

⁸Coigne, *op. cit.*, p. 41.

⁹*Ibid.* Cf. Eaton, *op. cit.*, pp. 10-11, who calls the Oregon system which permits a specified percentage of the electorate to compel the submission to popular vote of certain legislative measures the optional, rather than the obligatory, referendum.

The organic law of Oregon provides that in addition to the establishment of the initiative power, the people "... also reserve power at their own option to approve or reject at the polls any act of the legislative assembly."¹⁰ The section later authorizes the optional referendum by extending to the legislature the power to submit measures to the voters for their judgment. The words "any act" are also qualified by the inclusion of the restrictive clause pertaining to measures of an emergency character. The status of proposed amendments to the basic law remains the same in the sense that their submission to the electorate is mandatory, whether the proposals originate in the legislature or through initiative petitions.

The initiative and referendum had not long been parts of the Oregon system of government before their constitutionality was questioned in the state and federal courts. In 1903 the City of Portland, under authority of a statute enacted through the initiative process, passed an ordinance which levied a special assessment to be used for the purpose of improving streets within the municipality. This action was contested as being unenforceable on the grounds that the statute under which the assessment was made was enacted through unconstitutional means.¹¹ The first line of attack was based on that section of the Constitution of 1859 which prohibited the submission of a constitutional amendment to the people while other amendments, previously proposed, were awaiting the disposition of the legislature. The Supreme Court discarded this objection by pointing out that a proposed amendment which was not submitted to the electorate before the termination of the second consecutive legislative session in which it had been proposed lapsed upon the adjournment of that session. It was, therefore, concluded that the petitioner was incorrect in assuming that there was another amendment, or amendments, pending when the initiative and referendum amendment was proposed in the legislative session of 1899.

The second basis of attack, and one which was to carry the question of the constitutionality of direct legislation to the United States Supreme Court in a later case, was a more significant one. It was submitted that the amendment in question was unconstitutional as being in direct violation of, and repugnant to, Article IV, section 4, of the United States Constitution, which section guarantees to every state a republican form of government. The essence of this argument was that the state of Oregon, in permitting the people to legislate by direct action, had destroyed its republican form of government by precluding the exercise of the legislative function solely by a representative assembly.

¹⁰*Constitution, loc. cit.*

¹¹*Kadderly v. Portland*, 44 Ore. 118 (1903).

In resolving this contention, the Supreme Court stressed the fact that:

8
No particular style of government is designated in the Constitution as republican, nor is its exact form in anyway prescribed. A republican form of government is a government administered by representatives chosen or appointed by the people or by their authority. . . . Now the initiative and referendum amendment does not destroy the republican form of government and substitute another in its place. The representative character of the government still remains. The people have simply reserved to themselves a larger share of the legislative power . . . the government is still divided into the legislative, executive, and judicial departments, the duties of which are discharged by representatives selected by the people.¹²

The court's decision in the *Kadderly* case was evidently not convincing, because the same question was to be presented several times more in the space of a few years. The next instance in which the question arose was in the case of *Oregon v. Pacific States Telephone and Telegraph Company*.¹³ This case arose out of an initiative measure passed at the general election of 1906. The measure provided for the assessment of a two per cent tax on the gross receipts of all express, telephone and telegraph companies doing business within the state. This initiative proposal was attacked on several grounds, among which was included the allegation that the Oregon system of direct legislation conflicted with that portion of the United States Constitution dealing with the maintenance of a republican form of government among the several states. The Oregon Supreme Court disposed of this objection summarily, pointing out that the decision in *Kadderly v. Portland* was absolutely ruling on this point.

This decision was subsequently appealed to the Supreme Court of the United States where the decision rendered was far from satisfactory to the appellants. The court ruled that the question involved was purely a political one and, therefore, not within the competence of the court to decide. The question, if resolved at all, would have to be determined by the United States Congress.¹⁴ This decision left the initiative in a strong position federally since it was assumed that as long as both houses of Congress continued to seat the representatives from the state, this would be construed as *prima facie* evidence that Oregon was maintaining a government republican in character.

Prior to the decision by the United States Supreme Court, Oregon's supreme tribunal found it necessary to pass on two other cases which presented the same question. In the first of these cases the state Supreme Court established a rather novel idea regarding the nature of the legislative

¹²*Ibid.*, p. 145.

¹³53 Ore. 162 (1909).

¹⁴*Pacific States Telephone and Telegraph Company v. Oregon*, 233 U. S. 118 (1912).

power of the state.¹⁵ The court, in upholding an initiative measure authorizing the incorporation of the port of Coos Bay, Oregon, and the establishment of a Board of Port Commissioners, pointed out that although the direct legislation amendment had added a law-making body to the state's governmental structure, there remained, in actuality, only one legislative department with two subdivisions. In the clarification of this point of view the court averred that:

By the adoption of the initiative and referendum in our Constitution, the legislative department of the state is divided into two separate and distinct law-making bodies. There remains, however, as formerly, but one legislative department of the state. It operates, it is true, differently from before—one method by the enactment of laws directly, through that source of all legislative power, the people; and the other, as formerly, by their representatives—but the change thus wrought neither gives nor takes from the Legislative Assembly the power to enact or repeal any law, except in such manner and to such an extent as may therein be expressly stated. Nor do we understand that it was ever intended that it should be so. The power thus reserved to the people merely took from the legislature the exclusive right to enact laws, at the same time, leaving it a coordinate legislative body with them. This dual system of making and unmaking laws has become the settled policy of the state. . . .¹⁶

The most comprehensive and satisfactory reply to the contention that the initiative and referendum destroyed Oregon's republican form of government was made by the state Supreme Court in another case decided in the same session in which the *Straw* case was considered.¹⁷ Under the argument that the Oregon system of popular legislation was unconstitutional, the plaintiff in this case attacked a Portland amendment authorizing the issuance of municipal bonds to cover the cost of bridge construction and improvement within the city.

In attempting to arrive at a definition of a republican form of government, the Court began by considering the definition offered by James Madison in the tenth number of *The Federalist*, wherein he makes the statement that, ". . . we may define a republic to be, or at least may bestow that name on, a government which derives its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to

¹⁵*Straw v. Harris*, 54 Ore. 424 (1910).

¹⁶*Ibid.*, p. 430. This case also established the constitutionality of Article IV, section 1-a, of the Oregon Constitution which extends the initiative and referendum to local governmental units within the state. The court was careful to point out that the sovereignty of the state over these units can never be completely relinquished since this would result in the creation of states within the state and would, therefore, be in violation of Article IV, section 3, of the United States Constitution.

¹⁷*Kiernan v. Portland*, 54 Ore. 454 (1910).

such a government that it be derived from the great body of society; not from an inconsiderable proportion, or a favored class of it. . . . It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified."¹⁸

The court then discussed a definition of a republican government found in the case of *Chisolm v. Georgia*¹⁹ in which Mr. Justice Wilson gave his " . . . short definition of such a government—one constructed on the principle that the supreme power resides in the body of the people."

Measured in the light of these definitions, the court could not conceive of a system that came closer to the fulfillment of these requirements than did Oregon's. Anent this point the court said, " . . . it seems inconceivable that a state, merely because it may evolve a system by which its citizens become a branch of its legislative department, coordinate with their representatives in the legislature, loses caste as a republic."²⁰ The court pointed out that the state of Oklahoma was admitted into the union with the initiative and referendum included in its organic law, concluding that Congress must have evidently considered its government under that document to be republican in character. It also stressed the fact that prior to the advent of the initiative and referendum, no one attacked the requirement that the legislature submit proposed amendments to popular referendum on the grounds that this procedure deprived the legislative assembly of its powers, thus abolishing republican government.

In an effort to dispose of this question categorically, the court said:

The extent to which a legislature of any state may enact laws is, and always has been, one of degree, depending upon the limitations prescribed by its constitution; some constitutions having few and others many limitations. But in all states, whatever may be the restrictions placed upon their representatives, the people, either by constitutional amendment or by convention called for that purpose, have had, and have, the power to directly legislate, and to change all or any laws so far as deemed proper—limited only by clear inhibitions of the national constitution.²¹

This case seems to have settled the issue of the constitutionality of the political institutions of direct legislation in Oregon. There has arisen no other case since 1910 which has challenged the validity of the system on the basis of an alleged incompatibility with the federal constitution. There have,

¹⁸A. Hamilton, J. Jay and J. Madison, *The Federalist* (New York: The Modern Library of Random House, n. d.), pp. 243-244.

¹⁹2 Dall. 419, 457 (1793).

²⁰*Kiernan v. Portland, op. cit.*, p. 474.

²¹*Ibid.*, pp. 474-475.

to be sure, been many other litigations arising out of the initiative and referendum. Some of these cases have presented questions of a substantive nature; whereas most of them have involved the necessity of judicial interpretation of the procedural machinery set up by the constitution, and by subsequent legislation, for the purpose of defining, elaborating, and regulating the means whereby the instruments of direct legislation can be made to operate.

Some concern existed as to whether or not the amendment establishing popular lawmaking in Oregon was self-executing. In one of the earlier cases in which this issue was presented,²² the Supreme Court, in taking an affirmative stand on the question, said, "A constitutional provision is said to be self-executing if it enacts a sufficient rule by means of which the right given may be enjoined or protected. The language used, as well as the object to be accomplished, is to be looked into in ascertaining the intention of the provision."²³ An examination of the amendment led the court to the conclusion that it was sufficiently specific as to enable it to be carried out without legislative elaboration. A few years later the court again upheld this position, pointing out that the amendment in question defined in explicit detail the procedure under which a valid exercise of the initiative and/or the referendum could take place.²⁴ Again, in 1918, the court asserted in unequivocal language that, "Article IV, section 1, of the Constitution reserves to the people of the whole state the power to refer measures. . . ." and that this power could be exercised in full "without any other charter than the Constitution itself."²⁵

These decisions were not intended, however, to prevent the state legislative assembly from enacting statutes designed to elaborate the initiative and referendum processes. This was made perfectly clear in the *Stevens* case, in which an early elaborating statute was being questioned. In upholding the law, the court pointed out that, ". . . when a provision of the Constitution is self-executing, legislation may be desirable for the better protection of the right secured and to provide a more specific and convenient remedy for carrying out such provision. . . ."²⁶ And, again, in a case in which the very

²²*Stevens v. Benson*, 50 Ore. 269 (1907).

²³*Ibid.*, p. 272.

²⁴*State v. Langworthy*, 55 Ore. 303, 314 (1910).

²⁵*Carriker v. Lake County*, 89 Ore. 246 (1918). It is interesting to note that this was not the construction applied to the constitutional amendment which extended the power of direct legislation to local governmental units. In a decision on this point the court concluded that the absence of any rules governing the processes precluded any decision that the amendment was self-executing in character. *Long v. City of Portland*, 53 Ore. 92 (1909).

²⁶*Stevens v. Benson*, *op. cit.*, p. 274.

extensive elaborating law of 1907 (*Laws*, 1907, Chapter 226) was questioned, the court held that the legislation was valid within the meaning of the Constitution.²⁷

In a more recent decision,²⁸ the Supreme Court went to the state Constitution in order to document this view. It quoted from that section of the organic law which provides that the secretary of state and all other officers, in dealing with the problem of direct legislation, ". . . shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor."²⁹ It would seem to be obvious, then, from the very wording of the constitution that the provision, although self-executing, did not obviate the ability of the legislative assembly to enact statutes designed to enhance the facility with which the electorate could participate in popular lawmaking. Such legislation would, of course, be valid only so long as it did not pervert the clear intention of the constitutional provisions.

There have been several decisions by the Supreme Court in which attempts have been made to define the scope of the power granted to the people of Oregon by the provisions in the constitution dealing with direct legislation. Most of the cases in which this problem was discussed arose out of queries concerning the effect of direct legislation on the power of the legislative assembly. In the case of *Straw v. Harris*,³⁰ the doctrine was established that the adoption of the initiative and referendum merely took from the legislative assembly the exclusive right to make law, while at the same time leaving it a coordinate legislative body with the people. This position was made clear in a later decision³¹ in which the court indicated that while it was true that under the original organic law of the state the people vested all legislative power in the assembly, that situation no longer prevailed. According to the court, the people, through the exercise of their inalienable sovereignty, had declared that ". . . the legislature was no longer to be

²⁷*Farrell v. Port of Portland*, 52 Ore. 582 (1908).

²⁸*Zimmerman et al. v. Hoss*, 144 Ore. 55 (1933). On the self-executing nature of amendments generally, see *American Jurisprudence*, *op. cit.*, p. 155, wherein the following paragraph is found: "Legislation may be enacted to facilitate the enforcement of constitutional provisions relating to the initiative and referendum, even though they are self-executing, and such laws will be obligatory upon the Court when intended by the legislature to be mandatory, so long as they do not curtail the rights reserved or exceed the limitation specified in the amendment. On the other hand, an enabling act of the legislature, intended to carry into effect a self-executing constitutional provision conferring the right of initiative and referendum, which imposes restrictions on proposed legislation not found in the constitution is invalid."

²⁹*Constitution*, *loc. cit.* It should be noted that the judicial doctrine that in case of doubt the meaning of the amendment should be construed in favor of the initiative was early established. See *Othus v. Kozier*, 119 Ore. 101 (1926).

³⁰*Supra*, p. 7.

³¹*Kalich v. Knapp*, 73 Ore. 558 (1914).

their exclusive agency of expression."³² While elaborating this position, the court explained that "As a result of political expansion, the people amended this section of the Constitution by imposing an indirect limitation on the legislature compelling that institution to share its powers of legislation with that of the people publicly expressed through the initiative."³³

In concluding, the court placed great emphasis on the fact that the first section of Article I of the organic law of the state was ample authority for the assumption that the people could, if they were so inclined, strip the legislature of *all* of its powers, leaving it but a place in memory, since this section of the Constitution recognizes that sovereignty, in the final analysis, resides solely with the people.

The direct legislation amendment is, then, a general reservation by the people of Oregon of the power to propose laws and amendments to the constitution, to enact or reject these proposals at a proper election, and to approve or reject at the polls any act passed by the legislative assembly that is not of an emergency character.³⁴

The emergence of this new legislative body raised the problem of the relationship between the legislative assembly and the people in their capacity as lawmakers. Within this relationship it was wondered what the power of the legislature would be to amend or repeal statutes enacted through the initiative process and what would be the ability of the people to repeal or qualify statutes passed by the legislature. The power of the legislature in this regard was made clear at an early date when the Supreme Court asserted that, "Laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the legislature at will."³⁵

In the *Kiernan* case,³⁶ the court not only established this doctrine beyond a reasonable doubt, but went on to point out that this power was shared by the legislature and the people equally. And, in answer to the contention that this rule would lead to a chaotic situation wherein the people would systematically and arbitrarily repeal all legislative enactments, while the legislature just as arbitrarily would abolish legislation enacted by the people at the election preceding each legislative session, the court pointed out that this situation had always been a possibility in view of the fact that any legislative assembly was free to repeal the statutory enactments of previous sessions.³⁷

³²*Ibid.*, p. 581.

³³*Ibid.*

³⁴*Long v. City of Portland, supra.*

³⁵*Kadderly v. Portland, op. cit.*, p. 146.

³⁶*Supra*, p. 7.

³⁷*Kiernan v. Portland, op. cit.*, p. 480.

In a later case in which it was sought to have a legislative enactment, which provided for a method of nomination through the filing of a petition and the payment of a fee, declared unconstitutional on the grounds that it amended the direct primary law of 1913 which was adopted by the initiative, the Supreme Court again pointed out that the Constitution did not deny to the legislature the right to amend or repeal a statute enacted by the people.³⁸ The general theory behind all of these decisions was made plain in a more recent decision in which the court stated that the whole lawmaking power of the state, not expressly or impliedly withheld, is committed to the legislature. This body may, then, enact any law not forbidden by the constitution of the state, delegated to the federal government, or prohibited by the Constitution of the United States.³⁹

It appears to be clear, in the light of these decisions, that the legislative assembly has not had its power to legislate lessened as the result of the advent of direct legislation in Oregon. There are, however, two restrictions which apply to the legislature regarding the use of the optional referendum. The first of these, although it appears to be obvious, has to do with the inability of the legislature to submit to referendum any measure which has not been legally enacted. Thus, in one instance where it was found that a statute submitted had not received a majority vote in both houses of the legislature, the Supreme Court held the submission to be void.⁴⁰

The second restriction has to do with the power of the legislature to amend or repeal an act while it is awaiting action of the people. There appears to be no decision exactly in point here, but one early case established the rule that the filing of a petition for a referendum was not in itself a legislative act but merely a matter preliminary to the legislative act.⁴¹ One of the state's attorneys general construed this to mean that " . . . when a legislative act is pending under a referendum, until the people act upon it, it ceases to be an act and is nothing more than a bill pending for legislative action. The right of the people to a referendum vote on a statute enacted by the legislature cannot be defeated by a subsequent repeal of the act referred."⁴² This official pointed out that to allow the legislature to do this

³⁸*Patton v. Withycombe*, 81 Ore. 210 (1916). See also *State ex rel. Pierce V. Slusher*, 119 Ore. 141 (1926). This rule does not apply to Washington's initiative process. There an enactment of the people cannot be repealed for a period of two years. For a general discussion of this problem see *American Law Reports Annotated* (San Francisco: Bancroft-Whitney Company, 1935), vol. 97, pp. 1046-1053.

³⁹*Jory v. Martin et al.*, 153 Ore. 278 (1936).

⁴⁰*State of Oregon v. Boyer*, 84 Ore. 513 (1917). See *Constitution, op. cit.*, Article IV, section 25.

⁴¹*State ex. rel. v. Olcott*, 62 Ore. 277 (1912).

⁴²*Biennial Report and Opinions of the Attorney General, 1934-1936* (Salem: State Printing Department, 1936), p. 565.

would defeat the very purpose of the referendum, that is, to get an expression of the popular will regarding the specific statute referred. This view, which appears to be a sound one, has apparently been accepted by the Oregon legislature.

There are some restrictions on the scope of the electorate's power under the system of direct legislation which ought not to go unnoticed. The most important of these is to be found in the constitutional provision denying to the people the power to invoke the obligatory referendum against emergency measures, that is, those laws ". . . necessary for the immediate preservation of the public peace, health, or safety. . . ." ⁴³

One of the first cases in which the Supreme Court had an opportunity to interpret this provision involved a statute under which the legislature established Medford, Oregon, as the seat of Jackson County.⁴⁴ Mandamus was brought against the county clerk who had refused to submit the issue to a referendum on the grounds that the statute contained an emergency clause. The tribunal, in dismissing the complaint, pointed out that the constitution, having specifically indicated the classes of legislation to which the legislative assembly could not legally apply the emergency clause,⁴⁵ impliedly authorized that body to declare the existence of an emergency in connection with any other statute. Because the statute involved in this litigation did not fall into any of the exempted classes, the emergency clause was held to be valid.⁴⁶

In the following year the court was given an opportunity to restate this ruling and to point out, in addition, that the question as to the existence of an emergency was one for the legislature and not the judiciary to determine. In this latter regard, the court said, ". . . the Courts of this state have consistently held that the legislature of the state is the exclusive judge of the necessity of such measures, and has exclusive right to determine when the emergency exists. . . ." ⁴⁷

This sweeping statement should not be taken too literally. What the court actually meant was that the "rule of reasonableness" would be applied whenever the existence of an emergency was legally contested. If, on the

⁴³*Constitution, op. cit.*, Article IV, section 1.

⁴⁴*Cameron v. Stevens*, 121 Ore. 538 (1927).

⁴⁵Article IX, section 1-a, of the Oregon Constitution provides that "The legislative assembly shall not determine an emergency in any act regulating taxation or exemption." This provision has the effect of making all such statutes susceptible to the obligatory referendum. The courts will look to a statute for the purpose of determining whether or not it falls within this category; and, if it does, they will compel the secretary of state to refer the statute to the electorate. See, for example, *State ex rel. Smith v. Koser*, 121 Ore. 459 (1927).

⁴⁶This case also held that a valid exercise of the emergency clause caused the statute to which it was applied to go into effect at once—upon the governor's approval.

⁴⁷*Joplin v. Tenbrook*, 124 Ore. 39 (1928).

face of a statute or ordinance the existence of an emergency is clear, or if, to a reasonable mind, the emergency would appear to exist, the courts will uphold the law. The court, then, does, in fact if not in theory, perform a function which, by its own words, it has called exclusively legislative in character. This would seem to be inevitable whenever it draws the final conclusion as to the existence or nonexistence of an emergency.⁴⁸

The constitution allows the obligatory referendum to be directed against ". . . one or more items, sections, or parts of any act of the legislative assembly in the same manner in which such power may be exercised against a complete act. . . ." ⁴⁹ But this privilege is not extended to legislative resolutions. This fact was made clear as the result of a case in which a referendum was sought on a legislative resolution through which the eighteenth amendment to the Constitution of the United States was ratified.⁵⁰ The Supreme Court stressed the fact that a resolution was not an "act" within the meaning of Article IV, section 1, of the Oregon Constitution, and that it was, therefore, the belief of the court that neither this nor any other type of resolution could be made the subject of a referendum. To do otherwise would subject the court to the criticism that it was reading into the organic law something which did not exist.⁵¹

Before proceeding to a discussion of the procedural legal aspects of the initiative and referendum, some comment should be made regarding the effect of direct legislation upon the veto power of the governor. In the *Kaddery Case*, it was held that, in spite of the constitutional provision which specifies that the veto power shall not be applicable to those measures referred to the people, this power was suspended only in the case of an optional referendum exercised by the legislature. In a later case, however, it was pointed out that in a democratic form of government, the authority of the executive to veto an enactment of the legislative department is not an inherent power and can be exercised only under the sanction and authority of a constitutional provision.⁵² In view of the clear language of the first section of Article IV of the state constitution on this point, the court held the power not to be applicable to a law enacted by the people under the initiative. This decision, considered in conjunction with the opinion of the attorney general,⁵³ regarding

⁴⁸See, for example, *Wieder v. Hoss*, 143 Ore. 57 (1933), in which case the Supreme Court ruled that an act establishing a state hydroelectric commission and exempting from taxation property owned, controlled, or operated by it was not such an act as to which the legislature could declare an emergency and prevent a referendum thereon.

⁴⁹*Constitution, op. cit.*, Article IV, section 1-a.

⁵⁰*Herbring v. Brown*, 92 Ore. 176 (1919).

⁵¹*Ibid.*, p. 178.

⁵²*State v. Kline*, 50 Ore. 426 (1908). See also *State v. Pacific States Telephone and Telegraph Company*, *supra*.

⁵³*Supra*, p. 13.

the inability of the legislature to repeal an act pending an obligatory referendum, would seem to justify the conclusion that the governor's veto power is suspended in all cases in which the initiative and referendum is made to operate.

The Oregon Constitution defines the procedures under which the initiative and referendum must operate in broad general terms. Article I, section 1, stipulates that the initiative can be put into operation through the submission of a petition which, to be valid, must be accompanied by the signatures of not less than eight per cent of the legal voters of the state, together with the full text of the measure so proposed. The number of legal voters who must affix their signatures to a petition designed to give effect to the obligatory referendum is set at five per cent. In establishing the minimum number of valid signatures required on either type of petition at any one time, the constitution requires that the ". . . whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition or for the referendum . . ." shall be used as a base. The initiative petition must be filed with the secretary of state not less than four months before the election at which the measure, or constitutional amendment, is to be submitted. Petitions for an obligatory referendum must be filed with the same official not more than ninety days after the final adjournment of the legislative session in which the measure, or measures, upon which the referendum is sought were passed. This section of the constitution provides further that such measures shall become effective when approved by a majority of all of those votes cast upon each individual issue at the regular or special election at which they are submitted.

The state legislature, under the assumption that the constitutional provisions were insufficient to guarantee a well-organized and smooth-functioning system, wasted little time in enacting legislation designed to fulfill the general purposes outlined in the organic law. The first statute was passed in the legislative session immediately following the adoption of the direct-legislation amendment.⁵⁴ This was later superseded by a much more comprehensive statute adopted in 1907,⁵⁵ which law was elaborated and refined in turn by other statutes which will be discussed in this chapter.

A combined examination of the constitutional and statutory provisions governing the procedural legal aspects of direct legislation establishes the fact that there are six major steps which must be completed before either

⁵⁴*Laws*, 1903, Chapter 244.

⁵⁵*Laws*, 1907, Chapter 226. The constitutionality of this act was upheld on the grounds that it was enacted pursuant to constitutional authority. See *Farrell v. Portland*, *supra*; *Long v. City of Portland*, *supra*; *Campbell v. City of Eugene et al.*, 116 Ore. 264 (1925).

the initiative or the referendum can be carried to a successful conclusion. These steps would include the following: (1) the preliminary filing of the initiative or referendum petition; (2) the circulation of petitions for the purpose of obtaining signatures; (3) the final filing of the petitions and signatures; (4) the education of the voter; (5) the election at which the measures are presented for popular approval or disapproval; and (6) the promulgation of those measures accepted.⁵⁶

(1) *Preliminary Filing*: Before any person or organization can begin the circulation of any petition designed to put before the electorate a bill passed by the legislature or a proposed statute or amendment drafted under the initiative privilege, the law requires that a copy of the petition must be delivered to the secretary of state who will file it in his office.⁵⁷ This officer must then proceed to specify the form which the petition must take and must prescribe the kind and size of paper upon which copies of the petition shall be printed for circulation. Since most of these things are regulated by law, the function of the secretary in this regard is purely a ministerial one.⁵⁸

At the head of each petition the law provides that there shall appear a warning clause which reads as follows: "It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when he is not a legal voter."⁵⁹

It should be noted that in spite of this clear wording in the statute, the Supreme Court of the state, on several occasions, has ruled that this provision is not mandatory and that its omission does not act to vitiate the petitions which have been circulated without it.⁶⁰

Immediately below the warning clause, a copy of the petition is set out. This in turn is followed by spaces for twenty signatures, the law prohibiting the secretary of state from counting any more than this number appearing on any one sheet.

In compliance with the constitutional mandate, the Act of 1907 requires that the initiative petition must contain a full and correct copy of the measure proposed, and, although the organic law does not extend this requirement to

⁵⁶For a comparative discussion of these requirements, see Coigne, *op. cit.*, pp. 29-40.

⁵⁷*Laws*, 1907, Chapter 226, section 2, p. 398.

⁵⁸Samples of initiative and referendum petitions are included in Appendix C, *infra*. The statutory provisions as to size and quality require that the petitions be printed on a good quality bond or ledger paper in pages eight and one-half inches in width by thirteen inches in length, with a one and one-fourths inch margin at the top for binding purposes.

⁵⁹*Laws*, 1907, Chapter 226, section 1, p. 398.

⁶⁰*Stevens v. Benson*, *supra*. While this case ruled that the warning clause was not necessary to the sufficiency of a referendum petition, a later case, *Day v. City of Salem*, 65 Ore. 114 (1913), extended the same ruling to cover initiative petitions.

referendum petitions, the statute imposes the same qualification on them. In a case preceding the passage of this statute, the court applied a very strict construction to the constitutional provision governing the initiative, ruling that a title was also necessary in an initiative petition. The tribunal stressed the fact that the validity of all laws adopted at the polls must be determined in the same manner as are the enactments of the legislative assembly.⁶¹ A year later the court, in dealing with this title requirement, distinguished between initiative and referendum petitions. The court held that while an initiative petition *must* contain a correct copy of the title of the act, a referendum petition containing only a full and correct copy of the act to be submitted was sufficient.⁶²

This situation was changed by a statute passed in 1917⁶³ which was designed to tighten the petition law by requiring the printing and using of ballot titles on the covers of referendum petitions when in circulation. A case arising subsequent to the passage of this law held that a county clerk could be enjoined from printing a referendum issue on the ballots when it could be shown that at no time while the petitions were in circulation did they contain a ballot title. The court pointed out that there could be no valid exercise of the referendum except in pursuance of statutory authority and regulation.⁶⁴

The requirement as to the title of an initiative petition remains more severe than is the case regarding referendum petitions. Framers of initiative measures are held to the constitutional stipulation that, "Every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be set forth in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."⁶⁵ The rule which the courts have applied is that because the title must be considered to be a part of the statute, it must be of a nature that will permit one to ascertain the meaning of the statute by perusing the title.⁶⁶

(2) *Circulation*: Once the preliminary filing has been completed and the forms of the petitions have been approved, they are ready for circulation.

⁶¹*State ex. rel. v. Richardson*, 48 Ore. 309 (1906). See also *Turnidge v. Thompson*, 89 Ore. 637 (1918).

⁶²*Palmer v. Benson*, 50 Ore. 277 (1907). The court pointed out that the purpose of the referendum petition was to identify the particular enactment of the legislature which the petitioners desired to have referred to the people. A correct copy of the statute was found to fulfill this purpose.

⁶³*Laws*, 1917, Chapter 176.

⁶⁴*State ex. rel. McHenry v. Mack*, 134 Ore. 67 (1930).

⁶⁵*Constitution, op. cit.*, Article IV, section 20.

⁶⁶This point is adequately elaborated in *Malloy v. Marshall-Wells Hardware Company*, 90 Ore. 303 (1918).

The constitutional requirement that the petitions must contain specified percentages of the state's legal voters has been construed by the legislature and by the state courts to mean that any person who is a legally qualified voter of the state may sign.⁶⁷ Any signer who knowingly violates the warning clause is punishable by a maximum penalty of a five hundred dollar fine and/or incarceration up to two years.

Although the circulators of petitions need not be qualified voters,⁶⁸ their activities are now strictly circumscribed by law. Under the elaborating law of 1907, each circulator must be prepared to make affidavit to the effect that everyone who signed the petitions he has circulated did so in his presence; that he has reasonable grounds for believing that each signer has stated his name and residence correctly; and that each signer is a legal voter of the state.⁶⁹

The regulation of these agents was further extended in 1923. Under a statute passed in that year, it was made unlawful for any circulator to misrepresent the content, purport or effect of any petition to a signer; to knowingly file under oath any petition containing names which are falsified or otherwise fraudulent; and to circulate a petition known to contain false, forged or fictitious names.⁷⁰

In addition to these prohibitions the law makes it a felony for any person, for a pecuniary reward or other valuable consideration, to offer, propose, or threaten (1) to hinder or delay any petition or part thereof, or any signature thereon; (2) to desist from beginning, promoting, or circulating any petition or soliciting signatures; and (3) to use any petition or any power of promotion or opposition in any manner or form for the purpose of extortion, blackmail or intimidation of any person or business interest.⁷¹

This statute was not sufficient, however, to quell the tremendous amount of criticism that was being levelled against the direct legislation process. Most of this criticism centered around the allegation that the process was being exploited by individuals who would deliver enough signatures on any initiative and referendum issue if the price was right. This demand for a more stringent system of regulation resulted in the passage of a statute in 1933 which required that the sponsors of initiative and referendum petitions, at the time of filing the completed petitions, must also file statements showing

⁶⁷See *Woodward v. Barbur*, 59 Ore. 70 (1911). This provision does not mean that one must be a registered voter. If the requirements of age, citizenship, residence and literacy are met, this is considered sufficient.

⁶⁸*State ex. rel. v. Olcott*, 67 Ore. 214 (1913).

⁶⁹*Laws*, 1907, Chapter 226, section 3, p. 398.

⁷⁰*Laws*, 1923, Chapter 247, sections 1-5, p. 346.

⁷¹*Ibid.*, section 8.

all of the contributions received and the funds expended for the petitions involved. The law required the submission of reports, indicating the name and post office of every contributor, together with the amount donated by each, and the name and post office of every person to whom funds had been disbursed together with an indication of the purpose of the expenditure.⁷²

A failure to file such a report obliges the secretary of state to refrain from placing the measure on the ballot. It should be noted, however, that the Supreme Court has given this statute a liberal construction. In a mandamus action to compel the secretary to place the cigarette tax bill of 1941 on the ballot, the court held that the secretary was in error in deciding that the financial statement of the referendum sponsors should have indicated in minute detail all of the services for which money had been expended. It was pointed out that the secretary's duty was primarily a ministerial one and that the language of the statute should be liberally construed.⁷³

In 1935 the above law was amended so as to make it unlawful for any person, or persons, to give, pay, or receive any money or other valuable consideration for securing the signatures of electors on any initiative or referendum petition. A violation of this act subjects the offender to a maximum fine of one hundred dollars and/or a maximum imprisonment of fifty days.⁷⁴ In addition to this, the signatures thus secured are not counted.

(3) *Final Filing*: When the sponsors of circulated petitions decide that they have achieved the required number of signatures, the petitions are ready for final filing. The constitutional requirements as to the latest dates upon which initiative and referendum petitions can be filed have been held to be mandatory by the courts.⁷⁵ An opinion of Attorney General Van Winkle in 1926 also indicated that if an initiative petition, filed with reference to a particular election, is not submitted at the election designated because of some failure on the part of the sponsors, the measure could not be submitted at a later election. It was pointed out that there would be no logical reason for assuming that the voters who signed a petition with reference to a particular election would all be willing to see the measure presented at an election two or more years later.⁷⁶ A situation in which this failure of submission is due to the sponsors should, however, be distinguished from

⁷²Laws, 1933, Chapter 436, section 1, p. 789.

⁷³*State v. Snell*, 168 Ore. 153 (1942). A recent opinion of the attorney general indicated that the financial statements of sponsors need not include a listing of persons who performed gratuitous services. *Biennial Report and Opinions of the Attorney General, 1940-1942, op. cit.*, pp. 383-385.

⁷⁴Laws, 1935, Chapter 41, sections 1-2, p. 52.

⁷⁵*Kellaher v. Koser*, 112 Ore. 149 (1924); *State ex rel. v. Gibson*, 183 Ore. 120 (1948).

⁷⁶*Biennial Report and Opinions of the Attorney General, 1924-1926, op. cit.*, p. 622.

one in which the failure is caused by the inability of the courts, or any other official, to settle a controversy regarding the measure before the election takes place. In this latter case, the measure will be submitted at the election following the disposition of the case.⁷⁷

The number of signatures required on any petition will, of course, vary from time to time. The constitutional provision requiring that the *whole number of votes cast for the office of justice of the Supreme Court* be used as a base has had to be subjected to some modification. In a mandamus action brought to compel the secretary of state to file an initiative petition containing signatures equal to eight per cent of the votes received by the one of three candidates for the Supreme Court polling the greatest number of votes, the court held that the secretary was in error in refusing to file the petition.⁷⁸ In upholding the action, the court pointed out that to adhere to a strict construction of the constitution might result in a situation where eight per cent of the total vote cast for the office would exceed eight per cent of all of the electors within the state. This would clearly be contrary to the intentions of the framers of this constitutional provision. In this regard the court suggested that, "It is not reasonable to assume that the framers of this act intended that the number of signatures required of an initiative petition should depend upon the number of justices of the Supreme Court to be elected."⁷⁹ It pointed out in addition that the procedure demanded by the plaintiff had been that which had been approved by the court in previous cases⁸⁰ and that the justification of the rule was to be found in the fact that the court had a responsibility whenever a portion of the constitution proved to be ambiguous, to carry out, so far as possible, the intention of the people who enacted it.

The first duty of the secretary of state, upon submission of an initiative or referendum petition for final filing, is to transmit the various sheets of signatures to the proper county clerks for verification and certification. The law requires the county clerks to compare the petition signatures with those on their voters' registration lists. They must then number those which they are willing to certify as genuine, those which they consider not to be genuine, and those which are not found on the lists. It has been pointed out that this system does not affect the unregistered voter adversely, since their signatures can be made valid through a notarized statement from the signer averring that he is a qualified voter.

⁷⁷*Zimmerman et al. v. Hoss, supra.*

⁷⁸*Othus v. Kozar*, 119 Ore. 101.

⁷⁹*Ibid.*, p. 106.

⁸⁰See, for example, *State ex rel. Carson v. Kozar*, 105 Ore. 486 (1922); *Kellaher v. Kozar, supra.*

In passing upon the sufficiency of the number of signatures, the secretary of state is obliged to count only those which have been duly certified by a county clerk and others which are subsequently proved to be valid through notarization.⁸¹

Once the petitions have been filed they cannot be withdrawn from the secretary of state for further certification if this request is made within four months of the election at which an initiative proposal is to be submitted and after ninety days following the adjournment of the legislative session in which a bill being subjected to the obligatory referendum has been enacted.⁸²

Should the secretary of state refuse to file any petition finally, any citizen is authorized, within ten days, to apply to the circuit court of Marion County for a writ of mandamus to compel him to perform this function. If the court decides in favor of the sufficiency of the petition, it must be filed, along with a copy of the judgment attached thereto, as of the date upon which it was originally submitted by the sponsors of the proposal. Within ten days of the lower court's decision, either side may appeal to the Supreme Court of the state for a final disposition of the matter.⁸³ It should be noted, however, that such suits must be brought on relation of the district attorney of Marion County and not by a citizen in his own name.⁸⁴

The Supreme Court has justified its jurisdiction over questions involving the determination of the sufficiency of petitions on the grounds that the final filing is not a legislative act, but merely a matter preliminary to a legislative act.⁸⁵ In dealing with the problem of sufficiency, the courts have established the doctrine that substantial compliance with the constitutional and statutory provisions governing petitions is all that should be required.⁸⁶ Thus the court has refused to uphold an allegation of sufficiency arising out of the charge that many of the signatures were illegible.⁸⁷ In this regard it pointed out that, "Many of our best citizens habitually sign their names in a form illegible to anyone not familiar with the writing, and it would be unreasonable to deny such voters the right of referendum because of their chiro-

⁸¹*Laws*, 1907, Chapter 226, section 3, p. 398. See also *Kallaher v. Koser*, *supra*.

⁸²*Kallaher v. Koser*, *supra*. The right of a voter to withdraw his signature from a petition before or after it has been filed is not treated in any legislative enactment, nor has the question ever been before the courts of Oregon. Evidently, in those states where the problem has been considered, one is usually permitted to withdraw his signature while the petition is still in circulation but is estopped from doing so after the petition has been filed or the signatures certified. For a survey of state judicial decisions on this question, see *American Law Reports Annotated*, vol. 85, pp. 1373-1377, *op. cit.*

⁸³*Laws*, 1907, Chapter 226, section 4, p. 398.

⁸⁴*State v. Farrell*, 175 Ore. 87 (1944).

⁸⁵*State ex rel. v. Olcott*, *supra*; *State ex rel. Carson v. Koser*, 105 Ore. 486 (1922).

⁸⁶*Ibid.*

⁸⁷*State ex rel. Hill v. Olcott*, 67 Ore. 214 (1913).

graphical idiosyncracies."⁸⁸ The court has also refused to rule a petition insufficient on a showing that the county clerks had not numbered the petitions as required by law.⁸⁹ But the mere signatures without any certification are not enough to warrant a conclusion of sufficiency.⁹⁰

The Supreme Court of the state has been inclined to be much more strict on the question of fraud as regards any aspect of petitions. The burden of proving fraud on the part of the circulators, signers, or anyone else connected with the petition is always, of course, placed upon the person contesting the validity of the petitions. But as soon as the evidence of fraud is clear, the burden falls upon those claiming the petitions to be sufficient to prove the genuineness of signatures or the absence of the validity of any other charge.⁹¹ And where it has been clearly shown that the affidavits of the circulators are fraudulent, the secretary of state can be enjoined from filing the petitions since he, as a ministerial officer, has no right to waive any requirement concerning the sufficiency of petitions.⁹²

If it can be shown that the petitions are sufficient, the Supreme Court must compel the final filing even if it is of the opinion that the law being proposed is unconstitutional. This rule is based on the assumption which the court has made to the effect that the words "legally sufficient" apply only to the statutory procedure governing direct legislation.⁹³

When, finally, a copy of the petition has been filed, the law stipulates that the secretary of state must transmit forthwith two copies thereof to the attorney general. This latter official must, within ten days after receiving said copies, prepare a ballot title for the proposal and return it with one of the copies of the petition to the secretary of state. The ballot title must contain (1) a distinctive short title, not exceeding ten words, by which title the voters may identify the measure; (2) a general ballot title expressing in not more than one hundred words the purpose of the measure; and (3) a short title of not more than twenty-five words for voting machines.

A copy of the ballot title prepared and delivered to the secretary of state must be transmitted to the sponsors of the proposal. Any person dissatisfied with the title may appeal to the Supreme Court, praying for a different title while, at the same time, setting forth the reasons why the prepared title is considered unsuited. This appeal, which must be taken within twenty days after the title is made public, results in a decision which is final.

⁸⁸*Ibid.*, p. 219.

⁸⁹*State ex rel. Carson v. Koser, supra.*

⁹⁰*Ibid.*

⁹¹*State ex rel. v. Olcott, supra.*

⁹²*State ex rel. Trindle v. Snell*, 155 Ore. 300 (1937).

⁹³*State ex rel. Carson v. Koser*, 126 Ore. 641 (1920).

The court will either certify a new title or return the old one to the secretary of state for transmission to the county clerks.⁹⁴

The Supreme Court has held the attorney general's function in the preparation of ballot titles to be a quasi-judicial one and, consequently, subject to review by the courts.⁹⁵ In a few of the significant decisions which the court has handed down on this subject, it has been held that the statutory requirement that the ballot title must contain the names of referendum sponsors is not mandatory;⁹⁶ that the prepared title should be informative and not argumentative—a label and not a brief—and should give a perspective of the measure, not a prejudgment on its merits;⁹⁷ that the fact that the court might be able to write a better title is not justifiable reason for casting out the one prepared by the attorney general;⁹⁸ that a defect in the title of a statute enacted by the legislative assembly may be remedied by the ballot title supplied by the attorney general;⁹⁹ that the attorney general cannot be compelled to supply a ballot title for a petition demanding a referendum on a joint resolution of the legislative assembly;¹⁰⁰ that a ballot title should not simply be a summary of the context of the act;¹⁰¹ and that the provision that a ballot title shall contain a distinctive short title of not more than ten words intends a short title sufficient to attract the attention of the voter and to identify the bill on the ballot with a law passed by the legislature.¹⁰²

The courts, then, have the power to determine whether the attorney general acted impartially, performed his duties faithfully, stayed within the constitutional and statutory jurisdiction conferred, committed no errors of law, exercised judicial and not capricious discretion, and arrived at no conclusion clearly wrong.¹⁰³ When the ballot titles have been finally prepared, they are then ready for transmission to the county clerks who must have them printed on the official ballots.

(4) *Education of the Voter*: One of the features of the Oregon system of direct legislation which has attracted national attention is that providing for the education of the voter before every general and special election.

⁹⁴*Laws*, 1907, Chapter 226; *Laws*, 1917, Chapter 176; *Laws*, 1927, Chapter 255.

⁹⁵*Richardson v. Neuner*, 183 Ore. 560 (1948).

⁹⁶*State ex rel. Carson v. Koser*, 108 Ore. 550 (1923). The court said that this was true because the statutory requirement herein involved related to form and was, therefore, directory rather than mandatory.

⁹⁷*Weider v. Hoss*, *supra*.

⁹⁸*Ibid*.

⁹⁹*State v. Hawks*, 110 Ore. 497 (1924).

¹⁰⁰*Herbring v. Brown*, *supra*.

¹⁰¹*McDonald v. Van Winkle*, 136 Ore. 706 (1931).

¹⁰²*Young v. Neuner et al.*, 178 Ore. 625 (1946); *Davis v. Van Winkle*, 110 Ore. 497 (1924).

¹⁰³*Richardson v. Neuner*, *supra*.

The elaborating law of 1907, as amended in 1913,¹⁰⁴ requires the secretary of state to have printed a true copy of the title and text of each measure to be submitted at least thirty-five days before a regular election and thirty days before a special election. These must also be accompanied, in the official *Voters' Pamphlet*, with a sample of the number and form in which the ballot title for each measure will be printed on the official ballot.

Not later than ninety days before a general election and sixty days before a special election, the sponsors of an initiative measure may file an argument in support of the proposal with the secretary of state, who will see that the argument is printed in the pamphlet. Only the official sponsors may file a supporting argument, but, within seventy-five and sixty days of a regular and special election respectively, any person or organization is free to file an article in opposition to the proposal. The same rules as to time apply to arguments for or against a measure which has been subjected to an obligatory referendum or submitted to the electorate at the legislature's option. In the case of these arguments, however, anyone may file on either side of the issue.

Those who elect to file arguments must pay the cost of the paper and the cost of printing the arguments in the *Voters' Pamphlet*. All of the other expense involved, such as binding, distribution, etc., is borne by the state. The statute also requires that the names of the persons or organizations submitting the arguments must be printed on the title page. The law then goes into a great deal of minute detail, prescribing the size of the pamphlet, the organization of the material therein, the size of type to be used in printing the proposals and arguments, and other pertinent matters.

Not later than fifteen days before a general election and ten days before a special election the secretary of state must transmit, by prepaid postage, a copy of the official pamphlet to *every voter* in the state whose address he may have. This means that almost every registered voter in the state receives a copy of all the issues to be decided at least one full week before the election takes place.

The Supreme Court has ruled that in the event that the voters receive notice of an election, without at the same time receiving notice of an initiative issue to be submitted at said election, the election is still valid within the meaning of the law.¹⁰⁵ The court has stressed the fact that it is well settled that failure to supply statutory notice of a general election does not render such an election a nullity. The basis for this doctrine is to be found in the fact that the law regarding general elections, by fixing the time, place, and

¹⁰⁴*Laws*, 1913, Chapter 359, section 4, p. 743.

¹⁰⁵*Barbur v. Johnson*, 86 Ore. 390 (1917).

object of such elections, compels the voter to take cognizance of it and renders the requirement of notice directory rather than mandatory in character.¹⁰⁶ The same rule does not apply to special elections, however. Of this type of election the Supreme Court has said, "But as to special elections it is well settled that the statutory requirements concerning notice are mandatory. A special election notice is a condition precedent to the validity of the election."¹⁰⁷ Thus the court ruled invalid a general election in which notice of an initiative proposal was not given on the grounds that the presentation of the initiative measure for approval made it a special election. This position was maintained in spite of convincing evidence to the effect that the electorate had become aware of the initiative measure through newspaper articles and local discussion.¹⁰⁸

(5) *Election*: Both the constitution and statutory provisions stipulate that no measure submitted to the electorate shall be adopted unless it receives an affirmative majority of the total number of respective votes cast on such measure and entitled to be counted. This same requirement is true of constitutional amendments. This means, in effect, that one person could enact a law, given the rather improbable but altogether possible situation that out of the total number of those voting in the general election, only one person should choose to vote on a particular initiative or referendum issue.

Whether the direct legislative proposals are to be submitted at a regular or special election is a matter which the legislative assembly is authorized to decide at its discretion. The Supreme Court, in a case upholding this power, has pointed out that initiative measures cannot be submitted at a special election if the legislature has not given a clear indication that initiative proposals are to be included. Thus in a mandamus action to compel the filing of an initiative petition and its submission at a special election, the court held that the secretary of state was under no such obligation where the law providing for the election had reference only to referenda.¹⁰⁹

There have occurred situations in Oregon where two conflicting laws have been enacted by the voters at the same election. In the event of such an occurrence, the law provides that the statute receiving the greater number of affirmative votes shall be paramount in all particulars in respect to which there is a conflict. This provision, which applies to constitutional amendments as well as to statutes, anticipates the possibility of a measure's receiving a smaller number of affirmative and negative votes counted together while at

¹⁰⁶*Hill and Briggs vs. Hartzell*, 121 Ore. 4 (1927).

¹⁰⁷*Ibid.*, p. 11.

¹⁰⁸*Ibid.*, pp. 11-13.

¹⁰⁹*Equi v. Olcott*, 66 Ore. 213 (1913).

the same time getting the greatest number of affirmative votes, but requires that the greatest number of votes received is to be the determining factor.¹¹⁰

(6) *Promulgation*: Following the election, the law requires the secretary of state to conduct an official canvass of the vote and to report the results to the governor. This latter official must then issue a proclamation, indicating the total number of votes cast in the state for and against each proposal and declaring such measures as received a majority of the votes cast on the question to be in full force as the law of the state from the date of such proclamation. If there are conflicting measures he must declare which law, or parts of any law, are paramount.

In an early case arising under this provision, the Supreme Court of the state held that it applied only to referendum and not to initiative measures. With regard to the latter type of proposals, the court held that they must go into effect on the day that they are adopted at the polls without there having to be an official canvass and a proclamation by the governor.¹¹¹ In upholding this position the court pointed out that "The canvass of the vote and the proclamation of the Governor is only official and authoritative evidence of the result of the election, and is not made necessary to the enactment of the law itself. The law is adopted or rejected at the time the vote is cast, and not when the official canvass is made."¹¹²

Although there is a later case in which this principle was rejected as applied to constitutional amendments,¹¹³ an opinion of the attorney general in 1949 placed a tremendous amount of weight on the earlier case.¹¹⁴ It seems reasonable to assume, therefore, that the first principle, which is based on the theory that the will of the people could be easily thwarted if the validity of the law had to await the proclamation of the governor, is still a sound and generally accepted one.

¹¹⁰*Laws*, 1907, Chapter 226, section 7, p. 398.

¹¹¹*Bradley v. Union Bridge and Construction Co.*, 185 Fed. 544 (1911).

¹¹²*Ibid.*

¹¹³*Phy v. Wright*, 75 Ore. 428 (1915).

¹¹⁴George Neuner, *Opinion*, released for publication November 12, 1948.

III

DIRECT LEGISLATION IN OREGON: 1938-1948

Inasmuch as the direct legislative proposals submitted to the Oregon electorate from 1902 to 1938 have been considered at least once in previous studies, the following historical and analytical survey will be concerned with the period beginning with the general election of November 8, 1938, and terminating with the general election of November 2, 1948. This period, which in many ways appears to be typical of Oregon's experience with direct legislation, will also serve as the basis for the analysis of electoral behavior in the next chapter and for the critical evaluation of the initiative and referendum in the concluding chapter.

During this time, which encompassed six general elections and two special elections, a total of sixty-one proposals were submitted to the voters for their consideration and disposition. This amounted to an average of almost eight proposals per election.¹ Of this number, twenty-seven proposals appeared as constitutional amendments, submitted either by the legislature or by initiative petition, and thirty-four were statutory measures submitted through the operation of the initiative, optional referendum, or obligatory referendum.

A survey of the nature and character of these proposals submitted appears to be advisable before any attempt at analyzing electoral behavior is made. Regarding those issues of major importance, some attempt will be made to discover the conditions which brought them before the voters, the groups organized in favor of or in opposition to the proposals, the media of propaganda used, and the possible reasons for the particular reaction of the voters to these proposals. All of the proposals will get some attention. The amount of space devoted to each one has, of necessity, been determined by the amount of publicity which surrounded the individual issues and by this writer's decision which, in some instances, had to be arbitrary.

¹In view of the fact that only two proposals were submitted at each of the two special elections held, the average number of submissions at the six general elections would be nine and one-half. Over the entire period of Oregon's use of direct legislation, 365 proposals have been submitted at thirty-six general and special elections for an over-all average of 10.1 submissions per election. This number is comparable to the average number submitted in California, but much higher than the average of three proposals per election recorded for the state of Michigan. See V. O. Key and W. W. Crouch, *The Initiative and Referendum in California* (Berkeley: University of California Press, 1939), Chapters III, IV, VI; J. K. Pollock, *The Initiative and Referendum in Michigan* (Ann Arbor: University of Michigan, Bureau of Government, 1940), p. 17.

Regular General Election: November 8, 1938:

A total of twelve proposals appeared on the ballot at this election. These included four constitutional amendments and eight measures. Three amendments and one measure were presented by the legislative assembly, two measures were ordered referred by popular petitions, and six measures were introduced by initiative petitions.

One of the amendments submitted by the legislature was designed to correct the situation in which the governor was given a very short time in which to consider legislation passed by both houses of the assembly and submitted to him during the closing days of the session. Under the existing constitutional provision, which was enacted with the original organic law in 1857, the executive was given only five days after the termination of a legislative session in which to consider and approve or veto all of the bills passed during the session and referred to his office. This provision, which had undoubtedly been sufficient when the state was in its infancy, was now considered by the legislature to be wholly inadequate. The governor could not possibly give ample consideration to the many bills enacted in the last hectic days of each session. It was also felt that the public would not be given a sufficient opportunity to express its reactions to the legislation under consideration by the governor in this short period.²

There were no serious arguments presented against this proposed change. Most of the press comments which dealt with this proposal tended to reiterate the contentions of the legislature. The amendment was accepted by a substantial majority of those voting on the issue.³

Two financial proposals were included on the ballot. The first of these was an amendment submitted by the assembly. It was designed to raise the salaries of all state legislators from the then authorized three dollars per day, for a maximum of forty days during a regular session and twenty days during a special session, to eight dollars per day for fifty days during a regular session and twenty days during a special meeting. In addition to this the compensation for mileage was to be lowered slightly and additional compensation was to be provided for the presiding officer of each chamber.⁴

²The legislative committee assigned to write the argument in favor of this proposal accurately indicated that this extension would not unduly delay legislation since all bills, except emergency measures, could not go into effect until ninety days following the adjournment of the assembly. *Official Voters' Pamphlet, 1938* (Salem: State Printing Department, 1938), p. 7.

³The vote was 233,384 in favor of and 93,752 against the proposal, with every county in the state voting favorably. *Abstract of Votes, Regular General Election, November 8, 1938* (Salem: State Printing Department).

⁴For the full text of the measure, see *Official Voters' Pamphlet, 1938*, p. 11.

This marked the tenth time since 1902 that this issue had been presented to the electorate. In all of the previous submissions the voters had evidenced very little willingness to advance the salaries which were fixed at a time when three dollars bought much more than it did in 1938. Many influential newspapers in the state went on record in favor of the amendment.⁵ In the case of one state periodical which had not been enthusiastic about similar proposals in former years, one of the major reasons for the reversed stand could be found in the following quotation taken from a pre-election issue:

When collections have to be taken up among lobbyists to pay the living expenses of members of the legislature who find they cannot get housed and fed on the three dollars a day at Salem, it is time to look into the situation.⁶

Evidence was also brought forward by the press to show that many of the legislators who did not choose to become indebted to lobbyists were forced to use subterfuge in order to place their wives on the state payroll. This method of augmenting income was considered especially questionable in those cases where it could be clearly shown that the wives, or other relatives employed, did not possess the minimum qualifications for the jobs they filled.⁷

These arguments were evidently insufficient to satisfy the electorate. Although the question attracted the attention of eighty-two per cent of all of those voters participating in the election, forty-six per cent voted against the change thus maintaining historical continuity in refusing to adjust legislative compensation to an obviously higher cost of living.⁸

The other financial proposal submitted was a bill drawn up by the Townsend Plan groups within the state. The bill provided for pensions, not to exceed one hundred dollars per month, for all persons sixty-five years of age and over who were able to meet the qualifications set forth. The plan was to be financed through the levying of a two per cent tax upon the gross value of each transaction made in Oregon. Only wages, interest from government securities, and interstate transactions were exempted from the operation of the tax. The bill also provided for the suspension of the plan whenever the federal government should enact a national pension plan.⁹

Those who favored this welfare measure sought to establish the fact that the levy was not a tax at all but an insurance premium which would be placed into an earmarked fund to be used on a pro rata basis only for those

⁵See, for example, *Portland Oregonian*, October 11, 1938, p. 6, col. 2.

⁶*Oregon Voter* (edited and published by C. C. Chapman, Portland, Oregon), September 17, 1938, p. 14.

⁷*Ibid.*, p. 15.

⁸The vote was 133,525 in favor of the increase and 169,131 against it. Only seven of the thirty-six counties in the state voted in favor of the amendment.

⁹For the full text of the measure, see *Official Voters' Pamphlet*, 1938, pp. 20-24.

people who qualified for assistance at any one time. It was also anticipated that the qualifying age would gradually be reduced as the plan became stabilized.¹⁰

Although the plan granted pensions regardless of need, the opponents of the proposal did not concentrate their attack on this defect. Most of the opposing arguments pointed to the tremendous financial burden which the transactions tax, or super sales tax as it was called by some groups, would impose upon the state. One publication pointed out that this levy differed from an ordinary sales tax in the sense that in addition to constituting a levy on every step wherein personal property goes from raw materials to the consumer, the funds to be derived from it would not be used to offset any existing tax but would be an addition to the normal tax burden.¹¹ Oregon Business and Investors, Inc., which submitted an opposing argument in the *Voters' Pamphlet*, summed up its position with the assertion that, "A two per cent transaction tax in Oregon would penalize producers, vacate buildings, increase prices, drive customers to buy outside Oregon; raise cost of producing lumber; create more unemployment; turn loose an army of state employees to pry into the affairs of those who receive the pension to see that the money is spent; freeze real estate values, and generally create chaos and grief, to the great detriment of Oregon as a state in which we live and engage in business."¹²

This type of argument, which had many elements of truth in it, coupled with the picture which had been painted by the press of the economic devastation that would be wrought by such a pyramiding tax, was very effective. The measure was decisively defeated in every county in the state.¹³

The remaining nine proposals constituted public policy issues of one type or another. Two of the proposals were bills enacted by the legislature which purported to tighten the state restrictions on gambling. One of the statutes prohibited the possession, control, or operation of slot machines or devices of a like character which sold or paid money or merchandise or other articles of value on the evidence of winning. The machines were declared to be nuisances, and sheriffs were authorized and required to seize summarily any such machines and to hold them in possession until the issue had been disposed of by the courts.¹⁴ The other statute made it unlawful to own, operate or display all games of chance operated for profit, regardless of

¹⁰*Ibid.*, p. 25.

¹¹*Oregon Voter*, September 3, 1938, p. 9; September 24, 1938, p. 5.

¹²*Official Voters' Pamphlet*, 1938, p. 27.

¹³112,172 votes were cast in favor of the measure and 219,557 against its passage. *Abstract of Votes*, 1938.

¹⁴See *Official Voters' Pamphlet*, 1938, pp. 16-17, for the complete text of this statute.

whether the operation of the devices depended upon skill. Under this statute, sheriffs were ordered to confiscate and to destroy these devices without delay.¹⁵

Both of these measures, which were poorly and loosely drawn, were subjected to the obligatory referendum. The fact that the sections dealing with the authority of the sheriffs were conflicting and contradictory resulted in a great deal of criticism of the assembly by the press.¹⁶

The third gambling measure appeared in the form of a constitutional amendment proposed by initiative petition. This proposal would have legalized certain types of gambling, giving the state the exclusive power to license lotteries, dog racing, bridge studios, pool and billiard halls, shooting galleries, horse racing, bank nights, punch boards, vending machines, pinball machines, and raffles and bazaars for local charitable purposes.¹⁷ The proposal was officially sponsored by the Oregon Merchants Legislative League, Incorporated. Officers of this organization, in submitting their supporting argument, reminded the voters that the measure was designed primarily to raise revenue for old age security payments and, secondly, to guarantee the effective state control of gambling in the interest of the public welfare and morals. It was also stressed that a significant portion of the income from license taxes, estimated at four millions yearly, would be expended to assist municipalities in need of additional funds.¹⁸

Leaders of Townsend Clubs, labor leaders, cigar stand operators, owners of beer parlors, and some intellectuals were accused of having spearheaded this drive to liberalize Oregon's gambling laws.¹⁹ Some support for the amendment undoubtedly came from some of these groups, but it should be noted that many of the state's needy aged have always been opposed to the use of "tainted money" for the purpose of supporting the state pension fund.

At the polls, the voters followed what had become traditional state attitude toward gambling. Both of the referred statutes were accepted by significant majorities while the initiated amendment was defeated. The only two counties voting for the amendment encompassed sparsely populated areas in southwestern Oregon.²⁰ As to the conflicting provisions of the two ac-

¹⁵*Ibid.*, p. 18, for the complete text.

¹⁶See, for example, *Oregon Voter*, September 17, 1938, p. 10.

¹⁷*Official Voters' Pamphlet*, 1938, pp 43-44.

¹⁸*Ibid.*, p. 45.

¹⁹*Oregon Voter*, *op. cit.*, pp. 12-13.

²⁰Curry County where the vote was 603 for and 554 against the amendment, and Harney County where 529 and 526 votes were cast for and against the proposal respectively. It is both interesting and amusing that each of these counties also voted for the referred statutes, creating a situation that would probably have been cited in most state and local government textbooks, had it occurred on a larger scale. *Abstract of Votes*, 1938.

cepted laws, the rule that the measure receiving the largest vote would be paramount in the case of conflicting provisions was made to apply.

In 1913, the state constitution was amended so as to make each stockholder in a state banking corporation individually liable for twice the par or face value of his stock holdings in the corporation. Although the National Banking Laws had been changed on July 1, 1937, so as to remove a like provision pertaining to national banks, there were several states that continued to apply this form of liability to state banks. The argument submitted by the legislature in support of the proposed amendment to remove double liability emphasized the fact that the existence of the Federal Deposit Insurance Corporation obviated the need for such a regulation since it insured ninety-eight per cent of all bank depositors.²¹ In addition to this, it was felt in some quarters that the constitutional requirement benefited the large banking institutions while imposing a serious handicap upon many of the state's small home-owned banks.²² The vote on this question evidenced an unwillingness on the part of the voters to remove what they considered added or necessary protection to bank depositors. The measure was defeated by a vote of 165,797 to 133,525, with only seven of thirty-six counties voting in favor of the amendment.

The only bill submitted under the optional referendum at this general election was the Daisy Bevans bill, designed to extend the state requirement of premarital physical examinations to women as well as men. It was generally accepted that the restriction of this examination to males would not solve the health problem which brought this type of legislation into existence. The bill, which received universal press approval, received the largest number of affirmative votes given to any issue on the ballot, being accepted by seventy-two per cent of those voters participating in the election.

Another pension measure appearing at this election was labeled the "Townsend Plan Bill." It constituted no more than a mere gesture, since it simply directed the state legislature to apply to the United States Congress, asking that body to call a constitutional convention. According to this directive measure, the purpose of such a convention would be to amend the United States Constitution so as to provide for the inclusion of the Townsend Recovery Plan in the basic law of the land. Although the voters rejected the annuity plan based on a transactions tax, they gave some indication on this measure that they were in favor of some sort of a broad pension program. This advisory bill was passed by an appreciable majority, with eighty-six per cent of the people voting at the election participating.

²¹*Official Voters' Pamphlet*, 1938, p. 10.

²²*Oregon Voter*, September 24, 1938, pp. 5-10.

A statute submitted by initiative petition constituted a compromise bill between Oregon industry and those groups in favor of a comprehensive program of water purification. The principal purpose of this statute was to provide for the creation of a state commission which would devote its time to the working out of water purification problems throughout the state.²³ There were no arguments filed against the bill for publication in the *Voters' Pamphlet*, and the reception of the measure by the electorate was positive, as evidenced by the fact that it received the second largest number of affirmative votes.

The initiative process was also used to submit a statute that would have extended the state monopoly over alcoholic beverages to beer and unfortified wines. The statute would have given the Oregon Liquor Commission the exclusive control over the retail sale of all alcoholic liquor sold for beverage purposes. The statute also gave the family of a person who was sold liquor against the wishes of his family, a right of action against the commission for any damage incurred; it also gave any individual injured by a drunken person the right to sue the commission if it could be shown that the liquor was sold while the person committing the injury was in a state of intoxication.²⁴

The statute was sponsored by the Anti Liquor League of Oregon which objected violently to the allegedly deplorable conditions brought about in Oregon by the repeal of prohibition in 1932.²⁵ The Oregon Hop Growers Association and the Law and Temperance League of Oregon assailed the statute on the grounds that it really constituted a return to prohibition with all of its characteristic evils of bootlegging and gangsterism. These latter two organizations also sought to appeal to the older voters by pointing out that the measure would result in the destruction of the old age assistance fund, eighty-one per cent of which was maintained from state funds derived from the sale of liquor.²⁶ The campaign of these groups, which reported an expenditure of almost five thousand dollars,²⁷ was effective enough to cause the rejection of the bill by over one hundred thousand votes.

The most controversial and violently fought issue appearing at this election was the initiative statute designed to regulate picketing and boycotting by labor organizations operating within the state. The statute defined a bona fide labor dispute as being only an actual controversy between employers and

²³See the complete text of this measure together with affirmative argument in *Official Voters' Pamphlet, 1938*, pp. 35-38.

²⁴See *ibid.*, pp. 39-40, for text of measure.

²⁵The complete argument of this group is found in *ibid.*, p. 41.

²⁶*Ibid.*, p. 42.

²⁷*Biennial Report of the Secretary of State, 1936-1938* (Salem: State Printing Department, 1938), pp. 117-118.

employees directly concerning wages, hours, or working conditions involved in the immediate labor relationship concerned. Another section prohibited any interference with the flow of lawful commerce in the manufacturing, harvesting, processing, or marketing of agricultural or other types of products. Any picketing of an employer's property or boycotting of his products was made illegal in the absence of a bona fide labor dispute as defined by the statute. Other sections were designed to prohibit the use of union funds for the purposes of conducting illegal strikes, or for the intimidation, molestation, prevention, or hindrance of any person seeking employment. The state courts were authorized to restrain and enjoin any labor organization from picketing, boycotting, or performing any of the other activities classified as illegal by the act.²⁸

One publication suggested that the sponsors of this bill, allegedly farmers, were motivated by a fear of the type of labor intimidation which had resulted in the loss and ruin of crops in the past.²⁹ Even those news organs that favored the adoption of the bill, however, were quick to admit that the legislation was far from perfect and that the arguments on both sides were extravagant and vituperative in character.³⁰

On behalf of the proponents of the bill, it was charged that Oregon, and particularly the farmers, had suffered severely from the constant labor warfare and gangsterism which had characterized labor unions for a number of years. To some extent this charge was true. A report submitted by a special investigator appointed by the governor to investigate goonery and other labor malpractices indicated that state-wide investigation had resulted in one hundred and twenty arrests. Labor leaders and their subordinates were charged with window breaking, arson, bomb throwing, destruction of property, misuse of union funds, and a number of other unsavory practices.³¹ The publication of this report undoubtedly had a tremendous influence on the outcome of this measure at the polls.

The Oregon State Federation of Labor began its attack on the proposal with the accusation that it was sponsored by the mortal enemies of labor under a false front which purported to connote agricultural sponsorship. It was accurately pointed out that the bill would not permit a craft which was one hundred per cent organized to strike in a large industry if the members of this union did not constitute a majority of that industry's employees. Perhaps the most obnoxious aspect of the proposal was that section which pro-

²⁸The complete text of the act is found in *Official Voters' Pamphlet, 1938*, pp. 28-29.

²⁹*Oregon Voter*, September 10, 1938, pp. 5-14.

³⁰*Ibid.* See also *Oregon Journal*, October 23, 1938, p. 11, col. 1.

³¹For a complete reproduction of this interesting report, see *Oregon Voter*, October 22, 1938, pp. 5-33.

vided for the use of the injunction. This statute spelled death to Oregon's labor unions as far as many of the labor leaders were concerned.³² The case against the proposal was summarized with the comment that, "It would mark Oregon as the industrial black spot of the nation; as a state which, having boasted of being the pioneer in popular government, permitted the tools of democracy to be used to take away the democratic rights of one group for the aggrandizement of the wealthy group."³³

Whether or not the real sponsors of the proposal were farmers is difficult to establish. Richard Neuberger, journalist, author, and politician who has written at length about the Oregon political scene, made the flat statement that of the more than forty thousand dollars³⁴ that was spent in support of this measure, only four dollars and six-five cents was contributed by farmers, the rest coming from lumber companies, furniture dealers, utility lawyers, hotel managers, and similar "farmers."³⁵ Since no documentation is included in support of this assertion, its validity must remain open to question. There is some evidence to the effect that the farmers' organization did seek financial assistance in Portland, but none that would lead to the conclusion that such a small proportion of the whole amount actually came from farmers.³⁶

The predictions that this issue would attract a significant number of voters were not inaccurate. Ninety per cent of those who cast ballots at the election voted on the proposal, it being adopted by fifty-one per cent of this same number.³⁷ The extremely sympathetic attitude which the electorate had expressed toward organized labor for many years had been reversed—at least for the time being.

To summarize, the election resulted in the adoption of one out of four constitutional amendments and six out of eight statutory proposals. Three of six initiative proposals were accepted; two out of four legislative, or optional, referenda were accepted; and both of the statutes submitted through the use of the obligatory referendum were approved.

³²*Official Voters' Pamphlet*, 1938, pp. 32-33.

³³*Ibid.*

³⁴*Biennial Report of the Secretary of State, 1936-1938*, loc. cit.

³⁵R. L. Neuberger, "Liberalism Backfires in Oregon," *Current History*, vol. 50 (March 1939), p. 36.

³⁶*Oregon Voter*, loc. cit. Mac Hoke, president of one of the sponsoring organizations, was a wealthy sheep and cattle man from Pendleton, Oregon. It is fair to assume that his contribution alone was quite substantial.

³⁷A total of 346,231 votes were cast with 197,771 of these being cast for and 148,860 against the measure. Only three counties, Clatsop, Columbia, and Deschutes, voted against it. In Portland, where a large labor vote was centered, the measure passed by a majority of eight thousand votes out of one hundred thousand cast.

Regular General Election: November 5, 1940:

Five constitutional amendments and four statutory proposals were presented at the 1940 general election. Four of the amendments were referred by the legislature and one by initiative petition. Two of the legislative proposals were resubmissions of issues which had been defeated by the voters in the preceding election. The legislative assembly again sought to persuade the voters to remove the double liability requirement as to the stockholders of certain state banking corporations, and to endorse the increase of legislators' compensation under terms similar to the 1938 proposal.³⁸ At least one publication shared the legislature's surprise at the defeat of the double liability amendment in the preceding general election. Part of the blame for the failure was placed on the opposition which labor organizations were supposed to have expressed against the measure; part was placed on the belief by many voters that the removal of the double liability requirement would leave the depositors in the banks affected without any security.³⁹ In spite of the efforts of the legislature and the press to point out the nonvital character of this provision and the incongruous inequities which it established among stockholders, the amendment was again defeated in all but three of the counties of the state.

The eleventh submission of the legislators' compensation amendment was also defeated at this election, but, this time, by only twelve hundred votes out of a total of almost four hundred thousand ballots cast on the issue. The majority of over twelve thousand votes which the amendment received in Multnomah County and the fact that it was favorably received in thirteen other counties was not enough to offset some of the heavy votes cast against the proposal in other up-state regions.⁴⁰ For another two years, Oregon would continue to operate under the "country-squire" theory of legislative compensation.

The removal of the constitutional provision restricting the terms of secretary of state and state treasurer to no more than eight years in any twelve year period⁴¹ was the subject of another proposed amendment. Part of the

³⁸The full texts of these two amendments are included in the *Official Voters' Pamphlet, 1940*, pp. 11, 13.

³⁹*Oregon Voter*, September 21, 1940, pp. 13-17.

⁴⁰The *Oregon Voter*, which has a tremendous political influence in the rural areas of the state, could have assisted the passage of this amendment if it had not reversed its previous stand on the issue. The line taken by this publication before the election was that more pay for the lawmakers would encourage irresponsible candidates to run for office. The existence of purely honorary rather than incentive pay would theoretically guarantee that only high caliber men would be willing to serve at the state capital. See issues of September 28, 1940, pp. 12-13; November 2, 1940, p. 21.

⁴¹*Constitution, op. cit.*, Article VI, section 1.

pressure for this amendment stemmed from the belief by some people that Earl Snell, who was then secretary of state, had been so efficient that it would be a loss to the state to prevent his holding a third, and, if necessary, a fourth and fifth term.⁴² The essence of the argument submitted by the legislative committee assigned to this task was that the restriction was unsound from the standpoint of good public administration, in addition to the fact that it prevented voters from recognizing and rewarding efficient and faithful service.⁴³ The argument was evidently considered weak by the voters, for the amendment failed to pass by a sizeable number of votes.

The last amendment proposed by the legislative assembly was a highly involved and technical one having to do with the six per cent tax limitation voted in 1916 and amended in 1932. The proposal was procedural in character and was designed to correct some of the deficiencies of the provision. Among other things, it sought to provide a means whereby tax bases could be established in those municipalities that had not levied for more than three years without having to hold annual special elections. It also defined the procedure to be followed by newly formed communities in establishing a tax base.⁴⁴ Evidently, a good portion of the electorate felt that this proposal was designed either to destroy the six per cent limitation or to modify it to the financial detriment of the taxpayers. Only two counties voted for the amendment, the remainder expressing themselves in favor of the existing system of limiting tax increases.

The one initiated amendment, which was sponsored by the Oregon Merchants Legislative League, was another attempt to loosen the state restrictions on gambling. The amendment contained over ten thousand words and would have had the effect of increasing the length of the constitution by one-half. The sponsors of the measure attempted to minimize the scope of the proposal by referring to it as the "punchboard bill," but any careful perusal of its contents left little doubt that in addition to punchboards, it authorized dog and horse racing, bingo, bank night, marble boards, pinball machines, and numerous other forms of lotteries.⁴⁵ The framers of the proposal utilized an excellent means of propaganda by stating that the avowed purposes of this amendment were to reduce the tax on real property and to raise revenue for the old-age assistance fund. The amendment also included a

⁴²*Oregon Voter*, *loc. cit.*

⁴³*Official Voters' Pamphlet*, 1940, p. 7. The committee failed to mention that it is also not good public administration to select purely administrative officials by election rather than by appointment.

⁴⁴For the text of this measure and the argument submitted in support of it, see *ibid.*, pp. 8-9.

⁴⁵*Ibid.*, pp. 45-46, for the complete text.

section retaining the right of local governmental units to exercise the local option regarding gambling, and another section stipulating that the amendment could not be substantially changed for a period of four years.⁴⁶

The proposal was very severely criticized on several counts. The ability of the sponsors to bind the legislature and electorate to the inviolability of the amendment for a period of four years was seriously questioned. Most of the criticism, however, was directed against the length of the proposal. One publication facetiously declared that "Oregon's constitution would have the unique distinction of having an entire section of fifteen hundred words devoted to the elevating possibilities of bingo."⁴⁷ It was also suggested that the deficiency in the constitution which devoted only four hundred words to the subject of banking would be remedied by the inclusion of an eight hundred word section on bank nights.⁴⁸ Under the attack of such arguments, the measure was defeated in every county by a total majority exceeding one hundred thousand votes.

Two of the statutory measures submitted were concerned with the subject of alcoholic beverages. One of the measures, enacted by the legislature in the 1939 session, was designed to tighten the state requirement that only specific types of restaurants, hotels, or clubs could be licensed to serve or permitted to use any room, place, bar, glasses, tables, chairs, mixers, storage places, or any other facilities for the mixing, serving, or drinking of alcoholic liquor. Under the sponsorship of Common Sense, Incorporated, a corporation organized for the purpose of initiating liberal liquor legislation and combating strict legislation, this measure was subjected to the obligatory referendum.

This same organization was responsible for the sponsorship of a measure that would have repealed the Knox Law, and, in place of the restrictions which this law imposed, would have permitted the sale of liquor by-the-glass in any place of business which maintained enough of a restaurant to require twenty seats, a kitchen, and food service.⁴⁹ This proposed statute, which contained twenty thousand words, would have almost doubled the length of the constitution.

It was charged that the sponsors of the bill caused the legislative enactment to be referred in order to confuse the voter.⁵⁰ One measure followed the other on the ballot, and it may well be that confusion did exist because both of the measures were rejected by substantial majorities. If such was

⁴⁶*Ibid.*, p. 57.

⁴⁷*Oregon Voter*, August 10, 1940, p. 16.

⁴⁸*Ibid.*

⁴⁹*Official Voters' Pamphlet*, 1940, pp. 26-45.

⁵⁰*Oregon Voter*, August 17, 1940, pp. 16-17.

the case, the confusion worked to the detriment of the sponsors of the initiated measure.

During the 1939 session of the legislative assembly a measure was passed which abolished the direct presidential primary and moved the state and county primaries from May to September. This measure had been submitted to the voters in the general election of 1936 when it was defeated by a majority of almost three to one. In spite of this popular expression, the legislature passed the measure again, and it was subjected to the obligatory referendum by the Oregon State Grange and the Oregon Federation of Labor.

These two organizations argued that the law defied the express will of the voters; that it would cause a decreased participation in elections because September was a busy month for farmers and laborers; that it would deny to the voters the ability to choose their own party committeemen and committeewomen; and that it would re-establish the control of parties by political machines.⁵¹

In defense of the abolition of the presidential primary, it was alleged that Oregon's delegates to the party national conventions had become the recipients of ridicule because of the law requiring them to support the candidates favored by the state electorate. It was also conceded that the party leaders in both major parties were in favor of the party discipline which the convention system of choosing delegates and committeemen would make possible.⁵² The advertising campaign conducted by the farmer and labor groups was sufficient to cause the defeat of this measure for the second time within a four-year period.

The last measure presented was an initiative proposal designed to repeal the Oregon milk-control law. The statute had been enacted in 1933 for the primary purpose of restoring prosperity to a completely demoralized fluid milk industry. In accordance with this policy, a milk control board was created with power to investigate, supervise, and regulate the production, transportation, storage, distribution, and sale of fluid milk. Its specific authority included the power to fix wholesale and retail prices, establish geographic milk-marketing areas, provide for the disposition of surplus milk, prevent ruthless competition, license all milk dealers, and to adopt all rules and regulations necessary to the accomplishment of the purpose of the act.

The repeal measure was sponsored by Thomas R. Mahoney, Democratic senator, who charged that the law had made possible the establishment of a big milk monopoly which prevented new producers from obtaining quotas.

⁵¹*Official Voters' Pamphlet, 1940*, p. 20.

⁵²*Oregon Voter*, September 28, 1940, p. 15.

This monopoly allegedly consisted of only twenty-four hundred people who benefited at the expense of the rest of the state.⁵³

Some complaint had been registered against the law by consumers who opposed any price regulation that protected door-to-door distributors against cash-and-carry competition. Dairymen who wished to enter the fluid milk market only during the flush season without having to obligate themselves for the entire year were also opposed to the regulation. The strong feelings on both sides are to be noted in the fact that this measure, which attracted the largest number of votes, was rejected by a majority of only thirteen thousand, nine counties having voted for the abolition of the law.⁵⁴

One might conclude that the voters approached the direct legislative proposals at this election with an extremely negative attitude, since every one of the nine issues submitted was rejected. The only proposal that came close to adoption was the legislators' compensation amendment, which attracted the attention of eighty-four per cent of all those people voting at the election. The average participation on all proposals was exceptionally low, with only seventy-seven per cent of the voters participating in the election.

Regular General Election: November 3, 1942:

The legislators' compensation amendment (presented for the twelfth time) was one of seven direct legislative proposals submitted to the voters at the general election of 1942. The amendment, which was one of the four submitted by the legislature, contained essentially the same details as did the ones referred at the two preceding elections. The relatively small percentage of registered voters who went to the polls might have been responsible in part for the acceptance of this change by a majority of almost twenty thousand votes. The fact that a state-wide citizens' committee to increase legislators' pay spent almost four thousand dollars in support of the amendment was undoubtedly also influential over the outcome of this issue which had for so long met with the disapproval of the electorate.⁵⁵

Another proposal sought to remove a section of the constitution enacted in 1916, which section authorized the creation of a rural credits fund. This removal was sought even though a previous federal statute had answered all of the purposes which the Oregon amendment was designed to fulfill. The

⁵³*Official Voters' Pamphlet, 1940*, p. 59. The belief that new milk dealers were unfairly barred from the fluid milk industry was shared by one of Senator Mahoney's most violent critics, C. C. Chapman. See *Oregon Voter*, October 12, 1940, p. 13.

⁵⁴A total of \$32,624.54 was spent by those who favored the abolition of the milk law. The expenditure was insufficient, however, to bring about the law's defeat. For a break-down of the individual contributions to this war chest, see *Biennial Report of the Secretary of State, 1938-1940*, p. 232.

⁵⁵*Ibid.*

legislature, in justifying the abolition of this long and wordy section, pointed out that only a minute portion of the authorized eighteen million dollar fund had ever been utilized for purposes of loans, and that most of these loans had been repaid.⁵⁶ The amendment did not attract a great deal of attention, but enough voters saw the logic in the proposal, thus voting for the acceptance of this change in the organic law.

Under the Oregon statute which established the motor vehicle license and gasoline taxes, the revenue from these sources could be utilized only for the purpose of building and improving roads. The legislature, fearing that the strain on the state's financial resources imposed by the war would tempt the voters to divert these funds to other purposes, and in order to keep faith with the motorists who paid the exceptionally high tax, sought to give constitutional protection to the purpose for which the funds could be used.⁵⁷ The press was in essential agreement with this point of view, and no serious opposition to the proposal materialized. It was accepted by the voters with only four counties voting against it.

Article III, section 2, of the Oregon constitution, in addition to denying the privilege of voting to any idiot or mentally diseased person, provides that this privilege shall be forfeited whenever a person is convicted of a crime punishable by imprisonment in the penitentiary. The legislature, recognizing that this stipulation would work an injustice in the case of many persons who had satisfactorily paid their debts to society, proposed an amendment to this section that would permit it (the legislature) or the people to modify the scope of the prohibition through the enactment of appropriate legislation. It was pointed out that only through a full pardon could the privilege of voting be restored; that this provision was a remnant of feudal law where a conviction worked the forfeiture of property and the taint of blood, and that the provision had never been enforced since it would necessitate an embarrassing challenge of every voter who appeared at the polls.⁵⁸

In spite of the sentiment in favor of this amendment, it failed of enactment by two thousand votes out of two hundred and four thousand cast on the issue. It is difficult to understand why the electorate would not favor this fair measure, unless it could be argued that this constituted one of the many instances in which the proposal was not clearly understood by the voters.

Two of the three statutory measures appearing on the ballot at this election were passed by the legislature and referred by referendum petition. One bill clearly illustrates the manner in which essentially unwise legislation can

⁵⁶*Official Voters' Pamphlet*, 1942, p. 9.

⁵⁷*Ibid.*, pp. 11-12.

⁵⁸*Ibid.*, p. 14. See also *Oregon Voter*, September 12, 1942, pp. 6-9.

be crowded through the legislature in the closing days of the session. The sportsmen of Oregon, who are well organized, introduced a measure which prohibited net fishing in all coastal streams and bays with the exception of certain specified places. When the measure which had been pressured through the legislature was subjected to referendum, the sponsors of the bill denounced this as the selfish action of a small group of commercial fishing interests that sought to wipe out the fish supply of the state.⁵⁹ In answer to this accusation, the commercial fishing interests insisted that the bill would reduce the salmon catch by fifty per cent at a time when the fish were needed by the armed forces; that hundreds of Oregon's fishermen and their families would be deprived of a source of livelihood; and that Oregon's hatchery program would be destroyed. It was further alleged that all of this was to be brought about in order to give a few so-called sportsmen a few days of pleasure each year.⁶⁰

The Oregon Wildlife Federation, which sponsored the bill, spent almost six thousand dollars in its campaign while the Oregon Fish Protection Association expended almost twice that much for the purpose of bringing about the defeat of the measure.⁶¹ Money seems to have been effective in determining the outcome of the measure, for it was decisively defeated, only one county voting for it by a majority of a few votes.

During the same session the legislature enacted a cigarette tax measure which provided for a levy of two cents on each package of cigarettes. The bill stipulated that after the payment of administrative expenses, one-sixth of the revenue from this levy would go into the state vocational education fund and five-sixths would be used for purposes of public assistance. The use of the revenue for these purposes would make for the relieving of the tax burden on real property which was then supporting the funds indicated.

Those who favored the levy stressed the fact that although the cigarette tax was a sales tax, it was not being levied on necessities. For this reason, the tax theoretically constituted no burden. It was also pointed out that the twenty-eight states using a similar tax at the time found it to be a very convenient money raiser.⁶² Tobacco manufacturers and retail vendors were naturally opposed to the measure, and they managed to conduct a successful campaign against it. The measure failed at passage in spite of the fact that ten counties voted in its favor.⁶³

⁵⁹*Ibid.*, p. 25.

⁶⁰*Ibid.*, pp. 26-27.

⁶¹*Biennial Report of the Secretary of State, 1940-1942*, pp. 226-227.

⁶²*Oregon Voter*, September 26, 1942, pp. 8-10.

⁶³*Abstract of Votes*, 1942.

The last measure appearing on the ballot was initiated by teachers who felt that school districts were in need of additional financial support from the state. The measure, which was very poorly drawn, provided that all of the funds received from the state income tax in excess of \$7,750,000 in any one year would be diverted to the school districts in proportion to the number of days of actual school attendance by pupils residing in each district. All such money received was to be applied to the reduction of other (property) taxes levied within the district.

The measure was attacked on several grounds. It was argued that it defeated the original intent of the state income tax which was to use *all* funds so collected for the purpose of offsetting the state property tax. The difference between \$7,750,000 and the total property levy would also have to be made up through a state property levy. In addition, it was accurately indicated that nothing in the bill compelled the local districts to reduce their future property levies.⁶⁴ Another publication objected to the bill on the grounds that it taxed a restricted group for a general purpose.⁶⁵ Perhaps the most valid argument against the measure was that the financial support of small school districts would serve to defeat the campaign for school district consolidation. The real advantages would thus be deferred and the existing defects continued longer than necessary.

The voters indicated a determination to increase the amount of state aid to local school districts when they passed this measure. Doubtless, many of them voted for the measure under the assumption that local property levies would be reduced. In answer to this demand, the Oregon Teachers Association went on record after the election favoring an amendment which would make this reduction mandatory.⁶⁶

Regular General Election: November 7, 1944:

One of the two constitutional amendments presented to the voters through the initiative at this general election sought to lend constitutional sanction to the system of state aid to the public schools. The proposal, which was initiated by the Oregon State Teachers Association, sought to add a new section to Article VIII of the constitution, which section would require the legislature to create a state fund in addition to the common school fund. The fund so created would be exempted from the constitutional six per cent limitation and would be made sufficient to provide not less than forty-five

⁶⁴*Official Voters' Pamphlet, 1942*, pp. 29-32.

⁶⁵*Oregon Voter*, October 10, 1942, pp. 4-10. This same publication saw no injustice in the cigarette tax, however, although that tax was designed to tax a restricted group, the smokers, for specified purposes not immediately beneficial to them.

⁶⁶*Oregon Voter*, December 26, 1942, pp. 14-15.

cents per child per day of school attendance in the preceding academic year. The sponsors pointed out that this proposal would make permanent the financial relief for school districts which was provided in the statute adopted by the people in the preceding general election. It was pointed out that the major effect of the proposal, if accepted, would be to cause all of the people of the state to share in the support of public schools.⁶⁷

The opponents of the amendment deplored the fact that the bill did not include the means whereby the additional revenue was to be raised. This would mean that if the revenue from the state income tax was not sufficient to cover the cost of supporting this program, a thirteen-mill levy on property would have to be made.⁶⁸ Again the cogent argument that such a provision would work against the school district consolidation movement was reiterated. This time a sufficient portion of the electorate was persuaded to vote against the measure, although fourteen counties went on record in favor of including this provision in the constitution.

The state Townsendites made another attempt at putting their plan into practice by initiating a constitutional amendment that would have provided for monthly annuities to be financed by a gross income tax of three per cent. This levy could be increased to a maximum of five per cent if necessary to the maintenance of a fund sufficient to pay all persons over sixty, and those under sixty who were totally handicapped, a minimum of sixty dollars per month. The proposal also included a section requiring that the recipients of this money must spend all of it within a thirty-day period.⁶⁹ This latter provision was the basis for the contention by the sponsors to the effect that the plan would result in a tremendous business increase because of the rapid velocity of the money paid out.⁷⁰

The proposal was very negatively received by most of the press and organized groups of the state. The Oregon State Federation of Labor, which was not opposed to the idea of pensions, refused to endorse this plan on the grounds that the gross income tax was a glorified or super sales tax that would be levied on every transaction, and on the grounds that a pension plan belonged in the statute books and not in the constitution.⁷¹ It was also cautioned that this plan would cost the state between seventy-two and eighty-seven millions each year, placing an unbearable burden on the taxpayers.⁷² Only

⁶⁷*Official Voters' Pamphlet, 1944*, pp. 30-31. (See also *Portland Oregonian*, November 3, 1944, p. 11, col. 1.)

⁶⁸*Ibid.*, p. 32. See also *Oregon Voter*, October 7, 1944, pp. 9-10.

⁶⁹*Ibid.*, pp. 33-35.

⁷⁰*Ibid.*, pp. 36-37.

⁷¹*Ibid.*, p. 38. See also *Oregon Voter*, August 12, 1944, pp. 9-11.

⁷²*Oregon Voter*, August 26, 1944, pp. 8-9; September 9, 1944, p. 3; September 23, 1944, pp. 5-6; *Portland Oregonian*, November 2, 1944, p. 8, col. 6.

six of the thirty-six counties were willing to accept the arguments in favor of this amendment; thus it met with defeat by a majority of thirty-nine thousand votes out of four hundred thousand cast on the question.

The legislature submitted four constitutional amendments for consideration at this election. Two of them were resubmissions of proposals which had been defeated at previous elections. The legislature evidently was convinced that the voters had failed to understand the real meaning of the proposal to remove the double liability regulations as to stockholders in some state banking corporations, and the proposal to give the assembly power to modify the rigid constitutional provision which denied to all persons convicted of a felony the privilege of voting. The grange and labor organizations within the state changed their previous stand on the double liability issue,⁷³ and many state officials spoke in favor of the modifications of the voting privilege forfeiture modification. Whether for reasons of more adequate education or because they grew tired of having the same proposals appear on the ballot, the voters accepted both of these changes by substantial majorities.

Another proposed amendment submitted by the legislative assembly attracted very little popular discussion. The proposal was designed to amend Article VI of the constitution so as to authorize the legislature to prescribe the method and means whereby any county, by a majority vote of the electors included therein, could adopt a county manager form of government in lieu of the present form under which it operated. All of the possible arguments which could be levelled against the perpetuation of the wholly inadequate and archaic system of county government which prevailed in the state were advanced by the legislature. Whatever comment did appear in the press was generally favorable, it being pointed out that the amendment was permissive and not compulsory, giving the counties an option to choose between what they had and what other form of government the legislature made available. Twenty-one of the counties voted against the amendment. It was, nevertheless, carried by a majority of twenty-one thousand votes, this success being due in large part to the fact that the largest county in the state, Multnomah, gave the proposal a favorable majority of seventeen thousand votes.

The last amendment submitted by the legislature was one of two proposals designed to provide assistance for veterans of World War II. The amendment proposed to set up a fund to be used in lending money as security for farms and homes purchased by the returning warriors. Along with this amendment, a statutory measure was referred which authorized a two-mill levy on all taxable property of the state in order to provide funds to be used for the educational assistance of war veterans. Both of these plans, which

⁷³*Ibid.*, October 21, 1944, p. 10.

were to be supported by a tax on property, met with the general disapproval of the Oregon press on the grounds that they duplicated assistance which had been made available to all veterans by the passage of the "G-I Bill of Rights" by the United States Congress. Organizations such as the Oregon State Grange and the Oregon State Federation of Labor, campaigned in favor of these proposals, however, and the voters accepted both of them. The fact that the measures were applicable only to those veterans who did not receive assistance from the Federal Government probably had some influence on the outcome of these proposals at the polls.

Two more bills, one referred by the legislature and the other referred by popular petition, appeared on the ballot. The legislative submission was a statute designed to tighten state control over the sale of fortified wines. Under the Knox Law of 1933, fortified wines could be sold only by state liquor stores operating under the control and supervision of the liquor commission. In 1935 the legislature amended this act so as to authorize the sale of fortified wines outside the liquor stores and without a permit. Under the leadership of Senator Burke, whose name the referred measure bore, the legislative session of 1943 voted to re-establish the original provision of the Knox Law.

It was charged that the 1935 legislature had been influenced by a large and well-heeled lobby sent to Salem by the California wine interests and that the fortified wines being sold in Oregon contained ingredients very injurious to the health of those who consumed these beverages. It was also suggested that putting these wines back into state stores would make them less available to the youth and addicts of the state.⁷⁴ This measure, which had the support of the Grange, the State Council of Churches, the Women's Christian Temperance Union, and a good portion of the press of the state, was opposed by one editor on the grounds that it was forced through the legislature by the Oregon sweet-wine interests that did not want competition from fortified wines. It was correctly pointed out that sweet wines contain more impurities than fortified wines and that the youth and addicts of the state could become just as inebriated by consuming a little more of the sweet wine as they could by drinking the fortified variety.⁷⁵ This one voice was lost in the tremendous wave of enthusiasm for the measure. It was passed by all but four counties in the state.

The last measure presented was one which had on previous occasions met with overwhelming disapproval of the voters. In 1933, 1934, and 1936, the electorate had turned down various types of sales taxes. In the session of 1943, the legislature enacted another sales tax which was to involve the use of

⁷⁴*Official Voters' Pamphlet, 1944*, p. 28.

⁷⁵*Oregon Voter*, October 28, 1944, pp. 20-21.

no tokens and provide for the exemption of food and other necessities from its operation. In order to make the measure as attractive as possible, it was stipulated therein that twenty per cent of the revenues derived would be used for old age assistance, sixty per cent for the reduction of property taxes, and twenty per cent for the support of public schools. In addition, the approval of the measure would result in a reduction in income tax rates together with an increase in income tax exemptions.⁷⁶

It was submitted that this tax would not hit the people in the lower income brackets any harder than they were already being taxed by the income tax; that it would remove completely the state tax on property; and that it would compel everyone, including transients and tourists, to share in the tax burden.⁷⁷ As in former years, the proposed levy was categorically opposed by farmer and labor groups. The Oregon State Grange avowed that any tax not defensible on principle was improper. Since the sales tax was based on the necessity to spend rather than on the ability to pay, it was condemned on the basis of principle.⁷⁸ The Oregon State Federation of Labor cleverly publicized the fact that the very legislators who claimed that there was a financial emergency necessitating the passage of the sales tax were the ones who voted in favor of a bill permitting the reduction of the personal income tax. In addition, this organization stressed the fact that only three states in 1942 levied no property tax. None of these states utilized a sales tax, Oregon being one of them.⁷⁹

The voters reacted very favorably to the campaign against the tax. Not one county voted in favor of its passage; under one hundred thousand voters out of three hundred and sixty-six thousand ballots cast could be persuaded to vote for the proposal.

Of the six constitutional amendments and the three statutory measures presented to the electorate, four amendments and two measures were accepted. Two of the amendments accepted had been presented before, while one of the two rejected, the Townsend plan, had been previously turned down, and the other, the school support proposal, had been passed in the form of legislation in the preceding election. The passage of the amendment and statute regarding aid to veterans was in keeping with the attitude of the voters following the first World War. And the overwhelming defeat of the sales tax measure indicated a continued firm stand against this form of taxation, whatever its appeal. One cannot conclude that county home rule was favored in the state

⁷⁶For text of measure see *Official Voters' Pamphlet*, 1944, pp. 17-22.

⁷⁷*Ibid.*, pp. 23-24. (See also *Oregon Voter*, October 7, 1944, pp. 16-18; *Portland Oregonian*, November 3, 1944, p. 8, col. 4.)

⁷⁸*Ibid.*, p. 25.

⁷⁹*Ibid.*, p. 26.

as a whole, since the success of this proposal was determined by the heavy vote it received in the state's largest and most urban county. The passage of the Burke Bill was also in keeping with a generally conservative attitude of the voters regarding alcohol. The fact that over twenty-two thousand dollars was spent in opposition to the bill is also an indication that there does exist a strong lobby which has as its main purpose the liberalization of the liquor laws.⁸⁰

Special Election: June 22, 1945:

A special election was called by the legislature in 1945 for the purpose of submitting two revenue measures to the electorate. The first of these authorized a property levy of five million dollars a year outside the six per cent limitation for a two-year period. This ten million dollar fund was to be used for the construction and repair of state buildings in institutions of higher education and elsewhere. Most of the newspapers agreed with the legislative argument that the state was in dire need of new educational and medical buildings. The fact that there would be no actual levy on property because of an income tax surplus sufficient to offset this levy was undoubtedly a factor working in favor of the measure. The voters accepted the measure by a very substantial majority, although only a small percentage of the registered voters bothered to go to the polls.

The other revenue measure constituted a resubmission of the revenue bill authorizing a two-cent tax on every package of cigarettes sold within the state. The purpose of this measure was to provide a means whereby many desirable changes could be made within the state educational system. The legislature felt that the continuing dependence of the local school districts on state aid necessitated the creation of a stable source of revenue. Under existing conditions, state assistance was made available only when a surplus remained after the revenue from the state income tax had completely offset the state tax on property. According to this body, the people were faced with the choice of foregoing many desirable educational improvements, financing improvements through the payment of an excessive and unequal state property tax when revenue from incomes declined, or finding a new and stable source of revenue with which to support the schools.⁸¹

The opposition to this measure came from the farmer and labor groups, traditionally opposed to any tax on consumption. Tobacco manufacturers and distributors also campaigned against it. The measure was defeated by a

⁸⁰*Biennial Report of the Secretary of State, 1942-1944*, p. 196.

⁸¹The text of this measure and arguments in favor of it are found in *Official Voters' Pamphlet, 1945*, pp. 8-15. See also *Oregon Voter*, June 9, 1945, pp. 5-10; June 16, 1945, pp. 3, 6-8.

majority of seven thousand out of one hundred and twenty thousand ballots cast on the issue.

Regular General Election: November 5, 1946:

Four amendments, all of them proposed by the legislative assembly, and five measures, two referred by the legislature, one by popular referendum and two by initiative petitions, were on the ballot at the 1946 general election. Three of the four amendments were related directly to the structure of the state government. The first of these sought to amend Article V, section 8, of the constitution so as to add the secretary of state and state treasurer to the line of succession to the governorship. Under the existing provision, the president of the senate and the speaker of the house of representatives would succeed the governor in the event of his removal from office, his death, his resignation, his absence from the state, or his inability, for any other reason, to perform his duties. This proposal met with no opposition and was overwhelmingly approved by the voters.

Another proposal, labeled the "anti-filibuster" amendment, was designed to change that section of the constitution which required that every bill be read, section by section, before final passage in either house of the assembly.⁸² It had become the practice to overlook this requirement for reasons of efficiency, but some members had developed a practice of gaining concessions by threatening to invoke the operation of this requirement on all lengthy bills. The proposed amendment would have simply authorized either house to suspend its operation by a two-thirds vote.⁸³ Sixteen counties voted against this amendment, but the campaign in its favor caused it to be accepted in Multnomah County by a majority of twenty thousand votes. This was sufficient to bring about its passage.

Constitutional reapportionment was the subject of the third amendment submitted. In order to provide a senate seat for Deschutes County and others adjacent to it without having to take one from Umatilla County, this proposal would simply have increased the total number of senators from thirty to thirty-one. The only argument which the legislature could present in favor of this type of reapportionment was that an odd number of senators would prevent the deadlock and delay capable of being caused by a tie vote.⁸⁴ The Oregon State Federation of Labor and the Portland City Club were both opposed to this measure. The former organization went on record

⁸²*Constitution, op. cit.*, Article IV, section 19.

⁸³For the text of measures and arguments submitted in favor of it see *Official Voters' Pamphlet, 1946*, pp. 19-20.

⁸⁴*Ibid.*, p. 22. It was pointed out that in 1943 the legislative session and the inauguration of the governor were delayed two full days because of a deadlock on the question of the election of the president of the senate.

against any scheme of reapportionment which was piecemeal rather than general.⁸⁵ The City Club was not in favor of any plan of reapportionment by amendment which tended to increase the number of representatives rather than to redistribute them on the basis of population as required by the constitution.⁸⁶ This proposal was very decisively defeated, and the state, which had not been reapportioned since 1910, would have an inequitable distribution of senate seats for another two years.

The last amendment referred was designed to remove section 8 of Article XV of the constitution, which section had become a dead letter. This section provided that any Chinese person who was not a resident of the state at the time that the original constitution was adopted could never hold any real estate or mining claim located within the state. The legislature properly indicated that the section was not only a gross injustice but also that it was wholly unenforceable under the fourteenth amendment of the Federal Constitution.⁸⁷

The philosophy which must have governed the framers of the original organic law prevailed in the twenty-two counties that voted against this proposal. It was carried anyway, largely because Multnomah County gave the amendment a favorable majority of twenty thousand votes.

Two measures having to do with public education were among the five presented. One of them, referred by the legislature, was designed to provide equal educational opportunities for all elementary and high school pupils within each county. In each of the counties not using the county unit system, a rural school board of five members, elected by zones, would be created for the purpose of reviewing district budgets in order to equalize them. A uniform school tax would be levied by this board on a county basis and the funds would be distributed among the districts according to need. Administration of the program would remain a district rather a county function, however. Although it was conceded that this plan was not as sound as the county-unit system, it was felt that it would go a long way toward removing the evils to be found in the "no tax" or "low tax" school districts.

The measure received the support of the governor, the Oregon State Federation of Labor, the Oregon League of Women Voters, and a good portion of the press.⁸⁸ It was generally agreed that the measure, although not actually providing for consolidation, would go a long way toward encouraging this needed reform.

⁸⁵*Oregon Voter*, October 5, 1946, p. 6.

⁸⁶*Ibid.*, October 19, 1946, p. 10.

⁸⁷*Official Voters' Pamphlet*, 1946, p. 18.

⁸⁸See *Oregon Voter*, September 21, 1946, p. 4; October 19, 1946, pp. 6-8. See also *Official Voters' Pamphlet*, 1946, pp. 15-16.

Twenty-five of the thirty-six counties voted against this measure, but it carried nevertheless. Again, the majority of twenty-eight thousand votes which it received in Multnomah County was the determining factor.

The teachers again made a bid for basic state assistance by initiating a measure which authorized the levy of an annual state school tax, sufficient to produce the sum of fifty dollars per capita for each child within the state between the ages of four and twenty. The levy would be in addition to all other state taxes, but in lieu of the two mill property levy for the state elementary school fund.

The purposes of the measure, as stated by its sponsors, were to equalize educational opportunities, to make possible long-range educational planning, to get rid of unequal property tax burden at the local level, and to attract and keep qualified teachers by making available good salaries.⁸⁹ The bill was supported by farm, labor, business, and educational groups, but there was also active opposition to it from many quarters. The major attack against it was that at fifty dollars per child it would cost the taxpayers fifteen millions yearly and that the property owners could never carry this burden if the receipts from the income tax fell off to the point where a state levy on property would become necessary.⁹⁰ As was the case with the rural school district bill, this measure was rejected by twenty-seven counties. It was enacted, however, by the scant majority of six thousand votes, with the assistance of Multnomah County, which gave it a seventeen thousand vote majority.⁹¹

The voters turned down another revenue measure proposed by the legislature, which measure would have authorized a 45/100 mill levy on all the taxable property of the state for a period of ten years. The money collected was to be appropriated for the construction and equipment of armories around the state as military requirements should dictate. The voters were content to follow the argument presented by the Oregon State Federation of Labor to the effect that there were more pressing financial problems with which the state had to cope at the time.

Another measure passed in the 1945 session attempted to solve the controversy between the sportsmen and the commercial fishermen of the state. The former group, not content with defeat at the polls in the preceding general election, pressed for some restrictive legislation. They succeeded in putting through a measure which prohibited commercial fishing in certain coastal

⁸⁹*Official Voters' Pamphlet*, 1946, p. 38.

⁹⁰*Ibid.*, p. 39. See also *Oregon Voter*, August 24, 1946, p. 12; September 21, 1946, p. 12; October 5, 1946, pp. 10-11.

⁹¹Over thirty-three thousand dollars was spent in the campaign against this measure. It was effective in every area but Portland and a few other counties. See *Biennial Report of the Secretary of State, 1944-1946*, p. 33.

streams and bays, but this law was referred to the voters under the sponsorship of the commercial fishermen. The same arguments that appeared in 1944 were again presented on both sides. The sportsmen spent over twenty-one thousand dollars in support of the bill, whereas the commercial fishing interests officially reported an expenditure of nine thousand three hundred and forty-eight dollars.⁹² This time the sportsmen prevailed, the measure being accepted in all but one county.

The last measure to appear at this election was another attempt by the Townsendites to get their plan approved by the voters. The measure was essentially the same as the one presented two years before, except for a few changes.⁹³ It was again insisted by the plan's antagonists that the three per cent tax on gross income was a pyramiding one that would bankrupt the state.

The plan was also attacked on the grounds that it would provide pensions regardless of need. Many of the same arguments that had appeared previously were reiterated on both sides. Funds were expended on both sides, but the advocates of the plan were able to muster just six and one-half thousand dollars, whereas the various groups opposing it reported a total expenditure of over fifty-seven thousand dollars.⁹⁴ The more extensive campaign again proved successful. The measure was swamped by a tremendous negative vote.

At this general election, then, two amendments (Chinese ownership of property and the anti-filibuster amendment) and two bills (the rural school district bill and the basic school fund measure) were carried by less than one-half of the total number of counties, Multnomah County being responsible in large part for the outcome. The voters very willingly accepted the gubernatorial succession amendment, while it may be concluded that an extensive campaign by the state sportsmen resulted in the passage of the fish bill. Of the three measures rejected, it would appear that a basic conservatism resulted in the rejection of the constitutional reapportionment; an unwillingness to become concerned with problems of national defense so soon after the war caused the rejection of the armories bill; and a tremendous newspaper campaign through editorial columns and paid advertising resulted in the defeat of the Townsend plan.

⁹²*Ibid.*

⁹³The transactions tax was fixed at three per cent with no provision for an increase; the first twelve hundred dollars of income was exempted; fraternal, religious, charitable, educational, and scientific societies were completely exempted from the levy.

⁹⁴*Biennial Report of the Secretary of State, 1944-1946*, pp. 33-34.

Special Election: October 7, 1947:

In the fall of 1947, the state legislature called another special election. On the grounds that the financial position of the state had become extremely critical, the legislature enacted and submitted to the voters two revenue measures that had never found favor with the people—a three per cent tax on retail sales and a tax of two cents on every package of cigarettes sold within the state. Both of these measures were very similar to the ones that had been previously enacted and submitted. An interesting feature of the cigarette tax bill was that it would not go into effect, even if voted by the people, if the sales tax were accepted. The legislature predicted very dire consequences for the state if the sales tax was not enacted. Appeals were again made to farmers, property owners, educators, and the aged by stipulating that funds would be used to finance public assistance, property tax relief, schools and other local governmental units.⁹⁵ Another feature of the bill designed to win support provided that the exemptions on the state income tax would automatically be lowered five hundred dollars if the tax was not accepted.

The Grange, Federation of Labor, and many other labor organizations went on record in opposition to these measures. It was pointed out that the legislature and other organizations favoring the sales and cigarette tax had been predicting dire consequences for the state from the very first time that these taxes were introduced. The legislative committee assigned the task of writing the opposing argument cited the fact that Griffenhagen and Associates, renowned tax counselors of Chicago, had recommended, in their report to the Portland Chamber of Commerce, an increased income tax to ward off the pressure for a sales tax in Oregon. In addition to this the Legislative Oregon Tax Study Commission had not recommended either tax.⁹⁶ The proponents of the measure expended sixty-two thousand dollars while those who opposed it spent nine thousand dollars.⁹⁷

The tremendous expenditure of funds to promote these measures and their submission at a special instead of a regular election were not sufficient to reverse what had become a well-defined voter policy in Oregon. The sales tax was rejected by a majority of almost three to one while the cigarette tax was defeated by thirty-seven thousand out of a total of two hundred and forty-four thousand votes cast on the issue.

⁹⁵For favorable arguments see *Official Voters' Pamphlet, 1947*, pp. 14-18; *Oregon Voter*, June 6, 1947, p. 39; September 20, 1947, p. 25; September 27, 1947, p. 34.

⁹⁶*Official Voters' Pamphlet, 1947*, pp. 19-20.

⁹⁷*Biennial Report of the Secretary of State, 1946-1948*, p. 14.

Regular General Election: November 2, 1948:

Four constitutional amendments, six measures, and one submission by the State Tax Commission appeared on the ballot at the general election of 1948. Three of the four amendments were referred by the legislative assembly, the fourth originating by initiative petition. Of the six measures that were considered, one was referred by the legislature, one was referred by obligatory referendum, and the last four constituted initiative proposals.

In one of the proposed amendments, the legislature made another attempt at modifying the six per cent limitation on tax increases. Although the ballot title failed to indicate the two-fold purpose of this amendment, a reading of the proposal made it clear that it was intended to confine the limitation to property taxes only and to permit local taxing agencies to raise the tax base without having to call a special election whenever the limitation had to be exceeded.⁹⁸ The proponents of the amendment relied on the argument that it would obviate the necessity of having to inconvenience the voters each year by calling a special election to authorize a levy in excess of the limitation. In rebuttal to this contention, it was suggested that being able to control the amount of a tax levy was the essence of popular government.⁹⁹ Those who disfavored the proposal had the advantage of an electorate very wary of any measure that might result in increased taxes. The change was rejected by a very large majority.

The legislature, convinced that forest fires and logging operations had seriously depleted the forest resources of the state, submitted an amendment authorizing the issuance of bonds for the purpose of providing funds to be used for the rehabilitation and reforestation of the depleted lands. These bonds were not to exceed at any one time three-fourths of one per cent of the assessed value of the taxable property of the state. The proposal was passed by a large majority in the upper and lower houses, one and two votes respectively having been cast against it. In spite of the fact that twenty counties reacted negatively to this amendment, it was accepted, by a majority of less than two thousand votes.

The third legislative proposal was called the "right to vote" amendment. In 1932 the voters of the state had amended the constitution so as to restrict the suffrage in school districts to those qualified voters residing therein who were property owners or to those who owned stock in taxpaying corporations or cooperatives.¹⁰⁰ Because this amendment was considered to be wholly unsatisfactory and unjust by many people, the "right to vote" amendment was

⁹⁸*Official Voters' Pamphlet, 1948*, p. 6.

⁹⁹*Ibid.*, pp. 7-10.

¹⁰⁰*Oregon Voter*, September 25, 1948, p. 4.

submitted in 1948 in an effort to remove these restrictions. Those who favored the proposed change pointed out that the old provision unjustly excluded those persons who were purchasing homes on contracts, those who rented homes or apartments, thousands of people who paid taxes indirectly, and married persons whose property was recorded in the name of the spouse.¹⁰¹ The contention that property owners were the only ones to be relied upon to deal intelligently with problems of local education was not a convincing one. The 1948 amendment was adopted by a majority of one hundred and twenty thousand out of three hundred and forty thousand votes cast on the proposal.

The amendment submitted through the initiative process created a great deal of controversy in the press. It authorized the creation of bonded indebtedness, outside the six per cent limitation, not to exceed three per cent of the assessed valuation of the property in the state. The revenue collected would be used to create a veterans' bonus fund out of which would be paid cash bonuses of fifteen dollars for each month of service, with an additional ten dollars per month for every month served outside the continental limits of the United States. A great deal of objection to the measure was raised on the grounds that it would result in a property tax increase approximating fifty million dollars.¹⁰² This argument alone would not have been enough to deter an electorate which four years earlier had declared itself overwhelmingly in favor of providing rewards for the returned veterans. The factor which encouraged all the veteran groups in the state to fight the proposal was to be found in a poorly worded clause which had the effect of restricting bonus payments to those members of the armed forces who were inducted, warranted, enlisted, or commissioned before December 7, 1941.¹⁰³ The acknowledgement of this defect by most of the people who analyzed and reported on the proposal in the press was largely responsible for its defeat.

The only statutory measure referred by the legislature was a bill authorizing the creation of a state boys' camp where boys between the ages of twelve and eighteen could be detained for purposes of discipline, observation, and training instead of their being sent to a reform school for sterner discipline. The bill was designed to provide some means whereby boys with tendencies toward delinquent conduct could be rehabilitated without having the blemish of a reform school sentence on their records. The wisdom of this proposal was generally conceded, but there were some objections to the site chosen on the grounds that Timber, Oregon, was too remote and dreary to serve the desired purpose. It was also suggested that its location was

¹⁰¹*Official Voters' Pamphlet, 1948*, p. 24.

¹⁰²*Oregon Voter*, July 10, 1948, p. 5.

¹⁰³*Ibid.*, September 18, 1948, pp. 14-16.

such that escape would be easily executed by those boys who did not care to stay. Another good criticism of the location had to do with the difficulty of persuading competent administrative personnel to go into the isolated backwoods for the purpose of supervising the camp. Early returns indicated that the proposal had been rejected, but when the total vote was tabulated, the camp had been authorized by a majority of eight thousand votes.

The bill referred by popular petition was one of the most controversial issues with which the voters had to cope. In 1931 the legislature had enacted the Hydroelectric Commission Act for the primary purpose of protecting the power resources of the state against exploitation by private power companies. One of the sections of this act authorized the state to take over any private power dam at any time during the license period by giving a two year notice. The compensation to be paid by the state was to represent fair value at the time of purchase.

In the 1945 legislative session, the Idaho Power Company, a Maine corporation, pressed for the modification of these provisions. As an incentive to the lawmakers the company expressed a desire to construct a power project on the Snake River at Ox Bow, Oregon, which project would produce one hundred and forty thousand kilowatts at a construction cost of twenty-eight million dollars to the company. It pointed out, however, that the above provisions made it financially impractical for it to invest in a project that might be summarily purchased by the state at a price which might be far below its actual worth.¹⁰⁴ The legislators were persuaded by this argument and enacted amendments to the law which required the hydroelectric commission to set forth the maximum rate of return and amortization in licenses and prevented the state from taking over the project for purposes other than condemnation, before the expiration of the original license period. If at the end of the first license period the state did not wish to purchase, the commission could extend the original license for five year periods.¹⁰⁵

The bill was vetoed by the governor on the grounds that it constituted a "power grab." His veto was overridden by substantial majorities in both houses of the legislature. It was at this point that the obligatory referendum was put into operation by the Oregon State Grange and the Farmers' Union.

Those who defended the bill deplored the fact that there had been no major power development by private capital in the seventeen-year period of the law's operation. This project, according to the advocates of change, would give eastern Oregon much-needed electric power, would encourage the use of private capital in power projects, and would add millions of dollars

¹⁰⁴*Official Voters' Pamphlet, 1948, p. 18.*

¹⁰⁵*Ibid.*, p. 17, for full text of measure.

in property to the tax rolls of the state. Without the removal of the restrictions it was held unreasonable to assume that any company would or could finance such a project under an indefinite franchise.¹⁰⁶

The opponents of the measure stressed the fact that it was passed as the result of pressure exerted by the lobby of a foreign corporation. Their main objections to the construction of the Ox Bow Dam, outside of its constituting an alleged "power grab," was that it would preclude the construction of the one million kilowatt Hell's Canyon Dam anticipated by the Federal Government. This latter dam, which would be a multi-purpose instead of a single-purpose project, would completely flood out Ox Bow if constructed, and for this reason it was feared that the Idaho Power Company would attempt to delay or prevent its construction.¹⁰⁷

The fear that a new era of private power exploitation of the state's natural resources might be brought into operation by this act caused the voters to reject it. Only Baker County, in which the Ox Bow project would have been constructed, gave the proposal a favorable vote.¹⁰⁸

The contingency attached to the sales tax in 1947, which provided that income tax exemptions would be lowered if the sales tax was not accepted, was overwhelmingly repudiated by the vote cast in favor of an initiative measure increasing income tax exemptions. There may not have been any "heinous plotting" on the part of the legislature when it submitted the sales tax, but the voters at this election clearly expressed their disapproval of such contingent proposals by giving the initiated bill four hundred and five thousand affirmative votes out of four hundred and sixty-eight thousand votes cast on the measure. Thus the income tax increase, which had gone into effect automatically when the voters rejected the sales tax in 1947, was wiped out one year later.

Another fish bill appeared on the ballot at this election. It was not a case, this time, of the sportsmen fighting the commercial fishermen. Rather it was the overt expression of an antagonism of long standing between the commercial fishermen themselves. This bill, which was introduced by those who fished with gill nets, made it unlawful for any person to construct or to maintain fixed fishing appliances, such as pound nets, fish traps, fishwheels, set nets, drag seines, whip seines, or any other fixed appliance, for use in

¹⁰⁶*Ibid.*, pp. 19-20. See also *Oregon Voter*, September 4, 1948, pp. 3-10.

¹⁰⁷*Ibid.*, pp. 21-22. An interesting observation made by the opponents of the measure was that the Idaho Power Company had maintained a six hundred kilowatt dam at Ox Box for thirty years, and that it was not until the Federal Government had declared its intention to build the Hell's Canyon Dam that the company decided to expand Ox Bow.

¹⁰⁸Sixty-two thousand dollars was spent in favor of this measure and sixty-three hundred against it. *Biennial Report of the Secretary of State, 1946-1948*, p. 42.

catching salmon in the Columbia River or in any of its tributaries. The bill was an excellent example of an interest with seventy per cent of the salmon industry under its control attempting to create an absolute monopoly by outlawing its only serious commercial competition.¹⁰⁹ Far from being a conservation measure, the bill was designed to give the gill netters a free hand in taking all of the salmon to be caught in the waters affected. The feud between the two interests was at least fifty years old and had resulted in an extremely deplorable situation in the general election of 1908 when the voters approved two bills, one which prohibited gill-net fishing, the other which prohibited fishing with fixed appliances on the Columbia.¹¹⁰ Twenty-four thousand dollars was spent by the proponents of the 1948 measure and twenty-two thousand dollars by the opponents.¹¹¹ By a majority of almost one hundred thousand votes, the electorate sanctioned the creation of the gill-net monopoly.¹¹²

Another extremely controversial measure presented to the voters was an initiative measure that was designed to abolish the Knox Law and to substitute in its place a measure authorizing the sale of hard liquor by-the-glass. The measure would have permitted the Oregon Liquor Control Commission to issue permits to licensed hotels, restaurants, clubs, and common carriers of passengers for hire, authorizing them to mix, serve, and sell alcoholic liquor with or without food. One of the official sponsors of the bill was the Oregon State Federation of Labor. However, at least one editor made the accusation that the real sponsors were groups of hotel owners and restaurant operators who anticipated increased profits in the passage of the measure.¹¹³ The influential Portland *Oregonian* reversed previous stands by going on record in favor of this measure on the grounds that it constituted a more reasonable method of serving liquor than existed in Oregon at the time. The great emphasis which the advocates had been placing on the fact that liquor by-the-glass was actually more temperate than was liquor by-the-bottle was having its effect.¹¹⁴

¹⁰⁹See *Oregon Voter*, September 18, 1948, pp. 10-13.

¹¹⁰For a complete discussion see Culbertson, *op. cit.*, p. 68. The acceptance of both measures resulted in a blanket restriction against all commercial fishing.

¹¹¹*Biennial Report of the Secretary of State, 1946-1948*, p. 43.

¹¹²The measure was questioned as to its constitutionality in the Circuit Court of Marion County. The court found technical flaws in the initiated legislation which was found to be in violation of the constitutional provision restricting legislation to one subject. The judge held fish traps and fish seines to be two different subjects. This decision was appealed to the Supreme Court, but had not yet been decided at the time of this writing. See Portland *Oregonian*, October 18, 1949, p. 1, col. 3; October 20, 1949, p. 16, col. 1.

¹¹³*Oregon Voter*, August 7, 1948, pp. 3-4.

¹¹⁴See *Official Voters' Pamphlet, 1948*, p. 32.

Although thirty-two thousand dollars was spent in support of this bill, as contrasted to five thousand dollars expended against its passage, the measure was defeated by sixty-three thousand votes. The various religious denominations, under the direction of the Oregon Church Council, entered the political scene with a great deal of vigor on this issue and were undoubtedly responsible, in large part, for the measure's defeat. The fact that members of the various congregations might favor the bill did not deter some churches from utilizing church time and personnel in the furtherance of the anti-liquor campaign.¹¹⁵

The Townsendites, having been defeated in their attempts to tie their pension plan to a transactions tax in previous elections, initiated a bill which was to cause a great deal of difficulty following the election. The measure which they initiated declared it to be the public policy of Oregon to create a minimum old age pension of fifty dollars per month for all men over sixty-five years of age and for all women over sixty. The legislature was directed to create an Old Age Pension Commission to administer the program and to provide a continuing appropriation to support the plan. The measure included additional sections which sought to make the plan effective notwithstanding any previously assumed or declared constitutional restrictions or inhibition, to have an emergency declared, and to compel the courts to rule that the measure was constitutional.¹¹⁶

Most of the Oregon press completely failed to analyze this measure carefully. One editor charged that the bill was a bold attempt by its sponsors to take advantage of the constitutional provision which permits the jurisdiction of state courts to be defined by law. It was also pointed out that the fact that the funds were awarded regardless of need would preclude Federal aid if the bill were passed, and that it purported to forbid the legislature, admittedly a legislative body coordinate with the people, from making any substantial changes.¹¹⁷

The measure, which was worded in very attractive phraseology, was accepted by a very substantial majority, every county in the state giving it a favorable vote.

What the press failed to tell the voters prior to the election, they now divulged in voluminous articles. The Portland *Oregonian* began its first real analysis of the measure two days after the election. A front-page story began with the statement that, "Oregon awoke the morning after the general election with a potential \$9,000,000-a-month pension bill facing it and no idea

¹¹⁵One sermon and several letters and leaflets of a highly propagandistic nature were provided through the auspices of the religious group to which the writer belonged.

¹¹⁶For full text see *Official Voters' Pamphlet*, 1948, pp. 25-26.

¹¹⁷*Oregon Voter*, August 14, 1948, pp. 3-4; October 16, 1948, p. 3.

of where the money would come from."¹¹⁸ The measure, which might cost over two hundred million dollars each biennium, looked like a specter, indeed, to a state with a total of seventy million dollars available for all state functions during the next biennium. To provide more headaches, the Federal Social Security Board lost no time in informing the state that this plan failed to meet its requirements and might therefore preclude the continuance of Federal aid.¹¹⁹ The next day, a news story indicated that investment houses would refuse to take any Oregon bonds in view of the dire financial straits into which the pension plan had put the state.¹²⁰ Bids on two million dollars in veterans' bonds were quickly withdrawn.

Mr. Joe E. Dunne, one of the measure's sponsors, was appalled at the confusion which the measure had created. He indicated that because popular interpretation was far from what the sponsors had actually intended, they would ask the state legislature to revise and amend the law. According to Mr. Dunne, the real intention had been to raise the average pension payments to fifty dollars from the forty-seven dollar average which prevailed at the time. He also stressed that although the bill made no reference to need as a qualification, this had been the intention of the framers.¹²¹

The bill which had been ignored by the newspapers of the state was now referred to as something vague and fantastic. The Portland *Oregonian* attempted to rationalize its failure to analyze adequately the measure by pointing to one brief article which it had published prior to the election.¹²²

State officials, hard-pressed for some solution to the problem, began to express the opinion that the bill was wholly unconstitutional. One of the reasons given for this conclusion was that the bill sought to compel the state to dip into any of the various reserve state tax funds in order to finance the plan. Leslie Scott, the state treasurer, averred that he would not give his consent to the use of any of these funds for purposes other than those stipulated in the laws creating them. The immediate problem was one of delaying the operation of the measure, which became effective upon passage, until the Supreme Court could pass on its constitutionality.¹²³

¹¹⁸Portland *Oregonian*, November 4, 1948, p. 1, col. 1. This figure was based on statistics showing 76,060 men over sixty-five years of age and 101,546 women over sixty who would be entitled to assistance.

¹¹⁹*Ibid.*

¹²⁰*Ibid.*, November 5, 1948, p. 1, col. 8. One investment banker remarked that, "If this bill is constitutional, the state's damned near insolvent. If there is one chance in ten million that the thing will stick, there isn't a chance to get a bid on Oregon bonds."

¹²¹Portland *Oregonian*, November 6, 1948, p. 1, col. 1. Mr. Dunne's suggestion that the legislature amend the bill was a deviation from the section of the bill which sought to preclude this possibility.

¹²²*Ibid.*, p. 10, col. 1.

¹²³Oregon *Journal*, November 7, 1948, p. 1, col. 8.

Mr. Dunne agreed to join with the state board of control and the state welfare commission in asking the attorney-general for an opinion as to whether the act was workable. In addition to this it was suggested that a mandamus action to compel the board of control to issue certificates of indebtedness to those qualified to receive pensions would be a rapid avenue to a Supreme Court decision.¹²⁴ On the eighth of November the attorney general issued a memorandum opinion in which he referred to the plan as "incomplete, inoperative and not self-executing."¹²⁵ On the basis of this preliminary statement, which was to be followed by a formal opinion, the board of control decided not to issue any certificates of indebtedness. It was also made known that if the formal opinion followed the nature of the preliminary statement, the Federal Social Security Board had indicated that Federal funds would not be withheld.¹²⁶

In his formal opinion, Attorney General George Neuner stressed the fact that the act did not in itself constitute an appropriation of state funds. The act did no more than state that the sums needed for the implementation of the plan would be declared to be an appropriation. But nothing in the act actually provided that "Said sums hereby are appropriated." Neuner also concluded that the sections of the act which purported to direct the legislature to perform certain specific duties were advisory and not mandatory in character. Regarding the section containing an emergency clause, Neuner ruled that such a clause had absolutely no function in an initiative measure and must, therefore, be nothing more than superfluous.

Referring to the section which sought to give the act immunity from judicial review, Neuner said, "This act . . . was evidently drafted on the apparent theory that the initiative process has a greater sanctity in law than legislation enacted by the legislative assembly. We venture to say that no legal authority can be found to support that theory. The quoted section contains provisions obviously intended to make this act not only paramount to, and immune from, constitutional limitations and restrictions on the legislative power, but also beyond the reach of the judicial branch of the government to interpret or the legislative to change or repeal. Such provisions are clearly beyond legislative power and are inoperative and void."¹²⁷

The general conclusion drawn was that the act, when stripped of all superfluous and otherwise ineffective provisions, was no more than a resolution on the subject of public policy, leaving it to the legislature subsequently to enact such policy into legislation if it should choose to do so.¹²⁸

¹²⁴Portland *Oregonian*, November 7, 1948, p. 1, col. 3.

¹²⁵*Ibid.*, November 9, 1948, p. 1, col. 1.

¹²⁶*Ibid.*

¹²⁷George Neuner, *Opinion*, released for publication November 12, 1948, p. 5.

¹²⁸*Ibid.*, p. 11. See also Portland *Oregonian*, November 14, 1948, p. 31, col. 2.

The opinion was accepted with a great deal of relief by most people. The state would be able to function. The old-age assistance program would continue on the basis of the system existing prior to the election until a decision was handed down by the Supreme Court or until the plan was modified by the legislature. What inferences the legislature could logically draw from the election other than that the voters favored pensions was still a puzzle.

When the legislative assembly convened in January, they indicated no disposition to enact or submit to the people new and major forms of taxation. The people, at the general election, had not only turned down new forms of revenue, but had actually voted to decrease the revenue from the income tax and had also refused to approve a six million dollar transfer to the general fund of money taken from the income tax surplus fund. This measure, as it appeared on the ballot, was poorly worded,¹²⁹ but an informed electorate would have recognized that the transfer constituted a simple bookkeeping procedure and was not designed to increase the total amount of taxes levied.

The legislature attempted to solve the pension problem by providing a substitute bill. When the bill was introduced it was found to deviate in many respects from the measure which had been voted at the polls. Mr. Dunne objected to the deviations on the grounds that they constituted a defiance of the expressed will of the people.¹³⁰ When the measure was finally reported out of committee, it contained many of the features of the initiated bill.¹³¹ It was subjected to amendment, and, when finally the issue was disposed of, the legislature had enacted two statutes on the subject of pensions. These included a requirement that children financially able to do so must support their aged parents and a provision permitting the state to bring legal claim against the estate of the beneficiary.

Mr. Dunne immediately promised that referendum petitions would be circulated against the measures if they were not vetoed by the governor. The

¹²⁹The State Tax Commission submitted the proposal according to *Laws 1947, Chapter 477*. The legislature had previously attempted to transfer part of the income tax surplus from the fund to offset the state property tax to the general fund. The Supreme Court ruled that this was not legally possible since the people, when the income tax was enacted, voted to restrict the use of the funds derived from the tax only for the purpose of offsetting the state levy on property. The procedure attempted here by the Tax Commission was to have the people vote a state property levy in excess of the six per cent limitation. The income tax surplus could then legally be used to offset this increase. In the absence of such approval, the money in the surplus fund would remain idle. See *Official Voters' Pamphlet, 1948*, p. 38.

¹³⁰*Corvallis Gazette-Times*, March 9, 1949, p. 1, col. 7.

¹³¹A pensioner was permitted to possess an insurance policy not exceeding the value of one thousand dollars, five hundred dollars in cash, an automobile worth one thousand dollars or less, and a homestead worth a maximum of five thousand dollars. He would also be entitled to medical, dental, surgical, and hospital services.

governor did sign the bills, but the Townsendites failed to get the signatures, within the ninety days allotted, that would have held the statutes in abeyance until the next general election or until a special election was called by the legislature.

Thus the voters approved six of the eleven proposals submitted at this election. The ones approved included the amendments authorizing reforestation, the creation of a boys' camp, and the extension of the suffrage in school district elections to all voters meeting the general state qualifications for voting. The three measures approved were the gill netters' fish bill, the bill to increase income tax exemptions, and the highly controversial Townsend-sponsored proposal. Among the proposals rejected were the amendment which would have modified the six per cent tax limitation, the bill restricting the ability of the state to recapture private power projects on a two-year notice, the liquor by-the-glass authorization, the veterans' bonus bill, and the authorization to transfer six million dollars from the income tax surplus fund to the general fund.

The behavior of the electorate over this entire period will be analyzed in the next chapter.

IV

ELECTORAL BEHAVIOR: 1938-1948

A number of interesting questions regarding the behavior of the Oregon legislative assembly and of the electorate, in its capacity as a legislative body, present themselves at this point. Some of these have been discussed with regard to Oregon's earlier experiences with direct legislation, while others have not been touched on. It will be of some interest to discover which method of presenting issues to the voters—popular initiative, optional referendum, or obligatory referendum—has been put to the greatest use, and to ascertain which of these methods has met with the greatest success from the standpoint of adoptions. In addition there are some other inquiries which may produce answers leading to a better understanding of the direct legislative process. What types of issues have been presented, and with what success? How well have the voters participated in the function of direct legislation? Is there greater or less interest in direct legislative proposals as compared with the interest expressed toward the selection of public officials? Which type of proposal—constitutional amendment or statutory measure—has attracted the greater number of voters at each election? Does the voter evidence more or less interest, as measured by participation, toward initiated proposals than he does toward those proposals referred by the legislature or by the people? What type of issue has attracted the greatest amount of participation? What type the least participation? Does the number of issues appearing on a ballot, or the ballot position influence participation or the outcome in terms of success or failure? What proportion of the issues has been decided by a majority of the registered voters or of those voters casting ballots at the various elections? What proportion by a minority? What has been the effect of special elections? Have the people performed as expert a job in the drafting of proposals as has the legislative assembly?

These are the queries which this chapter will attempt to answer. The validity of many of the answers can be established statistically. It should be remembered, however, that some of the queries, such as the effect of the long ballot on voter fatigue and the comparative caliber of the drafted proposals are not susceptible to categorical answers. The evidence which is available will inevitably lead to varying subjective conclusions and interpretations. One need but glance at some of the earlier studies of the initiative and referendum in Oregon in order to establish the validity of this observation.

The Use of Direct Legislation: The initial popularity which characterized the Oregon system of direct legislation was evidenced by the frequent

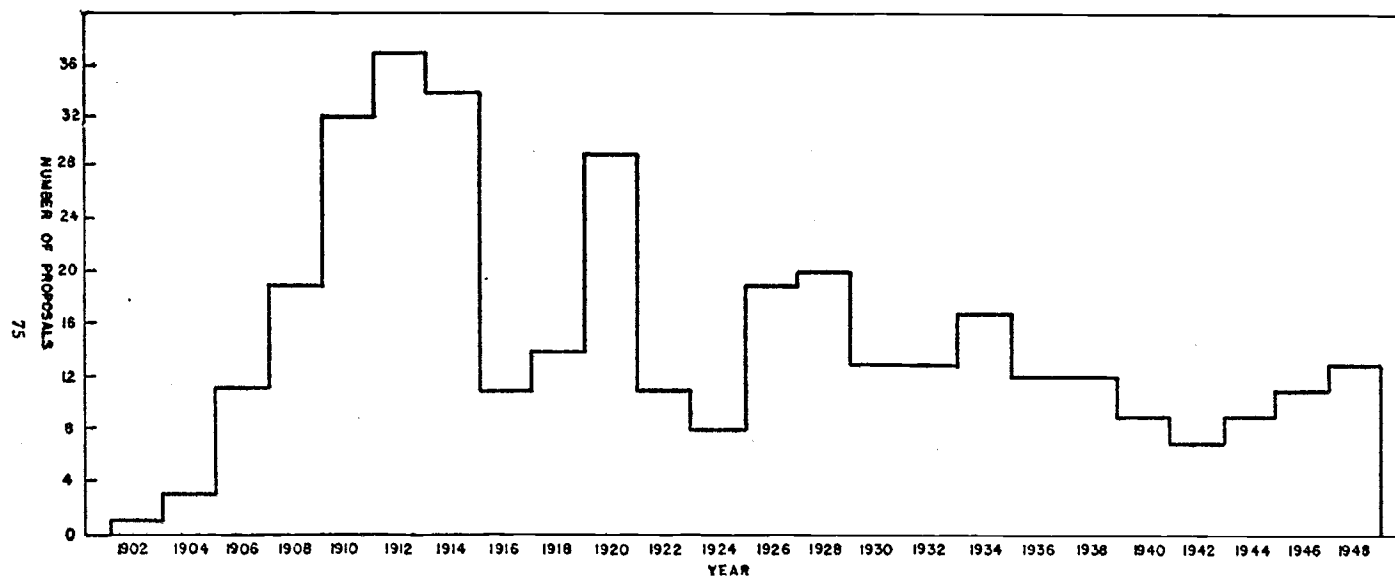


Figure 1. TOTAL NUMBER OF DIRECT LEGISLATION PROPOSALS IN OREGON: 1902-1948.

use of the initiative and obligatory referendum during the first two decades of the present century. The conviction of the average voter to the effect that the initiative and referendum constitute the only sure means of guaranteeing popular sovereignty remains unchanged, but the use of the instruments of that sovereignty's protection has decreased rather significantly in recent years. This is true in spite of the fact that there has been a slight rise in the total number of issues presented to the people since 1944. (See Figure 1.) There seems to be little reason for assuming that this rise indicates a return, in the near future, to the attitude which encouraged the people to present the tremendous number of proposals appearing on the ballots at the elections which took place following the adoption of direct legislation. As a matter of fact, it appears that this recent upward trend has been caused entirely by the economic, social, and political readjustments which must follow any major war. This was certainly one of the chief factors which contributed to the rise that took place following the first World War, and a glance at the nature of the proposals submitted in this postwar period leads to the conclusion that a great many of them would not have materialized under normal conditions.

As Figure 1 illustrates, the average number of submissions between 1902 and 1920 is much greater than the average number submitted from 1922 to 1948. The initial desire to experiment with the newly created political institutions seems to have been satisfied for the most part. Some of the early, and sometimes reckless fervor with which the instruments of popular government were put into motion at the slightest provocation, has been replaced by a relatively restrained and cautious use of the initiative and referendum.

Thus we find that both the constitutional and statutory initiative have been used to a far lesser extent in recent years than they were during the early period of direct legislation. (See Figure 2.) Following the advent of the initiative, the people used the process for the purpose of putting into the constitution and upon the statute books all of those reforms which a recalcitrant legislature had failed to institute. Not satisfied with this, the voters also enacted various statutory and constitutional safeguards designed to preserve the people's power. In addition, the number of proposals appearing at each early election was augmented by the fact that many extremely radical proposals were presented again and again, only to be met with a negative vote of the electorate.

The situation is somewhat altered today. Whereas the initiative once constituted the most popular instrument of direct legislation, today the referendum plays the dominant role. (See Figure 3.) This does not mean to imply that the people have switched from the use of the initiative to that of

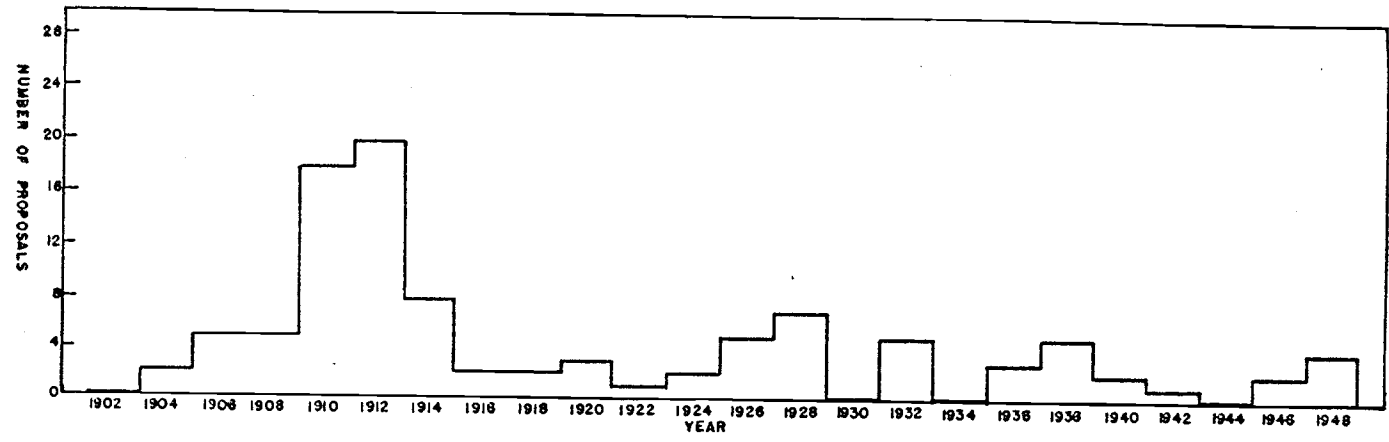


Figure 2a. TOTAL NUMBER OF STATUTORY MEASURES PROPOSED BY INITIATIVE: 1902-1948.

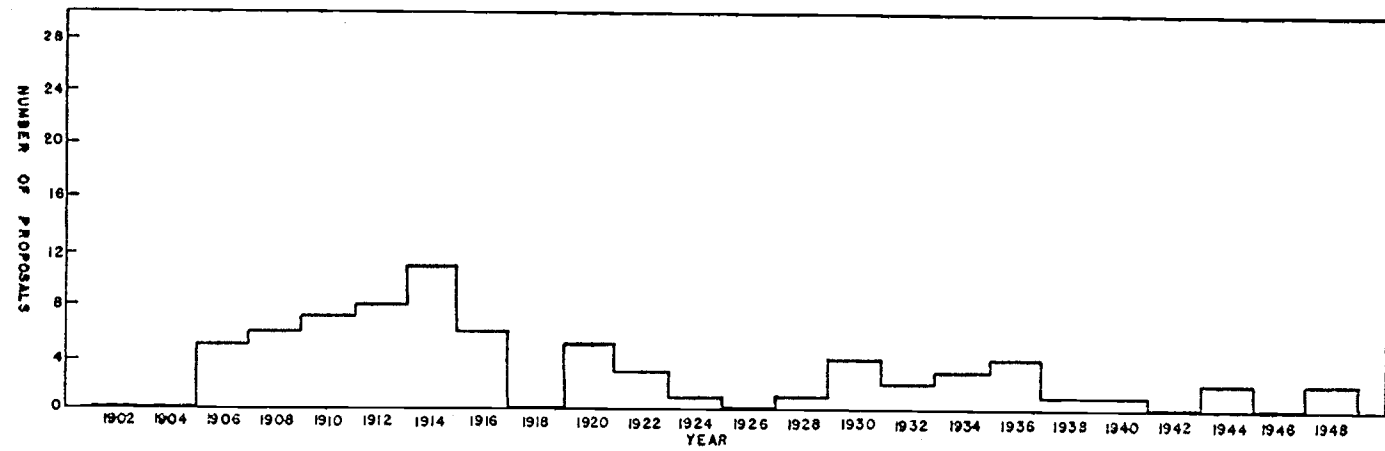


Figure 2b. TOTAL NUMBER OF CONSTITUTIONAL AMENDMENTS PROPOSED BY INITIATIVE: 1902-1948.

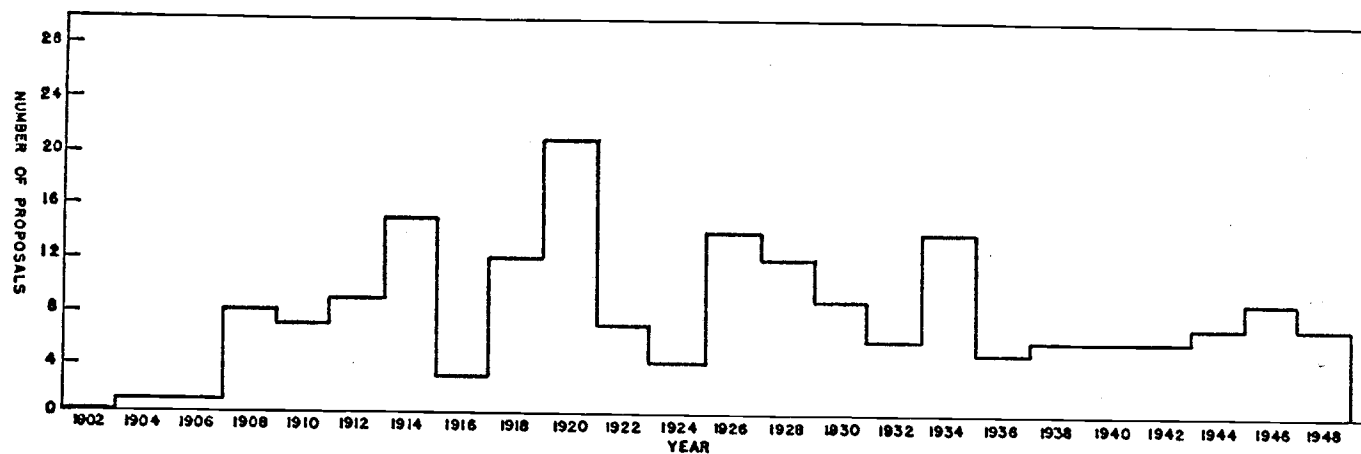


Figure 3a. TOTAL NUMBER OF REFERENDUM PROPOSALS BY TWO-YEAR INTERVALS: 1902-1948.

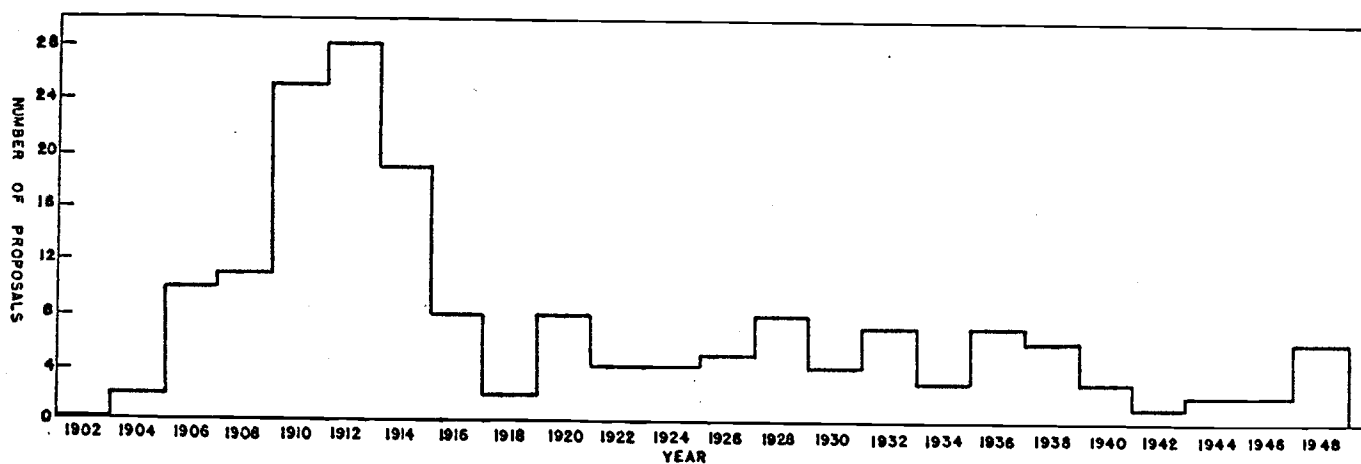


Figure 3b. TOTAL NUMBER OF INITIATIVE PROPOSALS BY TWO-YEAR INTERVALS: 1902-1948.

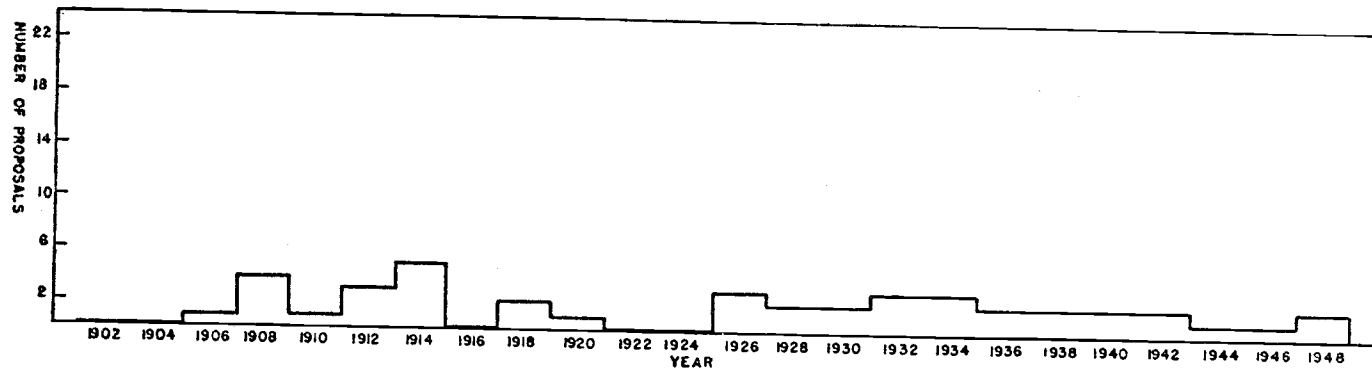


Figure 4a. TOTAL NUMBER OF REFERENDUMS ORDERED BY THE ELECTORATE THROUGH PETITION: 1902-1948.

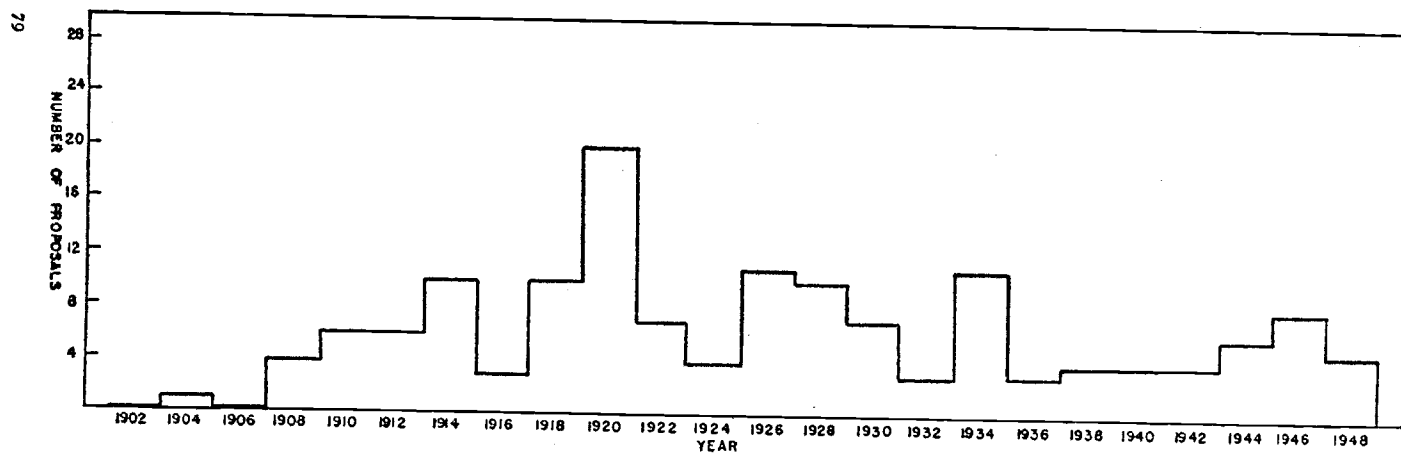


Figure 4b. TOTAL NUMBER OF REFERENDUMS ORDERED BY THE LEGISLATIVE ASSEMBLY: 1902-1948.

the obligatory referendum. The increased use of the referendum, as indicated in Figure 3, has resulted from the fact that the legislative assembly has been taking an ever-increasing interest in the use of the optional referendum. One may conclude from this that the voters, having given legal status to most of the reforms which they sought, now use the initiative only in exceptional cases. On the other hand, it seems not unreasonable to assume that the legislature, initially reluctant to use the optional referendum, now finds this to be an extremely convenient means through which it can relieve itself of the frequently unpleasant task of resolving highly controversial legislative matters. How much less frustrating and devoid of unpleasant political consequences it is to let the voters make a vital decision. Indeed, those who are inclined toward the conviction that the initiative and referendum have destroyed the responsibility of the legislative assembly point a knowing finger at the significant rise in the number of proposals submitted to the voters by the legislature.

The period under consideration in this study emphasizes the change which has taken place in the use of the initiative and the referendum. Of the sixty-one proposals submitted to the voters, twenty, or less than one-third, arose through the use of the initiative, ten of them constituted obligatory referenda, and thirty-one constituted the total number of statutes and constitutional amendments referred by the legislative assembly. (See Figure 4.)

Of the ten measures subjected to the obligatory referendum, four were accepted and six were rejected by the voters. Although this constitutes a refusal to accept sixty per cent of the legislative measures referred by compulsion, it should be noted that a very minute proportion of the total number of bills passed by the legislature has been subjected to the operation of the obligatory referendum. For this reason, it has been suggested that the people have found very little dissatisfaction with the statutes enacted by the legislature.¹ A survey of the measures referred by popular petition over the ten-year period under consideration would seem to indicate that it is not so much a question of popular satisfaction with most of the legislation passed as it is a matter of using the obligatory referendum as an instrument of last resort. The electorate will evidently tolerate legislation which is mildly antagonizing, utilizing the initiative process whenever it seeks to add to, detract from, or modify portions of the constitution or statute books. It is usually when the legislature wants a particularly obnoxious statute, such as the sales tax or cigarette tax, or when it attempts to curtail the people's power, as was the case in the attempted modification of the hydroelectric bill, that the obligatory referendum is invoked. Ordinarily its use involves a situation in which the

¹Culbertson, *op. cit.*, p. 460.

legislature has persisted in enacting a particular statute in the light of the unmitigated opposition of the electorate. It is also probable that the submission by the legislature of many amendments containing provisions more properly to be found in the statute books has obviated the need for the more frequent use of the obligatory referendum.

Ten statutes and twenty-one amendments were included in the thirty-one proposals referred by the legislature. The statutory measures were not received with much more enthusiasm by the voters than were those referred by the obligatory referendum. Five of them, or fifty per cent, were accepted, and five of them were defeated. However, a more favorable reception was given to the constitutional amendments submitted, the voters accepting twelve, or fifty-seven per cent, and rejecting nine.

The twenty initiated proposals included six constitutional amendments and fourteen statutory measures. Only one of the six amendments was accepted for an average of seventeen per cent. This percentage, which is significantly below the adoption percentage of constitutional amendments referred by the legislature, would seem to indicate a cautiousness on the part of the electorate toward initiated amendments. In this regard it should be pointed out that the legislature has been more careful in limiting its proposed constitutional amendments to fundamental constitutional questions. On the other hand, the people have not hesitated to make issues such as lotteries, pension plans, and veterans' bonuses the subjects of proposed amendments. Whether for reasons of cautiousness or because the issues initiated by the people have been more controversial than the amendments submitted by the legislature, it must be conceded that the constitutional amendments referred by this latter body have found more popularity with the electorate in terms of adoption. One further interesting observation is that the percentage of legislative proposals adopted would be much higher if the electorate had, upon first submission, accepted those constitutional amendments which the legislative assembly submitted two and three times before they were passed.

Of the fourteen statutes popularly initiated, eight, or fifty-seven per cent, were accepted by the voters. This is seven per cent higher than the number of legislative statutes, submitted under the optional referendum, which were adopted. Again, it would seem that the electorate is inclined to treat statutory proposals with equal consideration regardless of source. One explanation for this difference in attitude between statutes and constitutional amendments lies in the fact that, unlike the amendments submitted by the legislature, the statutes presented are frequently as controversial as those submitted by the people. Indeed, it may be concluded that the legislature is most inclined to let the people cast the deciding vote with regard to legislation which creates a great deal of public discussion.

Table 1. ADOPTION OF DIRECT LEGISLATIVE PROPOSALS, 1938-1948

Proposed	Initiative			Obligatory Referendum			Optional Referendum			Total proposals		
	Sub- mitted	Adopted		Sub- mitted	Adopted		Sub- mitted	Adopted		Sub- mitted	Adopted	
			<i>Per cent</i>			<i>Per cent</i>			<i>Per cent</i>			<i>Per cent</i>
Amendments	6	1	17	0	0	0	21	12	57	27	13	57
Measures	14	8	57	10	4	40	10	5	50	34	17	50
Total	20	9	45	10	4	40	31	17	55	61	30	49

Table 2. DIRECT LEGISLATIVE PROPOSALS ACCEPTED AND REJECTED, 1938-1948

Date	Constitutional amendments submitted				Measures submitted					
	By Initiative		By Referendum		By Initiative		By Obligatory Referendum		By Optional Referendum	
	Adopted	Rejected	Adopted	Rejected	Adopted	Rejected	Adopted	Rejected	Adopted	Rejected
November 1938	0	1	1	2	3	2	2	0	1	0
November 1940	0	1	0	4	0	2	0	2	0	0
November 1942	0	0	3	1	1	0	0	2	0	0
November 1944	0	2	4	0	0	0	1	0	1	1
June 1945	0	0	0	0	0	0	0	0	1	1
November 1946	0	0	3	1	1	1	1	0	1	1
October 1947	0	0	0	0	0	0	0	1	0	1
November 1948	1	1	1	1	3	1	0	1	1	1
Totals	1	5	12	9	8	6	4	6	5	5

A survey of the total number of proposals considered during this period indicates that the voters have been inclined to accept a greater percentage of legislative submissions than those which have been initiated or referred by the people.² It is also evident that whether referred by the legislature or by the people, referendum proposals have had greater success than have those presented through the initiative process. In addition, it should be noted that a greater percentage of constitutional amendments have been accepted as compared to statutes. (See Table 1.) One point of interest and significance, however, is to be detected in the fact that the percentage of initiative adoptions over the period under consideration has increased considerably while the percentage of referred measures adopted has remained relatively stable.³

The Types of Issues Submitted: The sixty-one proposals discussed in the preceding chapter can be classified under three major headings: (1) those proposals pertaining to the structure of government; (2) financial proposals; (3) public policy proposals.⁴

(1) Two-thirds of the nine proposals having to do with the structure of government were accepted by the voters. These included the authorization of county-manager government, the modified line of succession to the governor, the creation of rural school districts and boards, the removal of property qualifications for voters in school district elections, the amendment permitting bills to be read by title only, and the amendment extending the time in which the governor can consider bills passed by both houses of the legislature. The proposals rejected were the attempted removal of the time limit on the terms of the secretary of state and state treasurer, the attempt to increase the number of senators from thirty to thirty-one, and the move to abolish the presidential primary.

²Professor Pollock's study of direct legislation in Michigan indicates a like reaction on the part of the voters in this state. In this regard, he calls the reader's attention to the fact that "... the people have been more inclined to reject proposals popularly initiated or referred than proposals emanating from the legislature." He goes on to conclude that this phenomenon "... is not surprising, for it is to be expected that the legislature will be more cautious about proposals than will interested groups of the electorate and that it necessarily submits more proposals of routine importance in order to keep the Constitution more or less up to date." *Op. cit.*, pp. 19-20.

For a general analysis of this subject, see H. F. Gosnell and M. J. Smith, "Popular Law Making in the United States," *New York State Constitutional Convention Committee* (Albany, New York: J. B. Lyon Company, 1938).

³Culbertson, *loc. cit.*, indicates that fifty per cent of the proposals referred from 1902 to 1938 met with the approval of the voters, while only thirty-six per cent of the initiated proposals were approved over the same period. From 1938 to 1948, fifty-one per cent of the referred proposals were accepted as contrasted to the adoption of forty-five per cent of the initiated proposals.

⁴For a complete summary of the types of proposals submitted at each election, see Table 2.

The electorate indicated the greatest interest in the amendment extending the bill consideration time limit, the amendment changing the line of succession to the governor, and the establishment of rural school districts and boards. The county-manager amendment and the proposal permitting bills to be read by title attracted only a small number of voters.⁵

(2) Twenty-seven of the proposals were of a financial character. It should be noted, however, that most of these issues constituted repetitions of issues presented more than once. Thus the legislators' compensation amendment was presented three times before it was passed by the voters, while a state pension plan was defeated on each of the three occasions when it was tied to a transactions or gross income tax.

During this ten year period the cigarette tax appeared on the ballot on three separate occasions, being defeated every time, and the sales tax was defeated twice over the same period. Two attempts to modify the six per cent limitation on tax increases also failed, while the attempt to guarantee state financial assistance to local school districts was accepted upon the third presentation. Two property levies to cover the cost of state building programs were also placed on the ballot. One of these, authorizing the construction of educational and medical buildings, was accepted; and the other, providing for the construction of state armories, was defeated. Three more property levies designed to cover the cost of aid to veterans were presented to the electorate. Two of these, providing for educational and home and farm loan assistance, were approved, but the voters turned down the attempt to appropriate an outright bonus to the returned veterans.

The other financial proposals approved included the repeal of the rural credits fund, the specifying of the exclusive use of revenues derived from the gasoline and motor vehicle taxes, the measure authorizing a levy for purposes of reforestation, the creation of a home for delinquent boys, and the measure increasing the income tax exemptions. The last measure rejected was the authorization which would have permitted a six million dollar transfer from the income tax surplus fund to the general fund.

The measure attracting the most attention was the old age pension bill presented in 1944. Least attention was paid to the amendment seeking to modify the six per cent limitation which was presented in 1938. Needless to say, the number of people participating on proposals at special elections was extremely high, but the number of registered voters who went to the polls at the special elections of 1945 and 1947 was not very significant.⁶

It is extremely interesting to note that the electorate turned down every single revenue measure that would have levied a direct tax on consumption or

⁵See Appendix A, *infra*.

⁶*Ibid.*

on income. As a matter of fact, they actually raised the income tax exemption in the general election of 1948. During this same period, however, six of nine levies on real property were accepted. The number actually rejected should be reduced to two, since the school support proposal was eventually accepted.

Statistics of this character have led many people to the conclusion that the non-property owners will enact almost any additional tax on property while, at the same time, refusing to sanction any revenue measure which would affect them as a group. The evidence available would seem to lend validity to this conclusion, but there is an additional factor which is frequently overlooked. This is that most of the active opposition to taxes on consumption comes from organized groups who are property owners—the farmers. It would seem reasonable to assume that many property owners are convinced that a tax on retail sales, gross transactions, or cigarettes would affect them more adversely than does the tax on property. In any case, one must not conclude, as have some students of the Oregon system, that the people vote “no” automatically on all revenue measures. They have indicated a genuine unwillingness to enact taxes on consumption, but they have been rather liberal in providing other types of levies for worthwhile purposes.

(3) Thirteen of the twenty-five public policy measures presented to the electorate were accepted and twelve were rejected. Here, too, there were several cases of repetition. The proposal to remove the double liability provision pertaining to stockholders in certain state banking corporations was submitted three times before it was finally accepted. Proposals having to do with state regulation of alcoholic beverages appeared on five separate occasions. Twice the voters refused to liberalize the liquor laws, twice they refused to tighten them, and once, in the case of the Burke Bill, they voted the more stringent state regulations and supervision of the sale of fortified wines.

Four separate measures on the subject of gambling were also submitted during this period. The voters maintained a consistent policy in this area by voting twice against the liberalization of the gambling regulations and twice in favor of measures designed to increase these restrictions. Two pension measures, both of them directory in character, were accepted by the people. One was the resolution directing the legislature to petition the United States Congress for a constitutional convention to consider the adoption of the Townsend Recovery Plan, and the other was the notorious pension plan of 1948, which was judged directory in character only after the attorney general had rendered a formal opinion to that effect.

Of the three measures designed to restrict commercial fishing in various Oregon streams and bays, the voters accepted two and rejected one. The

measure to give the legislative assembly the power to define the conditions under which the voting privilege would be forfeited was presented twice before the voters accepted it.

The other measures presented included the pre-marital examination for women, the regulation of picketing and boycotting by labor groups, the creation of a board to study the problem of water pollution, the amendment permitting Chinese persons to own real estate and mining claims—all of which were accepted—and the hydroelectric bill modification proposal and the repeal of the state milk law, both of which were rejected.

The measure attracting the greatest amount of attention in this group was the 1948 proposal which would have authorized the sale of liquor by-the-drink. It was followed closely by the picketing and boycotting measure, which attracted over ninety per cent of the voters who participated at the election. The proposal providing for legislative regulation of the voting privilege forfeiture and the amendment abolishing the double liability of state banking corporations stockholders attracted the least attention.

The one obvious conclusion which can be drawn from an analysis of the electorate's behavior regarding public policy measures is that the people of Oregon remain quite conservative toward measures pertaining to the public welfare. Many newcomers to the state indicate marked surprise at the political, economic, and sociological conservatism of a people that, forty-eight years ago, put into motion some extremely radical governmental reforms. It is quite true that prohibitionists continue to exert a marked influence in the state. The many religious sects, and especially the Puritans, continue to share an important position in the determination of public policy. As was pointed out in the preceding chapter, the liquor by-the-drink measure was defeated in large part because of the organized opposition of the church groups.

But Oregon does not present a true dichotomy. It must be remembered that the initiative and referendum were instituted only after the people had been unsuccessful in their attempts to make the legislative assembly more responsive to their desires. Direct legislation came into existence when an electorate, deeply schooled in the Protestant theory of church government by common consent, became convinced that the initiative and referendum presented the only feasible means through which the people could exercise their sovereign authority in the determination of civil governmental policy. Whether or not this reasoning was valid will be discussed in the concluding chapter of this study. It is here important to recognize that the voters did not consider the initiative and referendum to be radical innovations or an invitation to mobocracy. In this regard, it is extremely significant to note that many of the truly radical proposals, such as cabinet government, uni-

Table 3. POPULAR PARTICIPATION ON DIRECT LEGISLATIVE PROPOSALS, 1938-1948

Date	Constitutional amendments						Measures								
	Proposed by Legislature			Proposed by Initiative			Proposed by Initiative			Proposed by Obligatory Referendum			Proposed by Optional Referendum		
	Number	Average participation		Number	Average participation		Number	Average participation		Number	Average participation		Number	Average participation	
		By registered voters	By those voting at election		By registered voters	By those voting at election		By registered voters	By those voting at election		By registered voters	By those voting at election		By registered voters	By those voting at election
		<i>Per cent</i>	<i>Per cent</i>		<i>Per cent</i>	<i>Per cent</i>		<i>Per cent</i>	<i>Per cent</i>		<i>Per cent</i>	<i>Per cent</i>		<i>Per cent</i>	<i>Per cent</i>
November 1938	3	56.7	81.6	1	57.8	83.4	5	60.0	86.8	2	59.0	85.2	1	61.5	89.0
November 1940	4	57.7	72.3	1	67.0	83.3	2	66.5	83.5	2	62.8	78.5	0	.....	.....
November 1942	4	39.4	73.2	0	.....	.....	1	42.9	79.3	2	49.3	81.8	0	.....	.....
November 1944	4	57.5	70.5	2	63.6	77.8	0	.....	.....	1	67.9	83.3	2	61.5	75.3
June 1945	0	.....	.....	0	.....	.....	0	.....	.....	0	.....	.....	2	22.8	98.3
November 1946	4	47.2	79.7	0	.....	.....	2	54.0	91.0	1	50.1	84.4	2	49.4	83.1
October 1947	0	.....	.....	0	.....	.....	0	.....	.....	1	44.2	97.8	1	44.7	98.9
November 1948	2	60.4	78.6	2	65.7	85.6	4	68.3	88.9	1	59.8	77.9	2	61.0	79.4
Totals	21	.....	.....	6	.....	.....	14	.....	.....	10	.....	.....	10	.....	.....
Averages .....	....	52.7	76.0	....	63.9	82.3	....	61.2	86.6	....	57.0	83.4	....	50.0	86.0

cameralism, the U'Ren Constitution, and the single tax, presented shortly after the advent of direct legislation, were defeated by decisive majorities.

It is, of course, true that many unwise proposals have been submitted to the electorate over the years. A few of these have even been accepted, but an avalanche of radicalism has never occurred in Oregon. The dire consequences predicted by the opponents of direct legislation have not yet materialized. What the future will bring is at least debatable. Doubtless, the tremendous influx of industrial workers during and since the war will have its consequences. It is yet too early to judge what these consequences have been or will be. For the present, at least, the voters of Oregon will continue to express a relatively conservative attitude, not only in their choice of public officials, but in their activities in the area of direct legislation.

Popular Participation—Measures and Public Officers: Voter participation on direct legislative proposals over the ten-year period under consideration was generally lower than the vote for the offices of governor or President of the United States. The over-all average participation on all initiative and referendum measures was 81.8 per cent as compared with 82 per cent in the case of the candidates for the offices of state or national executive. It should be noted that the direct legislation average is raised considerably by the inclusion of the two special elections which took place during this period. If these two elections, in which over ninety-eight per cent of the voters going to the polls voted, are excluded, the average number of votes cast for the public officers named is almost two per cent higher than the average number cast for initiated and referred measures. This participation figure is still much higher than that which is found in California, where, in some instances, a difference of almost thirty per cent has been indicated.⁷

Constitutional Amendments Submitted by Initiative or Legislative Reference: In spite of the fact that the voters have accepted a greater percentage of the amendments submitted by the legislature than of those submitted by popular initiative, there has been a greater amount of participation on amendments submitted through the latter process. A reference to Table 3 and Figure 5 indicates that at no election in which both types of amendments were presented did the voters participate more heavily on legislative proposals than they did on those submitted by the people. For the entire period, the legislative proposals received a participation average of 76 per cent of all of those voters casting ballots at the elections as compared to the figure of 82.3

⁷Key and Crouch, *op. cit.*, p. 533. This comparison should be further explained by pointing out that in California the vote for public officers is usually much higher than it is in Oregon.

per cent for the initiated constitutional amendments. The discrepancy is greater if the number of registered voters participating is used as a means of comparison, the legislatively proposed changes in the organic law receiving 52.7 per cent and the initiated proposals receiving 63.9 per cent. It is pos-

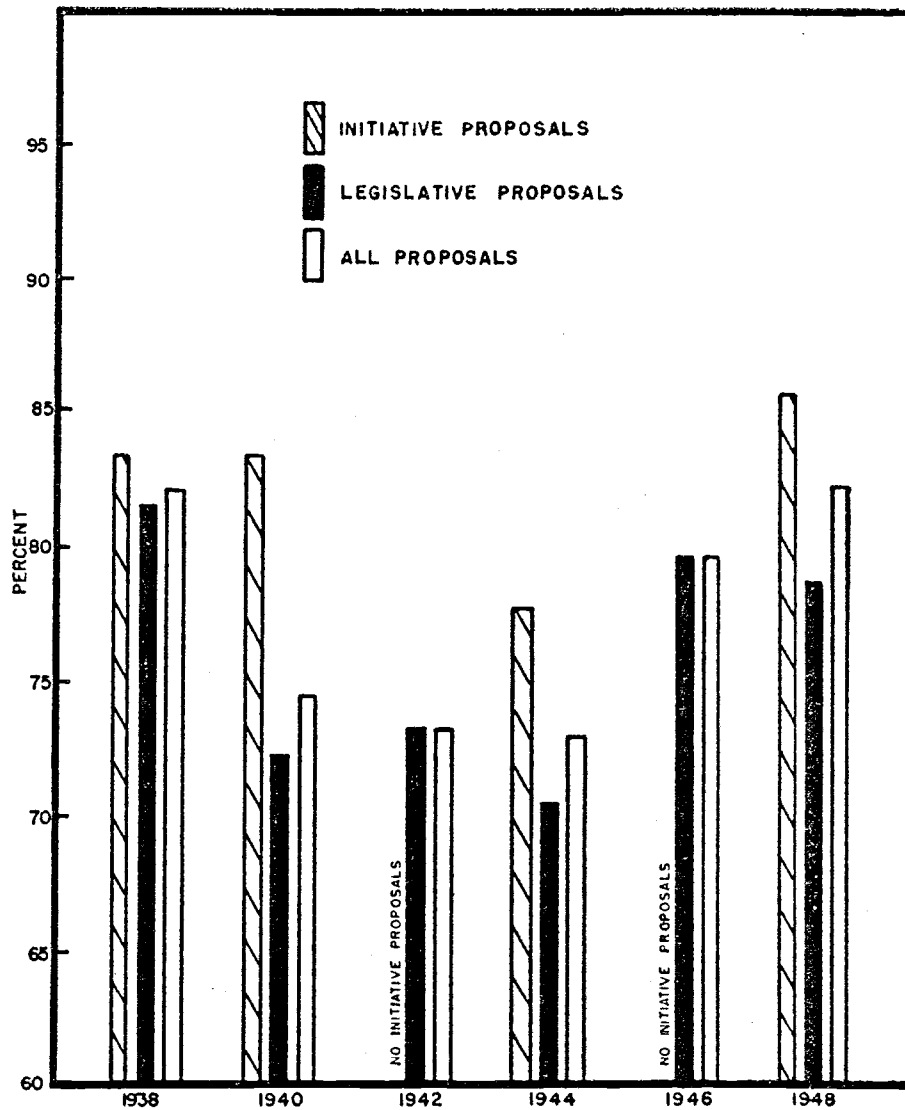


Figure 5. AVERAGE NUMBER OF THOSE VOTING AT ELECTIONS PARTICIPATING ON PROPOSED AMENDMENTS: 1938-1948.

sible to attack this conclusion on the grounds that the legislative figure is based on a greater sampling. Again, a glance at Table 3 would seem to indicate that the exclusion of those constitutional amendments referred by the legislature at elections in which no initiated amendments appeared would not change the figures significantly. It should be noted also that at only one election in which both types of constitutional amendments were submitted did a legislative proposal receive a higher participation percentage than any of the initiated amendments.⁸

Statutory Measures Submitted by Initiative, Obligatory Referendum, Optional Referendum: The situation regarding popular participation on statutory measures differs somewhat from participation on constitutional amendments. A study of Table 3 indicates that the proposals referred by the legislature have kept pace with those presented through initiative petitions. In the case of the 1938 general election the legislative average is actually higher, although it should be noted that only one legislative measure was submitted as compared with five initiative proposals. Even this one measure did not receive the single greatest number of votes, the issue of regulating picketing and boycotting having attracted one per cent more of the voters who went to the polls.

Another important factor bringing up the over-all participation percentage of the optional referendum is the inclusion of three measures appearing at special elections. The exclusion of these measures, all of which received a total vote of more than ninety-eight per cent of the people voting at the elections would change the relationship considerably. This altered situation is made clear by referring to Figure 6. The special elections having been omitted from the diagram, it is evident that there has been a consistently greater popular response to measures submitted through the initiative than through the legislative optional referendum.

Table 3 and Figure 6 also supply sufficient evidence for the conclusion that participation on obligatory referenda is more nearly equal to the participation on statutory measures optionally referred by the legislative assembly. Wherever a logical comparison is possible, it is found that the participation percentages are not very far apart. As in the case of the optional referendum, the special election figure would have to be deleted from the obligatory referendum column before a valid over-all participation com-

⁸See Appendix A, *infra*. One possible explanation for the greater interest expressed toward initiated constitutional amendments may be derived from the fact that these amendments have usually been of more than just a routine character. An amendment legalizing gambling or instituting a gross income tax for the maintenance fund would naturally attract more voters than one dealing with the subject of county-manager government or state reforestation.

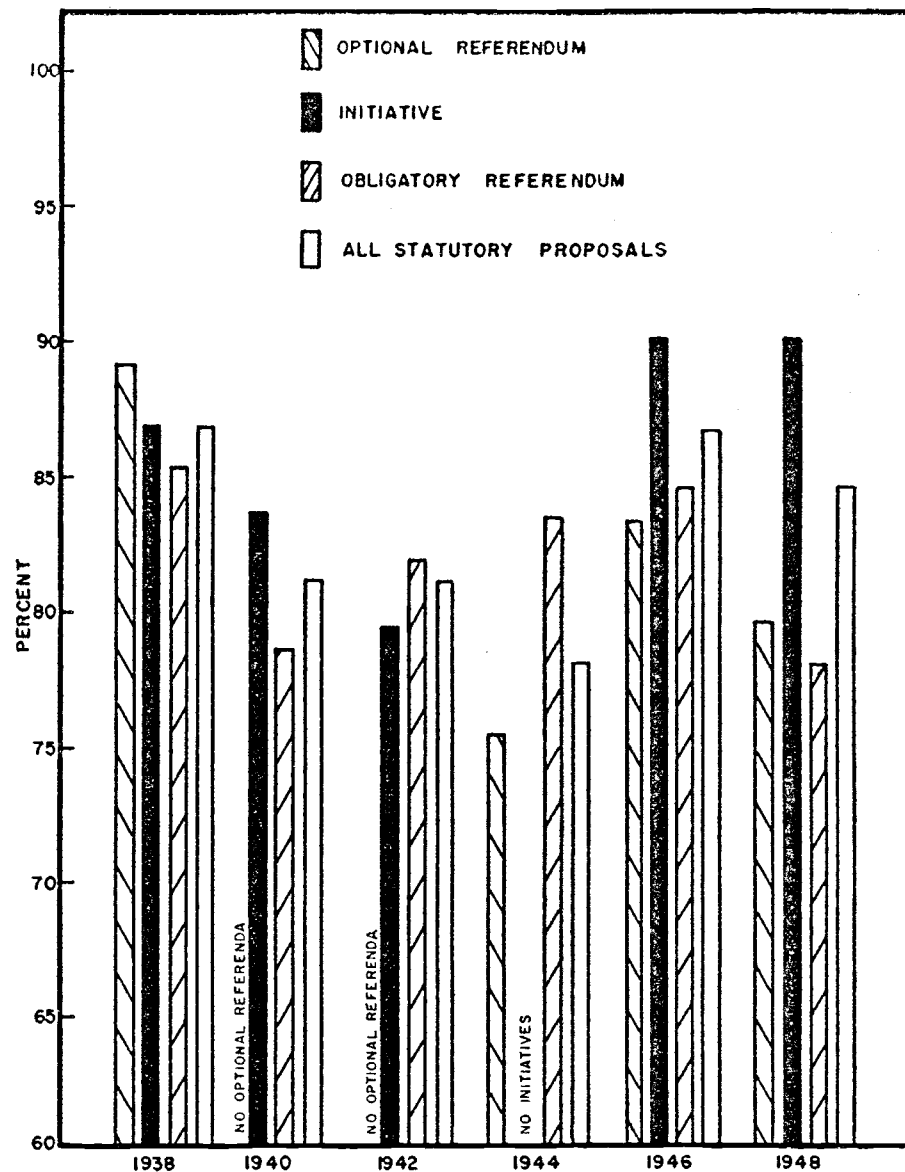


Figure 6. AVERAGE NUMBER OF THOSE VOTING AT ELECTIONS PARTICIPATING ON STATUTORY PROPOSALS: 1938-1948. (SPECIAL ELECTIONS OF JUNE 1945 AND OCTOBER 1947 OMITTED.)

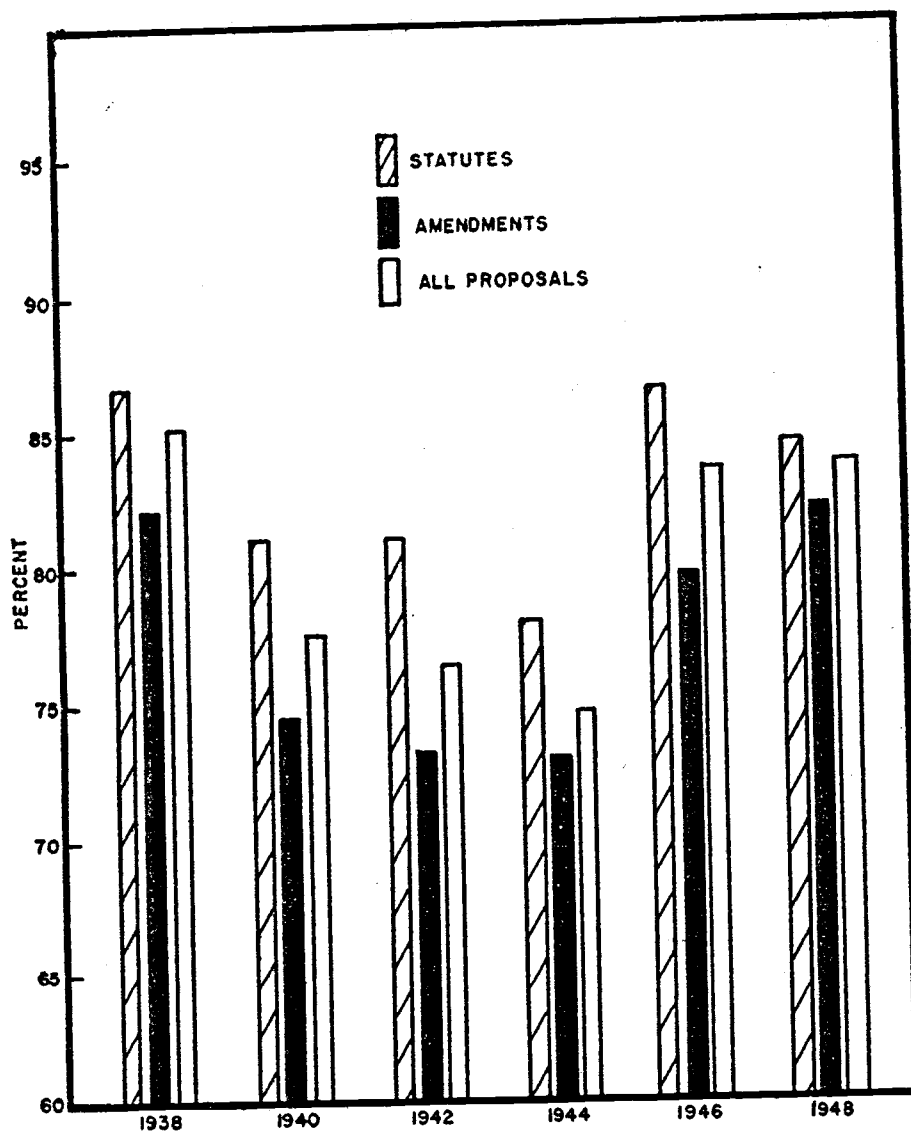


Figure 7. AVERAGE NUMBER OF THOSE VOTING AT ELECTIONS PARTICIPATING IN DIRECT LEGISLATION: 1938-1948.

Table 4. COMPARISON OF POPULAR PARTICIPATION ON AMENDMENTS, STATUTORY MEASURES, AND TOTAL PROPOSALS, 1938-1948

Date	Constitutional amendments			Measures			All proposals		
	Items submitted	Participation		Items submitted	Participation		Items submitted	Participation	
		By those voting at election	By registered voters		By those voting at election	By registered voters		By those voting at election	By registered voters
		<i>Per cent</i>	<i>Per cent</i>		<i>Per cent</i>	<i>Per cent</i>		<i>Per cent</i>	<i>Per cent</i>
November 1938	4	82.0	55.6	8	86.7	59.3	12	85.1	58.8
November 1940	5	74.5	59.7	4	81.0	64.6	9	77.4	62.0
November 1942	4	73.2	39.4	3	80.9	43.8	7	76.4	41.5
November 1944	6	73.0	59.5	3	78.0	63.6	9	74.6	61.0
June 1945 .....	.....	.....	.....	2	98.3	22.8	2	98.3	22.8
November 1946	4	79.7	47.2	5	86.5	51.4	9	83.5	49.5
October 1947 .....	.....	.....	.....	2	98.5	44.5	2	98.5	44.5
November 1948	4	82.1	63.0	7	84.5	65.0	11	83.7	64.0
Totals	27	77.0	55.3	34	85.6	55.9	61	82.3	55.5
Totals with special elections omitted	27	77.0	55.3	30	84.2	59.8	57	81.8	57.9

parison could be made between it and the popular initiative. Again the diagram presented in Figure 6 offers a more accurate means of comparing the popularity of the various types of direct legislative proposals.

One more comment should, perhaps, be made regarding Table 3. In comparing the amount of participation from the standpoint of the number of registered electors voting on the proposals, the special elections should be deleted from the optional and obligatory referendum columns. More voters naturally go to the polls during regular general elections, and not because they are particularly attracted by the initiative and referendum proposals included on the ballot. The difference in the percentage of the registered voters participating in direct legislation in presidential election years as contrasted to the years in which only state officers are elected, supplies the reason for this assertion. The exclusion of the special elections will bring the over-all figures into a more accurate relationship to each other.

Amendments and Statutory Measures: One of the most interesting observations to be drawn from the analysis of the electorate's behavior arises out of a comparison of the participation on statutory measures and constitutional amendments. (See Table 4 and Figure 7.) One would be inclined to assume that the voters, recognizing the state constitution as the instrument containing the fundamental law, would express a greater interest toward constitutional amendments than they would toward statutes. Such has not been the case in Oregon. In no election between 1938 and 1948 was there a greater average participation on constitutional amendments than on statutes. Only in the regular general election of 1948 did the amount of voter participation on proposed changes in the organic law come within reasonable distance of the participation on statutes. With the inclusion of the two special elections, the difference in interest is expressed in the difference between 77 per cent participation on amendments and 85.6 per cent participation on statutes. Omission of the special elections reduces the percentage participation on measures to 84.2, although it should be noted that this omission also has the effect of raising the percentage of registered voters participating in the legislative process. (See Table 4.)

In no specific election did any one constitutional amendment attract more voters than all of the statutes submitted at the same time.⁹ This situation may be cited in support of the thesis that the voters have actually failed to distinguish between the importance of the fundamental law as compared to statutory measures. This explanation appears to be too superficial, however. Professors Key and Crouch, in their study of the California system of direct

⁹See Appendix A, *infra*.

legislation, have suggested one possible reason for this difference in interest. They have pointed out that the function of the initiative is exactly opposite from that of the referendum in the sense that the initiative process is usually put into motion by groups unable to achieve particular ends through the legislature.¹⁰ The measures sponsored by these groups are usually controversial, and, as a consequence, attract the attention of many voters. Since most of them are presented as statutory measures, and since most amendments are referred by the legislature, more organized publicity will be given to the statutes than is given to the amendments. The legislature does not conduct extensive propaganda campaigns in conjunction with the proposals it refers whereas the sponsors of initiative measures do. This situation, coupled with the fact that most legislatively referred proposals are of a routine interest, would seem to account for the difference in voter interest. It is also interesting that whenever a constitutional amendment of more than casual consequence is submitted by the legislature, or by initiative process, the amount of participation goes up significantly.¹¹

The difference in the interest evidenced toward constitutional amendments and statutory measures offers a key to the type of proposals which have attracted the greatest and the least voter participation. Pension, gambling, and liquor issues have led the field as far as voter interest is concerned. Even in those cases where a gambling or liquor proposal was drafted as a constitutional amendment, the amount of interest was very high as compared to the reaction of the people to the other measures presented at the same elections. Other issues which have attracted a large percentage of the ballots cast at the elections were the picketing and boycotting bill, the requirement of a pre-marital examination for women, and the cigarette tax proposals. On the other hand, the amendments providing for increased legislative compensation, the removal of double liability from banking stock, the increased number of senators, the modification of the six per cent limitation, and the institution of county-manager government received the least number of votes at the elections in which they were presented.¹² This observation would seem to lend validity to the conclusion that the voters cast ballots on those proposals which have been kept before the public eye prior to the election.

The Influence of Ballot Position: There is no evidence for the assumption that the position on the ballot has influenced either the success or failure of proposals or the amount of voter participation. That the Oregon voters have been discriminating in their selection of constitutional amendments and

¹⁰Key and Crouch, *op. cit.*, p. 487.

¹¹See Appendix A, *infra*.

¹²*Ibid.*

Table 5. EFFECT OF BALLOT POSITIONS AND OF THE NUMBER OF PROPOSALS PRESENTED ON VOTER PARTICIPATION AND REACTION, 1938-1948

Position on ballot	Proposals adopted	Proposals rejected	Total	Average participation
				<i>Per cent</i>
First	5	3	8	84.1
Second	3	5	8	79.1
Third	4	2	6	78.1
Fourth	3	3	6	78.0
Fifth	4	2	6	79.8
Sixth	2	4	6	81.6
Seventh	5	1	6	84.0
Eighth	0	5	5	85.6
Ninth	2	3	5	86.4
Tenth	2	0	2	85.0
Eleventh	0	2	2	81.5
Twelfth	0	1	1	83.0
Totals	30	31	61	.....

legislative measures is apparent in Figure 8 and Table 5. It will be noted from Figure 8 that of the measures appearing in the first five ballot positions, the voters accepted nineteen and rejected fifteen. This amounts to an adoption of 55.8 per cent of the submissions and a rejection of 44.2 per cent. Of the measures appearing in all of the positions after the fifth, the voters approved sixteen, or 59.5 per cent, and rejected eleven, or 40.5 per cent.

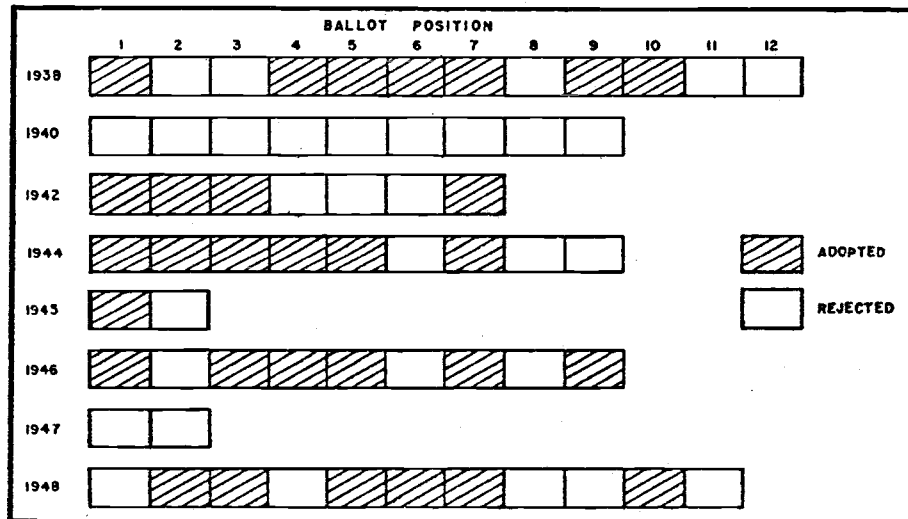


Figure 8. RELATIONSHIP OF BALLOT POSITION TO ADOPTION OF PROPOSALS: 1938-1948.

It should be pointed out that this apparent willingness of the voter to look over the ballot very carefully is due in part to the procedure of listing the proposals referred by the legislature first and the proposals submitted through the obligatory referendum or the initiative after them. As a consequence, it is not unreasonable for the voter to look for those proposals on the ballot which have aroused the greatest interest because of the publicity and propaganda associated with them.

This same factor is undoubtedly responsible for the greater amount of participation on the proposals appearing toward the bottom of the ballot. Table 5 clearly shows that the percentage participation on these proposals is several points above the participation on the issues appearing in the first few ballot positions. This is essentially the participation difference which will be found to exist between measures and constitutional amendments or between proposals legislatively referred as compared to those arising from action of the people.

Nor does the phenomenon of voter fatigue seem to have operated in Oregon over the period being analyzed. It has been generally assumed that the greater the number of proposals presented, the less inclined will be the voter to make a complete ballot. Again this theory is refuted by an analysis of Table 6. Only two of the eight measures appearing in the first ballot position received the greatest number of votes cast, and it must be borne in mind that on one of these occasions this constituted the difference of only a few votes in the special election of 1945. Most of the measures which received the largest number of total votes cast on proposals in each election appeared in the sixth, seventh, eighth, and ninth ballot positions. The same thing is true of the proposals which received the second and third highest number of votes. At the same time, those measures receiving the least number of votes cast appeared very close to the top of the ballot.

This, of course, also reflects the greater interest which has been shown with regard to those proposals emanating from the electorate. Fatigue is a minor consideration when an indignant voter wants to cast his ballot against a liquor bill, gambling proposal, sales tax, cigarette tax, or pension plan. It seems not unreasonable to assume that the votes for or against those measures which have created the greatest amount of public discussion and controversy will reflect the greatest popular participation regardless of ballot position.

Majority and Minority Adoptions: Only two of the sixty-one amendments and statutes considered by the voters were accepted or rejected by a majority of the registered voters. The one accepted was the measure increasing personal income tax exemptions (November, 1948), and the one rejected was the measure authorizing the private sale of alcoholic beverages (Novem-

Table 6. EFFECT OF POSITION ON BALLOT ON TOTAL VOTE CAST ON PROPOSALS, 1938-1948

Position on ballot	Rank according to the total vote received											
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
First	2	1	0	0	1	1	2	0	1	0	0	0
Second	1	1	0	1	0	0	1	1	2	0	0	1
Third	0	0	0	1	1	0	1	1	0	0	1	0
Fourth	0	1	0	0	1	1	1	1	0	0	1	0
Fifth	0	1	1	0	0	3	0	0	0	1	0	0
Sixth	1	0	1	1	1	0	0	0	1	0	0	0
Seventh	1	0	3	2	0	0	0	2	0	0	0	0
Eighth	1	2	0	0	1	1	0	0	0	0	0	0
Ninth	2	2	0	1	0	0	0	0	0	0	0	0
Tenth	0	0	0	0	0	0	0	0	0	0	0	0
Eleventh	0	0	1	0	1	0	0	0	1	0	0	0
Twelfth	0	0	0	0	0	0	0	0	0	0	1	0
Totals	8	8	6	6	6	6	6	5	5	2	2	1

Table 7. DISPOSITION OF PROPOSALS BY MAJORITY OR MINORITY VOTE, 1938-1948

Date	Amendments adopted or rejected								Measures adopted or rejected							
	By registered voters				By voters at election				By registered voters				By voters at election			
	Adopted		Rejected		Adopted		Rejected		Adopted		Rejected		Adopted		Rejected	
	Major- ity	Minor- ity	Major- ity	Minor- ity	Major- ity	Minor- ity	Major- ity	Minor- ity	Major- ity	Minor- ity	Major- ity	Minor- ity	Major- ity	Minor- ity	Major- ity	Minor- ity
November 1938	0	1	0	3	1	0	0	3	0	6	0	2	5	1	2	0
November 1940	0	0	0	5	0	0	0	5	0	0	0	2	0	1	2	0
November 1942	0	3	0	1	0	3	0	1	0	1	1	3	0	0	1	3
November 1944	0	4	0	2	0	4	0	2	0	1	0	2	0	1	0	2
June 1945	0	0	0	0	0	0	0	0	0	2	0	1	0	2	1	0
November 1946	0	3	0	1	1	2	1	0	0	1	0	1	1	0	1	0
October 1947	0	0	0	0	0	0	0	0	0	3	0	2	1	2	2	0
November 1948	0	2	0	2	1	1	1	1	0	0	0	2	0	0	2	0
Totals	0	13	0	14	3	10	2	12	1	16	1	16	10	7	11	6

ber, 1940). It would, perhaps, be unreasonable to require a majority of the registered voters to vote favorably on a constitutional amendment or statute in view of the fact that this provision does not pertain to the selection of public officers. But a reference to Table 7 serves to point out that of the thirteen constitutional amendments accepted by the electorate, only three of them received a majority of the total vote cast at the elections in which they were submitted. The other ten were adopted by a minority of these voters. When one stops to recall that the amount of participation on amendments is below the participation on statutory measures, this defect appears quite significant. Under a system which is supposed to include the essence of democratic government—determination of policy by majority vote—we find the fundamental law being amended, on ten separate occasions within a period of ten years, by a minority of the electors going to the polls.

The greater percentage of voter participation on statutory measures has resulted in a situation not quite so deplorable. It is in this classification that the two statutory measures mentioned above were disposed of by a majority of the registered voters. Of the total of seventeen measures adopted, seven, or forty-one per cent, of them were made law by a minority of those electors voting at the elections. It should be noted too that six of the seventeen measures rejected were disposed of by a minority of the participating voters. This takes on some importance when one considers that five of these constituted rejections of legislative statutes which had been subjected to the obligatory referendum. This problem of minority legislation is a serious one and one which will be considered at greater length in the concluding chapter.

Special Elections: It is extremely difficult to come to any sound conclusions regarding the influence of special elections on direct legislation during the period being discussed, in view of the fact that only two such elections took place. One obvious fact which presents itself is that a much smaller proportion of the registered voters go to the polls in these elections than do at regular general elections. It may be concluded from this that direct legislative proposals alone are insufficient to attract large numbers of voters to the polls. The election of public officials still constitutes the most effective means of encouraging the people to participate in the democratic process.

It may be reasonably assumed that these elections attract, for the most part, only those voters who are more than just casually interested in the proposals presented. Doubtless, there are some who go to the polls out of a deep sense of obligation to a democratic government, but they are probably few in number.

The smaller vote does not mean, however, that the disposition of proposals will necessarily be different in a special election from what it would

have been if the same issues had been presented at a regular general election. In this regard, it is interesting to compare the reaction of the voters to similar issues presented at general and special elections. In the case of the cigarette tax, there is no significant difference in the number of people voting for or against the issue in the three elections in which it was presented. The same thing holds true regarding the reaction of the voters to the sales tax in regular and special elections. Special elections, then, seem to do no more than bring out a representative cross section of the voters, albeit they may be more interested ones.

Expertness in Drawing Up Proposals: There remains to be considered the problem of whether the legislature or the people have done the most reasonable job of drafting constitutional amendments and statutes. This constitutes an extremely difficult thing to gauge in view of the fact that the standard of excellence must necessarily be a subjective one. Recent critics of the initiative have pointed to the confusing pension bill which was passed in 1948, the picketing and boycotting bill of 1938, and the school support measure of 1942 as examples of the extremes to which the voters can go in drafting poorly worded and badly organized legislation. It is undoubtedly true that all of these measures were sorely in need of expert revision. It is also true that some of the other proposals, such as the very lengthy gambling and liquor issues of 1940, could have been improved. But this does not mean that the legislative assembly has done a much better job by comparison. And this holds true in spite of the fact that the representatives are supposed to be experts in this area. Certainly the two gambling statutes referred in 1938, which contained provisions obviously in contradiction to each other, are not examples of expert legislative drafting. And the legislative modifications of the six per cent limitation, a difficult subject to comprehend when lucidly defined, have also become notorious for their needless complexity. The language of the lawyer bent on profundity can be just as confusing as that of the layman attempting to express his ideas in the form of legislation. It may be concluded, then, that both of the major branches of Oregon's legislature—the assembly and the people—have had their ups and downs as far as the expertness with which they have drawn up their proposals is concerned. This shortcoming would appear to be inevitable in the absence of a system wherein real legislative experts are consulted before any piece of legislation or any constitutional amendment is submitted to the electorate.

V

EVALUATION AND CONCLUSION

At the beginning of this study, it was indicated that many arguments have been formulated in support of and in opposition to the Oregon system of direct legislation. An evaluation of these contentions, in the light of the period analyzed, must necessarily precede any suggested changes or modifications of the initiative and referendum processes in Oregon. It is, of course, axiomatic that a conclusion can be only as valid as the evidence upon which it is premised. If this constituted the sole test, however, an appraisal of the initiative and referendum would not present a very difficult problem. The task is made more complex by the fact that what evidence exists can logically be made the basis for a number of varying interpretations. This is especially true in those cases where the element of personal opinion can never be completely divorced from the conclusions drawn. The manner in which one is inclined to view social, economic, and political problems will inevitably exert an influence, subtle or otherwise, over the value judgments drawn regarding the over-all worth of direct legislation. The reader should, then, bear in mind that in the presentation of a question which lends itself in large part to a subjective answer, the conclusion arrived at will represent the personal opinion of the writer. The absence of a purely scientific method precludes the establishment of scientifically valid observations.

THE SYSTEM OF DIRECT LEGISLATION ASSESSED

The Attack Upon the Initiative and Referendum:

In order to avoid confusion, the arguments directed against the initiative and referendum will be presented together with an appraisal of their validity. Those criticisms which have attacked the theory and practice of direct legislation in general will be considered along with those which have had reference to the Oregon system in particular.

(1) *Destruction of Representative Government:* The theory that the initiative and referendum destroyed representative government as it was intended by the Constitutional Fathers to function constitutes one of the major attacks on these political institutions. As was previously indicated, this contention has been officially considered by the Supreme Court of Oregon and by the supreme federal judicial tribunal.¹ Although the United States Supreme Court refused to resolve the question, it seems reasonable to conclude that the Oregon Court was accurate in its conclusion that direct legis-

¹See Chapter II, *supra*.

lation did no more than expand the legislative branch of the government to include the people legislating directly.²

Professor Munro cautioned against the possibility of treating lightly the contention that the initiative and referendum destroy the representative governmental system, pointing out that the decline of the American legislature has gone hand in hand with the reduction in its power.³ Another author, in his discussion of this problem, concluded that representative government would be completely destroyed whenever the Oregon electorate became convinced that of the two distinct legislative bodies in existence, one of them—the legislature—should be destroyed and the other—the people—retained.⁴ It should be noted here, however, that there is a difference in the above contentions. One writer spoke of diminishing legislative power while the other pointed to the complete abolition of the legislative assembly as the signs of the end of a representative system of government. This implies a difference in the definition of what constitutes representative government, and points out the fact that there is some disagreement as to what does or does not constitute such a governmental system.

It is undoubtedly true that the men who framed the United States Constitution, having been acquainted with the various early experiments in pure democracy, rejected complete popular lawmaking as unworkable and undesirable.⁵ It was perfectly clear that the whole country, or one of its constituent states, could not be governed by a town meeting. As a consequence, a system was instituted wherein representatives, elected by the people, determined legislative policy. But this seems to offer no reason for assuming that a system wherein the legislative power is exercised jointly by the legislative assembly and the people would constitute a destruction of the principle of representative government. If, in the final analysis, sovereignty does reside with the people, then it must follow that they enjoy the right to expand or limit the functions of a governmental agency which owes its very existence to the will of the people. Just as the creation of a legislative assembly constitutes an exercise of the power of sovereignty, so does the definition and limitation of the functions of such an institution constitute an exercise of that same sovereignty.

²Cf. Beard and Schultz, *op. cit.*, p. 29, wherein the authors contend that the initiative and referendum would have been violently opposed by the Founding Fathers. Speaking of the constitutionality of direct legislation, these authors suggest that "If the court, however, wishes to apply the spirit of the federal constitution as conceived by its framers, it can readily find justification in declaring a scheme of statewide initiative and referendum contrary to the principles of that great instrument."

³Munro, *op. cit.*, pp. 25-26.

⁴Eaton, *op. cit.*, pp. 114-118.

⁵Oberholtzer, *op. cit.*, p. 485.

Actually, representative government has been undergoing change ever since it was instituted in America. In this regard it has been said that:

The fact is that representative government has been in the process of transformation in the United States from the first assembly of burgesses in Virginia in 1619; and during the nineteenth century state legislatures have been steadily declining in popular esteem. This is not a matter of speculation, for the proof of the statement is to be found in the successive constitutions and constitutional amendments in nearly every important state.⁶

These changes in the organic laws of the states eventually came to include the incorporation of the initiative and referendum in some of the constitutions. Extensive power had been placed at the disposal of the state legislatures as a reaction against the autocratic power wielded by the colonial governors. But experience proved that the people could not place too much reliance in their elective assemblies. The experiences of many states led the voters to the conclusion that the assemblies could be just as autocratic as were the governors under the colonial governments. A redistribution of governmental functions took place, therefore, in an attempt to give the people a more feasible means of exercising control over the political institutions which they had created. In the absence of a system which permitted the people to realize accurate political expression, the people took the only logical step—the assumption of the exercise of functions previously delegated to an agency of their own creation.⁷

The contention that the modification of representative government was compelled by an unwillingness on the part of state legislatures to heed the voice of public opinion has been attacked on the grounds that the people themselves were responsible for the graft and corruption which developed at the state capitals.⁸ But one astute student of this problem stated that to place the blame on the people is to place it nowhere. One can expound at length the shortcomings of an electorate in a democracy and can suggest countless theories whereby the people can be educated to choose their representatives carefully, but government should not be permitted to rot while this transformation is taking place.⁹ Even those men who were opposed to the

⁶Beard and Schultz, *op. cit.*, p. 3.

⁷It has been correctly observed, *ibid.*, p. 12, that the decline of state legislatures has been marked by a steady extension of the principles of popular government.

⁸Lowell, *op. cit.*, p. 139, supported this contention. He suggested that "... a people who can neither trust nor control their representatives is at best imperfectly fitted for popular government."

⁹H. J. Ford, *Representative Government* (New York: Henry Holt and Company, 1924), pp. 153-155. Ford found many defects in the initiative and referendum, and was, therefore, in favor of another system of checking the elected representatives. He pointed out that similar institutions had proved ruinous to the ancient Greeks and Romans and that they were partly responsible for the Reign of Terror which followed the French Revolution. *Ibid.*, pp. 287-288.

initiative and referendum as a cure went on record in favor of some system of providing checks and securities designed to breed a better brand of politicians.

The fact remains, then, that there did exist serious defects in the system of representative government developed in the post-revolutionary era. The inevitable consequence of such a state of affairs was aptly put by Henry Jones Ford who observed:

✓ If representative government is spurious—if windbags and blackguards gain control—then it will be impervious to public opinion. This in turn will bring a violent reaction for reform which will be opposed with vehemence by the vested interests.¹⁰

Such a situation had developed in Oregon and the people reacted. Much of the vociferous opposition to the initiative and referendum came from the vested interests that for many years had dominated the state legislature. Viewed objectively, it cannot reasonably be charged that direct legislation destroyed representative government. Doubtless, the state legislature would be subjected to popular checks which had not previously existed, but the general power of that body to determine legislative policy in the name of the people remained. The advocates of these reforms insisted that they had simply refined representative government so as to provide the people with a more workable means of finding accurate political expression. Whether this purpose has been achieved will be discussed in a subsequent section. At this point it appears safe to conclude that direct legislation does not constitute a serious threat to representative government. Professor Barnett, who considered this problem, had the following to say in concluding his analysis of the criticism:

But whatever the amount of competition with the legislative assembly, from the ever-increasing amount of legislation enacted by the assembly . . . it is clear that there is no danger that the representative legislature will be superseded by the direct action of the people.¹¹

Two other students, in an attempt to answer this attack, averred:

The initiative and referendum, indeed, no more necessarily imply the complete overthrow of the representative principle than does judicial control or the executive veto. . . . It is a matter of degree. Moreover, a study of the initiative and referendum in those states where they have been in vogue shows that representative government is not destroyed. . . . And even in Oregon, where the system has been most extensively used, the legislature has been by no means abolished, or even set on the way to destruction.¹²

¹⁰*Ibid.*, p. 305.

¹¹Barnett, *op. cit.*, p. 166.

¹²Beard and Schultz, *op. cit.*, p. 23.

(2) *Destruction of Legislative Responsibility*: Related to the foregoing criticism is the assertion that direct legislation has the effect of destroying responsibility in the legislative assembly. Thus we find one student of the problem stating that "It may be said that strictly speaking such agencies only abridge representation, but in American practice they reduce the responsibilities of representative bodies in a way that amounts to a division of the authority entrusted to them."¹³ More specifically put, this argument rests largely on the assumption that direct legislation creates timidity in the legislative assembly resulting in a situation wherein they prefer ". . . to refer what they fear to enact."¹⁴

There is, of course, an element of truth in this argument. Although the mind of each legislator who votes to refer particular legislation to the electorate would have to be open to inspection in order to determine the real reason for such action, it can be assumed that some of the extremely controversial legislation referred to the Oregon electorate during the period studied constituted issues which the legislature considered "too hot to handle." It should also be remembered that the assembly will be inclined to refer measures which, if enacted with no provision for a referendum, would be referred by popular petition anyway. Professor Barnett, who studied the early period of direct legislation in Oregon, concluded that there was certainly some evidence appearing from time to time which would lend validity to the assumption that the legislators were shirking their responsibilities. In this regard, he stated:

The constitutional provision which permits the legislative assembly to submit statutes to the people of the state for approval or rejection is vicious in that it may tempt the assembly to shift the responsibility for the enactment of legislation, for which it has been chosen, back upon the electors, and also to add to the already overloaded ballot.¹⁵

But this argument also begs the question. It could just as logically be contended that failure of the legislature to put the optional referendum to use on proposals which are extremely controversial would constitute a failure on the part of that body to carry out its proper responsibilities. The voters instituted the optional referendum for the purpose of allowing the legislature to refer to the people those measures about which it entertained genuine

¹³*Ibid.*, p. 287.

¹⁴Oberholtzer, *op. cit.*, p. 476.

¹⁵Barnett, *op. cit.*, pp. 169-170. In addition to this, Barnett points out that the optional referendum not only results in a shifting of the legislature's responsibility to the people, but also permits the assembly to circumvent the governor's veto since that power does not apply to referred measures. Oberholtzer, *op. cit.*, p. 487, adds that the people have also gained an ascendancy over the judiciary, since they can enact as constitutional amendments those statutes, enacted by direct legislative methods, which the Supreme Court rules unconstitutional.

doubts. Calculated failure to refer such measures would make the assembly susceptible to the very same criticism which is levelled at it because of the allegedly large number of controversial issues left to the disposition of the electorate. In support of this contention, one would simply point to the significantly small number of optional referenda presented to the people over the period under consideration. It would be just as unsound to argue that the lack of submissions is conclusive evidence of the destruction of legislative responsibility as it is to argue that the number of controversial issues submitted points to this alleged defect.

It would appear that this attack on direct legislation has been greatly exaggerated. In these times of increasing legislative activity, the people appear to be content to allow the legislature to make the final decisions with reference to the great bulk of the legislation enacted. It is true that some highly controversial measures have been submitted by the assembly. But who is to prove conclusively the real intent of the legislature in submitting these proposals? This type of submission would appear to constitute the logical circumstance under which the optional referendum should be put into motion. What better means exists of securing the most accurate expression of popular opinion toward a particular measure? Perhaps some measures have been referred which could have been better disposed of by the legislative assembly, but who is to say which of those referred would fall into this classification? The answer to this query would most certainly have to be a subjective one. To obviate the occurrence of any such referenda in the future would entail the abolition of the optional referendum, but there is no evidence which would tend to warrant such drastic action at this time. Legislative responsibility is not destroyed when the representatives seek an expression of public opinion on problems which they find it extremely difficult to resolve. And, so long as the optional referendum remains an integral part of Oregon's direct legislative machinery, there would seem to be much more valid ground for assuming that a failure of the elected representatives to use the machinery would be a shirking of the responsibility imposed upon them by the sovereign electorate.

(3) *Multiplicity of Measures*: Theodore Roosevelt was one of the many persons who feared that the initiative and referendum might result in the inclusion of many issues of a non-fundamental character on the ballot. He cautioned that such a situation would preclude the possibility of the people's making wise decisions on the questions submitted to them.¹⁸ A. L. Lowell suggested that the needless repetition of issues which have been defeated

¹⁸Quoted in Munro, *op. cit.*, pp. 57-58.

would cause the people to weary and thus would discourage participation in the direct legislative function. The development of such a philosophy on the part of a significant proportion of the electorate would then result in the passage of some unwise measures by default. Professor Lowell was convinced that "If a popular vote expresses a real opinion, an enduring opinion, of the electorate, it ought to be accepted as final until such time as the people may reasonably be supposed to have had good ground for changing their convictions."¹⁷ The difficulty here would be the establishment of a time limit for each piece of legislation.

There have been many articles written to the effect that the multiplicity of measures had become characteristic of Oregon's system of direct legislation. Charges were made alleging that trick measures have been submitted under deceitful headings and titles, that many measures have been submitted repeatedly in the face of overwhelming defeats at each submission, that the multiplicity of measures has resulted in a general ignorance on the part of the electorate toward many measures, and that Oregon was acquiring the reputation of being a happy hunting ground for any wild scheme of governmental reform.¹⁸

The period which has been considered in this study would tend to substantiate the charge that there is frequent, and often unjustifiable, repetition of measures which are consistently defeated. Such has certainly been the case regarding the sales tax, cigarette tax, removal of double liability from banking corporation stockholders, legislators' compensation, and liquor and gambling proposals. In many instances, the legislature has been guilty of resubmitting proposals in spite of an obvious reluctance on the part of the electorate to accept them. On the other hand, certain groups, such as the Townsendites and the gambling interests, have evidenced an inclination to keep submitting proposals at each election in the hope that their pet projects would someday slip by the voters. It is when one of these schemes is adopted that the opponents of direct legislation are given an opportunity to denounce popular government.

It has been suggested that one way of preventing needless repetition would be to include a provision in the constitution which would prevent a specific measure or constitutional amendment from being resubmitted for a period of four or six years after having been once defeated at the polls. Such

¹⁷Lowell, *op. cit.*, p. 217.

¹⁸See, for example, Barnett, *op. cit.*, p. 81; Eaton, *op. cit.*, pp. 48-49; Oberholtzer, *op. cit.*, p. 32; Munro, *op. cit.*, pp. 221, 281-283. Richard L. Neuberger, *Our Promised Land* (New York: The Macmillan Company, 1938), p. 145, asserted that "No objective has been too trivial to command the operation of the great governmental institution which was to have made a Canaan in the Far West."

a provision would, however, be susceptible to two major defects. First of all, it would cause unwarranted delay of a proposal which became desirable before the expiration of the time limit when such a proposal could not be classified an emergency measure. Second, it would simply result in a postponement of the proposals to be reconsidered. A better plan would be to require an increasing percentage of signatures on petitions each time that the same proposal is resubmitted within a given period. This would have the effect desired in that it would actually make resubmission more difficult. Since this method would not take care of the resubmissions by the legislature, perhaps a time limitation would constitute the only answer. The ideal situation would be one in which the assembly and the voters could be encouraged to use the processes of direct legislation with discretion, but in the absence of such a situation, some plan of limitation would appear to be the only solution.

(4) *Control of Government by Special Interests:* A criticism closely allied to the alleged defect of multiplicity of measures is the one contending that direct legislation results in the control of government by special interests. It has been asserted that because of the low percentage of signatures required on initiative and referendum petitions, well-organized pressure groups find it relatively easy to get their pet issues before the electorate.¹⁹ This criticism is based in large part on the assumption that the average voter will sign almost any direct legislative petition presented to him without bothering to inquire into its real nature.²⁰ It is a well known fact that many of the circulators who operate in the Portland area are able to get many signatures without having to explain in detail the real import of the petitions. This was one of the reasons for the passage of the law requiring that the statement of the petition's purpose be printed on its cover. In an experiment conducted by the writer, thirty-five persons were approached with two petitions. One of these was an obligatory referendum petition which was designed to refer a statute passed in the 1949 session of the legislative assembly. The statute fixed a uniform standard time for the state. The other was a copy of the initiative petition which had been circulated in 1938 for the purpose of getting the anti-picketing and boycotting measure on the ballot. Of the persons approached, only one of them, an individual of an extremely cautious nature, insisted on a careful reading of the petitions. The others were quite willing to affix their signatures, oblivious of the fact that in one case they were com-

¹⁹Munro, *op. cit.*, pp. 29-30.

²⁰See, for example, Eaton, *op. cit.*, p. 128. This author also contended that fraud in the representation of the nature of petitions is very easily practiced, *ibid.*, p. 147. See also Barnett, *op. cit.*, p. 21, who pointed out that the initiative and referendum have not prevented special interests from finding legislative expression.

elling the submission of a routine statute at the next general election and that in the other, they were signing a petition which was not only invalid but which, if valid, was designed to impose overwhelming restrictions on labor organizations.

It may be argued that this experiment did not constitute a valid and logical sampling. It did, however, serve to indicate that circulators are presented with vast opportunities to perpetrate fraud in the representation of the real nature of petitions. Even if the average voter should make an attempt to read some of the petitions, he would often find the subject matter too difficult to comprehend and would either refuse to sign or would sign in order to rid himself of an obnoxious circulator. On questions which are concerned with subjects other than those involving a fundamental statement of policy, it is unreasonable to assume that the average voter will be able to determine accurately the nature of the measure he is helping to put on the ballot. Under circumstances such as these, it is difficult to rebut the contention that special interest groups have little difficulty in getting their proposals on the ballot. This is especially true when a measure—gambling, liquor, pension, or single tax—is tied to a project aimed at enhancing the general welfare.

However, it must be recognized that the correction of the circulation process will not rid the state of its special interest groups. One may reasonably conclude that all of the groups which operate within a political community constitute special interests. At any given moment the policy which is being put into motion will be that supported by those special interest groups which are then dominant. In most cases it would be impossible to point out the constituent parts of these groups, since they are never completely static, but it can be reasonably assumed that public policy will always be synonymous with the ideas of those groups which have found successful political expression. This leads to the conclusion that these groups, in and of themselves, need not be detrimental to society. It is when they are presented with opportunities secretly to control the policy of government that they may become detrimental to the general welfare.

It should also be noted that no proposal can be brought to vote without some sort of organization behind it.²¹ Thus we find that the Grange, the Oregon State Federation of Labor, private power lobbies, manufacturers' associations, liquor interests, and myriad other groups frequently find it necessary to conduct extensive campaigns in order to get their proposals on the ballot. It would be sheer folly to attempt to rid the political scene of special interests such as these, since they are inevitable in human society.

²¹See Barnett, *op. cit.*, p. 17.

Indeed, any group organized for the purpose of accomplishing this Herculean task would in itself constitute a special interest!

Direct legislation has neither encouraged nor has it discouraged the formation of pressure or interest groups. They existed prior to the advent of popular lawmaking, and undoubtedly would continue to exist in the event that direct legislation should be abolished. Indeed, it may be argued that the initiative and referendum have actually had a salutary effect, in view of the fact that the previously clandestine groups are now compelled to operate in the open.²² What is needed is some system whereby the voters will be discouraged from signing petitions about which they know little or nothing. Only then will they be protected from enacting measures toward which they would be opposed if they understood their real import.

(5) *Petition Hawking*: Twelve years following the advent of the initiative and referendum, one writer remarked that:

The machinery of direct legislation has fallen into the hands of dishonest men who for money and spite have abused the privilege of direct legislation and who in the name of the people have misrepresented our citizenship and brought disgrace upon our state.²³

This particular indictment was based largely on a disgraceful situation in which certain groups, antagonistic toward the University of Oregon, had twice caused the appropriation to the institution to be held in abeyance until a referendum could be held on the legislation. During the judicial proceedings on the sufficiency of the petitions circulated, evidence was presented which led the court to conclude that a tremendous proportion of the signatures were fraudulent and that most of them had been secured by paying professional circulators a sum of money for each signature.²⁴ Since that time there

²²One student of the Oregon system concluded that the advent of direct legislation resulted in a decrease in the number of lobbyists at the state capital. The alleged reason for this was that the lobbyists recognized that the people would refer any obnoxious measure enacted. *Ibid.*, p. 167. The action of the electorate regarding the hydroelectric bill modification would seem to constitute an example of this phenomenon.

²³Eaton, *op. cit.*, p. 128.

²⁴For an interesting discussion of this deplorable situation, see *ibid.*, pp. 144-146. Barnett, *op. cit.*, pp. 64-74, has an illuminating discussion of early petition hawking in Oregon. Among other methods used, paid circulators operated in the county court houses, waylaying persons who had just registered as voters.

The Portland *Oregonian*, October 14, 1911, p. 10, col. 1, commenting on petition circulating, pointed out that "... hard cash is the motive power that turns the petition machinery in Oregon. . . . The petition circulator is paid by the name. He gets the names in the barrooms, cigar stores, on the street corners and at the noon hour near the large factories. He operates where men congregate."

Another writer asserted that "Professional circulators charge from three to five cents for each name secured. These men usually carry more than one proposed measure and the individuals accosted by them are requested to sign their names once, twice, or thrice as the case may be. These men follow the lines of least resistance and secure the names with as little effort as possible." Hedges, *op. cit.*, p. 31.

has been enacted legislation designed to prevent fraud and to outlaw the practice of paid circulation of petitions.²⁵

Doubtless, the situation has improved since the early period. Some objection to the outlawing of paid circulators was voiced on the grounds that such a system would place a premium on dishonesty, thus resulting in a situation wherein the paid circulators would begin to work under cover.²⁶ Another writer felt that ". . . in view of the difficulties of enforcing such a prohibition, it seems that the prohibition would result in hampering those in good faith without preventing the unscrupulous from acting in violation of the law."²⁷ Both of these assertions are partially valid. Although there has been no recent evidence which would lead one to the conclusion that paid circulation is widespread, it does not appear presumptuous to assume that some form of compensation is paid to many of the professional circulators who appear in Portland from time to time. It should also be noted that the administrative machinery of labor organizations and corporations can be used very effectively in the circulation of petitions. But the laws have been effective in the sense that the flagrant misuse of direct legislation which characterized the early period has been largely curtailed. The abuses which remain might be abolished through some new system of circulation. One such system will be discussed later.

(6) *Improper Drafting and Unwise Legislation:* The question of improper drafting of direct legislative proposals by the people was treated in Chapter IV. It was pointed out that there exists no real reason for assuming that the legislature has done a better job of drawing up proposals than have the people. The late Professor Beard saw nothing inherent in the initiative and referendum that precluded expertness in drafting equal to that exercised by the legislative assembly. He felt that the interest groups sponsoring proposals would take great care to draft laws and constitutional amendments properly. In this regard he commented that "All that talent and enterprise which is now employed extralegally in the drafting of bills for legislatures may be drawn upon in the drafting of bills for popular initiation."²⁸

It is true, of course, that measures proposed by the legislature must pass both houses before being accepted. Theoretically, each bill would be subjected to two critical readings as contrasted to a situation in which an initiated proposal would be subjected to no constructive criticism. But in reality, the great bulk of the legislation passed in the state legislature is unknown in

²⁵See Chapter II, *supra*. See also *State v. Olcott*, 62 Ore. 277.

²⁶Hedges, *loc. cit.*

²⁷Barnett, *op. cit.*, p. 62.

²⁸Beard and Schultz, *op. cit.*, p. 35.

detail to most of the representatives. Both the legislature and the people, then, will be guilty, from time to time, of submitting proposals very poorly drawn.

The question as to whether the initiative and referendum have encouraged the passage of unwise legislation and constitutional amendments is much more difficult to answer. What is wise or unwise in politics will depend almost entirely on the individual's personal opinion regarding specific measures. Under some circumstances, such as the passage of the 1948 pension plan, many people who favor a particular principle will object to the specific implementation of that principle through a statute or constitutional amendment. But even then there are many people who consider the legislation or amendment wise (as evidenced by the great amount of indignation expressed when the legislature emasculated the pension plan mentioned above). Certainly there were many who felt that the legislature acted wisely when it modified the hydroelectric bill, and they undoubtedly deplored the fact that a great majority of the voters who went to the polls repealed the action of the assembly.

There are in Oregon today many voters who favor the construction of a Columbia Valley Authority along the organizational lines favored by the present national administration. There are many who are violently opposed to this plan. Who is objectively to determine which point of view is the wiser? Depending on the individual involved and the standard of appraisal used, the cards can be stacked in favor of either the legislature or the people of Oregon regarding the soundness of the proposals submitted and enacted or rejected. The only conclusion that can be drawn, therefore, is that both of these legislative agencies have had their periods of legislative profundity and that both of them have erred. This is certainly a part of the democratic process, and, although the people may someday enact a proposal which may prove politically, economically, or socially catastrophic, it must be conceded that in a democratic system, they must necessarily retain the right to make this choice.

(7) *Minority Legislation and Constitutional Amendments:* The analysis conducted in the preceding chapter served to indicate that a significant number of the statutes and constitutional amendments adopted were passed by a minority of those electors participating in the election. If representative government is designed to protect minorities against the arbitrary action of the majority, it must also be designed to protect the majority against the action of a minority. If the initiative and referendum in Oregon encourages minority legislation, then, according to some critics, it would seem to be open to a very serious criticism.

Professor Lowell attacked direct legislation not only on the ground that a minority of the voters can enact legislation but also on the ground that a very small segment of the electorate can get measures on the ballot without regard to the wishes of the public in general. During his discussion of this alleged shortcoming, he avowed that ". . . it is hard to see how the right of a small minority to raise issues uncomfortable for the majority is giving effect to public opinion."²⁹ This attack is a unique one. Professor Lowell failed to recognize that within state legislatures a minority consisting of any one representative is perfectly free to raise issues which may be extremely uncomfortable to the majority. After this has been accomplished, a majority of the legislators are free to defeat the proposal. The same thing does, or should, apply to the process of direct legislation. And, as has been accurately observed, anyone who argues dogmatically for vote by a majority will have to engage in some serious soul-searching when investigating the methods in which legislation is passed in the average state legislature.³⁰

It has been suggested that this alleged defect in the Oregon direct legislation system could be removed through the institution of a constitutional provision prohibiting any statute or constitutional amendment from becoming effective unless it receives a majority of all of those votes cast at the election in which the proposal is presented. The institution of such a procedure has been deemed by many students of government to be of especial importance with regard to constitutional amendments. This idea is based on the contention that changing the fundamental law by a minority vote constitutes an extremely undemocratic process.

The type of minority legislating and constitutional amending which is made possible under the existing direct legislative machinery in Oregon can be compared to the type of minority legislation emanating from those state legislatures in which the more heavily populated areas of the state are under-represented. Very often, the same persons who denounce direct legislation in Oregon on the ground that it permits minorities to determine policy are the ones who are violently opposed to any plan to reapportion the state legislature on the basis of population as required by the basic law. Unfortunately, this obvious inconsistency frequently goes unobserved.

Superficially, it would appear that the suggested change in the vote required of direct legislative proposals would make for a more accurate expression of public opinion in the case of those statutes and constitutional amendments considered by the voters. This position rests heavily on the assumption that those voters who refrain from casting ballots on direct legis-

²⁹Lowell, *op. cit.*, p. 222.

³⁰Beard and Schultz, *op. cit.*, p. 41.

lative proposals have no opinion at all. This may be the case in some instances, but it has also been wisely suggested that the failure of some voters to cast ballots might actually be an indication of intelligence.³¹

It is too simple to jump to the conclusion that the voter who fails to cast a ballot on particular proposals has no interest in them. What is all too often overlooked is the fact that some of the voters who do not cast ballots are aware of the proposals but may not care whether they are accepted or rejected. This is not necessarily an indication of a sterile attitude. It may actually constitute a real opinion—for implicit in this silence may be the voter's willingness to acquiesce in whatever decision is reached. This attitude would explain the differences which exist at any election between the total number of votes cast on the various proposals. It is not unreasonable to conclude that there will always be some proposals about which some of the voters, who participate in direct legislation generally, will entertain a neutral attitude.

But to require that all proposals must receive a majority of all of those votes cast at the election abolishes this neutral position. It results in a situation in which the failure to vote constitutes a vote against the proposal. That this assumption is unreasonable in many cases is self-evident. Under the existing procedure in Oregon no assumption is made other than that the voter will abide by the decision of those who do vote. This is certainly a far better view to take than would be the one involving an attempt to impute a "no" vote in the non-voter. The machinery of direct legislation—whether in the area of constitutional amendments or statutory measures—should not be designed so as to place a premium on the failure to participate in the democratic process. It would be more desirable to permit some minority enactments in Oregon than it would be to institute a system, such as has been suggested and which is now used in some states, which would make changes in the fundamental law extremely difficult, if not impossible.

(8) *Weakened Constitution*: Speaking of the 1902 amendment which brought Oregon's initiative and referendum into being, one writer remarked that the alteration had removed whatever safeguards had existed regarding constitutional amendments, thereby reducing the basic law to the same level as statutes.³² Another student of the system claimed that ". . . it is clear that so far as initiative legislation is concerned, there is no constitution in

³¹Cf. *ibid.*, pp. 37-38. These authors suggested that popular neglect of issues that are not of a fundamental importance is inevitable. On the other hand, Culbertson, *op. cit.*, p. 496, considered the failure of electors to vote to be "the weakest link in Oregon's scheme of popular government."

³²Walker, *op. cit.*, p. 448.

Oregon."³³ Generally considered, the charge that the amendment of the organic law by initiative process results in the abolition of any distinction between the constitution and ordinary statutes constitutes one of the most serious criticisms of direct legislation. The reason for this contention was explained by one author as follows:

This tends to incorporate in the constitution matters that have no proper place there. . . . If there be any difference between constitutional and other laws, the former ought surely to require a greater degree of consideration and, therefore, a more deliberate procedure.³⁴

Oregon's experience with direct legislation has tended to substantiate these observations. Prior to 1902, only three amendments were made to the organic law over a period of fifty years. In the half century since the adoption of the constitutional initiative, over sixty amendments have been accepted.³⁵ As was indicated in the preceding chapter, many of the initiated constitutional amendments dealt with subjects, such as gambling and liquor, which, some writers feel, could better be included in the statute books. Constitutional amending by the initiative certainly does not encourage the generally recognized necessity of shortening state constitutions. If only two of the initiated amendments had been accepted by the voters, the length of the basic law would have been increased one and one-half times.

In a political atmosphere wherein a distinction is drawn between the fundamental law and ordinary statutory matters, there would appear to be justifiable reason for criticizing any system which would tend to destroy this distinction. If this distinction does remain a fundamental concept of American political theory, it must be admitted that the initiative and referendum in Oregon have had the effect of weakening this tenet. In actual practice, Oregon's experience with direct legislation has served to indicate that the voters do not differentiate between statutes and constitutional amendments. They have been inclined to pay the most attention to those matters which have involved the greatest amount of public discussion, regardless of classification.

Are the political leaders of the state bound, therefore, to institute a change in the direct legislative procedure which would make it difficult or impossible for the electorate to place in the fundamental law matters which, by some standards, should more logically be found in the statute books? It may be that the people do not want to continue to maintain a distinction between the state constitution and ordinary statutes. If one were to judge by the actions of the electorate at the polls, this assumption would appear to be

³³Barnett, *op. cit.*, p. 182.

³⁴Lowell, *op. cit.*, p. 218.

³⁵See Appendix A, *infra*.

more reasonable than that which insists that the people continue to reserve a special position for that body of principles encompassed in the constitution. If this is the case, it may be concluded that any attempt to prevent the people from freely modifying the basic law in any way they choose would be undemocratic. It is, after all, only the sovereign electorate that has the power to determine the manner in which it will conduct its governmental affairs.

In the realm of political abstraction, the failure of the electorate properly to differentiate between the fundamental law and ordinary statutory matters may be a shortcoming. But if one is to view this problem realistically, it is obvious that Oregon, through the initiative and referendum, is doing exactly what has been done by other states through the medium of constitutional conventions. It is possible (but not categorically true) that this tendency is bad in theory. Oregon's experience indicates that the practice has not brought about any serious catastrophe. There is no indication that the basic law has been seriously weakened by the inclusion of certain provisions which some critics would restrict to the statute books. Some nations not following the distinction in question have managed very well without this differentiation. The abolition of the distinction among the states does not appear to involve any serious threat to democratic government. And, even if some shortcoming could be pointed out as resulting from the abolition of the distinction, it should be remembered that it is the people who will decide what the nature of their political institutions shall be.

(9) *High Cost of Direct Legislation:* It has been alleged that the cost of direct legislation has been high when compared to the results achieved. Again, this would seem to involve a matter of personal opinion. Although the complete cost of each measure submitted would be difficult to determine, it is possible to assess the cost of the *Official Voters' Pamphlet*, which has run into thousands of dollars in recent years, and the amount of money officially reported by the organizations and individuals campaigning for and against measures. In addition to these, direct legislation increases the cost of the election since it necessitates more ballot space and more personnel to tabulate the vote. There are also the service expenses involved in the drafting of measures, the circulation of signatures, the filing of petitions, and the verification of signatures.

In view of the fact that there has been no comparative study of the cost of direct legislation as compared with like measures passed by the legislature, it would appear unsound to draw any final conclusions on this subject. Some highly controversial measures presented to the electorate have cost well over one hundred thousand dollars, but no one has made a study of how much lobbyists have expended in the past in order to push a similar measure

through the legislature. This entire problem would make an excellent subject for another study. It is sufficient to remark at this point that in the absence of concrete comparative evidence, those who attack direct legislation because of allegedly excessive cost are standing on very uncertain ground.

The Defense of the Initiative and Referendum:

The advocates of direct legislation in Oregon had several arguments to present in support of the system. Most of these arguments have been reiterated to the present day by those who defend the initiative and referendum against some of the attacks pointed out in the foregoing section. The major contentions in support of the system will be briefly considered and appraised below.

(1) *Guarantee of Popular Sovereignty:* It has been said that the people of Oregon adopted direct legislation not as an end in itself, but:

... because it was considered a means to an end for securing certain changes and reforms which the people of Oregon have been unable to secure through the legislative assembly, or through the somewhat slow process of changing the Oregon Constitution.³⁶

There were others who felt that the only way in which representative government could fulfill its proper function (responsibility to the people) was through a transfer of the legislative power to the people themselves. Because it was felt that the state legislatures did not actually represent the wishes of the electorate, the people decided to take matters into their own hands.³⁷

It may be generally conceded that the people of Oregon have been given the opportunity to find accurate political expression. The obligatory referendum affords a means whereby they can repeal action taken by the assembly, and the initiative gives them the means whereby they are enabled to supplement, in the form of statutes or constitutional amendments, whenever the legislature has failed to act.

(2) *Checks on the Legislative Assembly:* The materialization of a tyrannical legislature is allegedly obviated by the existence of the initiative and referendum. As was pointed out above, the voters are given an opportunity to force action on an apathetic legislature and may prevent the enactment of legislation that does not meet with the approval of the voters. In this latter regard, the referendum has been called the only sure remedy for the abolition of political corruption and bribery.³⁸

³⁶Eaton, *op. cit.*, p. 124.

³⁷See, for example, J. A. Smith, *op. cit.*, pp. 354-355.

³⁸J. R. Commons, *Proportional Representation*, 2d ed. (New York: The Macmillan Company, 1907), p. 309.

Allied to this argument is the contention that the initiative and referendum would have the effect of preventing "boss rule" and control of the legislature by special interests. The *Portland Oregonian*, commenting on this favorable feature, editorialized as follows:

It would tend powerfully toward the suppression of legislation in which individuals, groups, and corporations have special interests. Such legislation now is often put through without the knowledge of the people. . . . No predatory measure could be carried before the people. The legislative lobbyist would be put out of business.

The referendum is an obstacle to too much legislation; to surreptitious legislation; to legislation in particular interests; to partisan machine legislation; and to boss rule.³⁹

This quotation is typical of the great faith which many Oregonians placed in the new instruments of popular government. Some of these fine purposes have been accomplished, although it must be recognized that none of the evils have been completely removed. One might observe that the ability of political bosses and machines to adjust to altered circumstances was greatly underestimated by the protagonists of direct legislation. It is true that following the inauguration of the initiative and referendum, the caliber of the state legislature improved. But this phenomenon was also true of those states which did not adopt a system of direct legislation. When one points out that Oregon today does not seem to have as much "boss rule" as have some other states, it must be remembered that, comparatively speaking, Oregon never had very much. Nevertheless, it must be conceded that direct legislation has weakened the power of the city or rural "boss."

The same situation which makes for effective popular control of the legislature has led to the charge that the legislative assembly has been guilty of a diminished responsibility. Even if this assertion were true, it would not constitute a sufficient reason for re-establishing a situation in which the assembly could defy the people at will. In view of the fact, however, that the writer feels the responsibility has not been destroyed, this feature of direct legislation appears the most important and effective argument in its favor.

(3) *Effective Control of Special Interests*: This argument was considered in part under the section dealing with the assertion that direct legislation has fostered control by special interests. It was there pointed out that if it accomplishes nothing else, direct legislation does compel the special interest groups to operate in the open. After this phenomenon has occurred, it is hoped that the voters will be less influenced by the appeal of special interest groups than will be the legislature.⁴⁰

³⁹Quoted in Thompson, *op. cit.*, p. 79.

⁴⁰See R. G. Gettell, *Political Science*, rev. ed. (Boston: Ginn and Company, 1949), p. 277, for a list of arguments for and against direct legislation.

The action of the electorate from 1938 to 1948 would seem to indicate that the people are as susceptible to special interest propaganda as is the legislature. The passage in 1948 of the pension plan and the measure restricting commercial fishing on the Columbia River are examples of special interest measures accepted by the people.

(4) *Voter Education and the Fostering of Interest*: A great deal of emphasis has been placed by the advocates of direct legislation on its educational value. Theoretically, the knowledge that he would now be able to participate intimately in the determination of policy would spur the voter on to take a greater interest in elections in general and in legislative matters in particular. The authorization of the *Official Voters' Pamphlet* was an outgrowth of this idea. Commenting on this supposed effect, one writer suggested that "When the voter became a legislator. . . he received a new stimulus to familiarize himself with the subject matter of laws and constitutions."⁴¹ Another author concluded that "There ought to be no doubt in the minds of those who have watched the workings of direct legislation in the past few years that this system does promote popular discussion of public measures."⁴²

But there are several reasons for doubting that the average voter has become either more educated, interested, or responsible as a result of direct legislation. The *Official Voters' Pamphlet*, which is theoretically a great contribution to voter education, is probably read by only a very small proportion of the voters who go to the polls.⁴³ And of those persons who do bother to read it, it is obvious that only a small percentage of them understand the real meaning of many of the proposals. It is a strong-willed individual who will sit down and read with care many of the extremely complex measures submitted at each election. The writer found, for instance, that not one of some seventy college students and college graduates polled understood the nature of more than fifty per cent of the proposals presented at the general election of 1948. There does exist, then, a point of diminishing returns for those people who make an earnest attempt to acquaint themselves with the more complex proposals. And reading the ballot titles will not be of any great assistance since they are in many instances grossly misleading.

Another reason for doubting the effectiveness of direct legislation in educating and arousing interest in the voter is to be found by investigating the vote on various measures. First of all, there are many voters who do not bother to vote at all on the direct legislative proposals. One author has

⁴¹Lobingier, *op. cit.*, p. 343.

⁴²Munro, *op. cit.*, p. 24. See also Eaton, *op. cit.*, p. 122.

⁴³Hedges, *op. cit.*, p. 33.

suggested that this is not a valid criticism in view of the fact that some measures are considered unimportant and, therefore, do not attract the attention of the voter.⁴⁴ But this author fails to recognize that approximately twenty-five per cent of the voters participating in an election never vote at all on the proposals. And it must be conceded that of those voting on the proposals, a certain percentage will participate in direct legislation only as a matter of form. The low percentage of registered voters who participate in a special election would seem to give some evidence as to the real number of genuinely interested electors.

Secondly, it should be remembered that the electors express the greatest interest, as measured by participation, in those measures receiving the greatest amount of publicity. From this it may be concluded that press and radio advertisements have been much more effective in influencing the voter than has the *Official Voters' Pamphlet*. This means that propaganda rather than objective analysis is what motivates the greatest number of voters. It is for this reason that we found a greater percentage participation on initiative measures than on constitutional amendments; and on liquor and gambling measures as contrasted to county management and the voting privilege forfeiture.

Thus it may be concluded that although direct legislation has undoubtedly had some salutary effect in the area of voter education, the advocates of the system will often be inclined to overemphasize this particular feature.

Appraisal:

A few years after the initiative and referendum had been instituted in Oregon, two students of American government made the following observation:

. . . a decade of usage failed to produce either the grave evils that had been foretold by the prophets of calamity or the drastic changes dreamed of by the apostolic Populists who brought the new engines of democracy upon the American political scene.⁴⁵

This observation has held true to the present day. The accomplishments of direct legislation have been many. The direct presidential primary, the recall of public officials, the direct election of United States Senators, the corrupt practices act, the provision for the *Official Voters' Pamphlet*—all have been singled out as major contributions to the theory and practice of democratic government. It has been pointed out that other states, without any system of direct legislation, have instituted these same reforms, but it is

⁴⁴Lobingier, *op. cit.*, p. 345.

⁴⁵C. A. Beard and M. Beard, *The Rise of American Civilization* (New York: The Macmillan Company, 1947), vol. 2, p. 559.

to Oregon's credit that she spearheaded the movement in that era in which it was fashionable to refer to this state as the "political experiment station" of the nation.

But the lofty hopes of the advocates of the initiative and referendum have not been completely realized. One observer of the Oregon scene was led to conclude a few years ago that:

The Oregon System was swept in on a wave of reform. Almost ever since it has lain stranded on the beach of reaction. It has been a step backwards as often as it has been a stride toward the promised land.⁴⁶

This statement would appear to be a bit harsh, and it was undoubtedly influenced by the fact that it was made in the year that Oregon voted the anti-picketing and boycotting bill into existence. It is nevertheless true that the machinery of popular government has served reaction on occasion as well as it has served those who sincerely believe in progressive reform. And the system has also served the crackpots, the special interests, and those groups with a particular axe to grind. It has not shown itself to be the panacea for all that ails democratic government. The millennium in politics has not arrived in Oregon, and, if the experience of the past fifty years is to afford some sort of gauge whereby the future can be predicted, it may be reasonably concluded that the millennium will still be long in coming.

Neither have all of the predicted dire consequences materialized in the half century of direct legislation in Oregon. Representative government remains, and the legislature is free to exercise absolute discretion with regard to the great bulk of legislation enacted. There are, however, some defects in the system which have been singled out above and which, in the opinion of the writer, can be ameliorated. The concluding section of this chapter will, therefore, be devoted to a series of suggested reforms which are designed to wipe out some of the more significant imperfections in the initiative and referendum.

SUGGESTED REFORMS

(1) *Direct Legislative Reference Service*: In order to avoid the type of complications brought about by the 1948 pension plan, the state should provide an agency which would assist the people in the drafting of proposed statutes and constitutional amendments. Such a service, which should be made compulsory and should be performed gratuitously, would go a long way toward abolishing the criticism that the people draw up measures very loosely and improperly. The cost of maintaining the service would certainly

⁴⁶Neuberger, *Our Promised Land*, pp. 149-150.

be more than offset by the fact that costly litigation would be cut to a minimum under the circumstances. It is useless simply to state that the legislature has done a more expert job in drawing up proposals when it can be shown that the people are denied the expert advice which is made available at no cost to the representatives at the state capital.

(2) *Circulation of Petitions:* It is the opinion of the writer that petition hawking still remains an important problem. In addition to this, the experiment mentioned above served to point out that the average voter will sign almost any petition presented to him. In order to prevent hawking, fraud, and misrepresentation, the petitions should be placed in the offices of the county clerks and in the hands of the various election registrars throughout the state. Anyone desiring to sign a petition would then be compelled to go to the clerk's office or to one of the registrars in order to do so. In addition to abolishing fraud and petition hawking, such a system would go far toward guaranteeing that only those people with a real interest in the proposals would bother to sign. Proposals receiving a sufficient number of signatures would be a more accurate gauge of public opinion than is the case under the present system of circulating. Such a system would also have the effect of preventing the needless repetition of many proposals at one election after another.

This suggestion is open to the criticism that many of the voters in the sparsely inhabited areas in the state would not be given an equal opportunity to sign the petitions. This defect could be remedied, however, by placing the petitions with the local postmasters. These voters would certainly have as great an opportunity to sign as they have at the present time, since it is a known fact that circulators concentrate their activities in the largely populated areas of the state.

(3) *Number of Signatures Required:* Professor Barnett suggested that if a system of circulating petitions such as the one described above were adopted, the percentage of signatures required might actually be reduced.⁴⁷ This suggestion does not sound unreasonable, unless it can be shown that the number of signatures required under the existing system is much too low. The greater problem here, however, lies in the failure of the Oregon requirements to distinguish between initiated statutes and initiated constitutional amendments. If the voters of Oregon want to maintain some sort of distinction between fundamental law and ordinary legislation, the process of amending the constitution by popular initiative should be made more difficult. Under such a distinction, whatever the percentage set with regard to the number of signatures necessary for a sufficient statutory initiative petition,

⁴⁷Barnett, *op. cit.*, p. 75.

the percentage for the constitutional initiative would be higher. One cannot logically expect the voters properly to differentiate between constitutional amendments and statutes, if no attempt at differentiation is made in the system of direct legislation itself. If, on the other hand, there is to be no legal or theoretical distinction maintained, then no attempt should be made by the legislature, the courts, or the people to verbalize a difference between constitutional and statutory provisions which difference does not exist in fact. To maintain a theoretical distinction without providing the machinery which would guarantee it in direct legislation is an inconsistency which has left popular lawmaking in Oregon open to criticism.

(4) *Avoid Complete Circumvention of Legislature:* One modification of the Oregon system would decrease cost, reduce the burden of the long ballot, and increase the morale of the legislative assembly. This would involve a system wherein the statutes initiated by popular petition would be submitted to the legislature for its consideration and disposition. If that body failed to enact the measure as it was initiated, it would then be submitted to the people at a general or special election. In order to prevent unwarranted delay, the legislature would be compelled to take some action on the proposal within a specified time limit. The short delay which might be caused in some instances would be more than compensated for by the salutary effects this change would induce.⁴⁸

(5) *Require Source of Revenue for Appropriations Measures:* One of the most serious defects in the Oregon system of direct legislation stems from the fact that initiative measures appropriating funds can be enacted without any indication as to how the appropriation will be supported. Such was the case with the 1948 pension bill which sought to compel the legislature to invade any of the reserve funds for the purpose of supporting an old-age pension plan. The same situation has arisen many times in the past and has always placed the legislature in the embarrassing position of having to provide additional funds for the purpose of supporting an appropriation voted by the people. The position has been embarrassing because any attempt to provide the funds through a sales or cigarette tax or through some modification of the six per cent limitation was certain to be referred by the people and defeated. In addition, the legislature has been violently attacked for having attempted to increase the already heavy tax burden.

⁴⁸The initiative process in the state of Washington is subjected to this restriction. See D. H. Webster, E. H. Campbell, and G. B. Smith, *The Legislature and the Legislative Process in the State of Washington* (Seattle: Bureau of Governmental Research and Services, University of Washington, 1942), p. 20. Professor Barnett, *op. cit.*, p. 165, also approved of this system.

An attempt was made in the 1949 legislative session to change the regulations pertaining to the initiative so as to require that every initiated measure proposing the expenditure of funds include the means whereby the necessary revenue was to be raised. The bill was passed in the lower chamber but met with a decisive defeat in the Senate. Some legislators did not want to leave themselves open to the charge that they were attempting to curtail the people's power. Nevertheless, the proposal was sound, and some further consideration should be given to the possibility of incorporating this requirement in the Oregon system.

(6) *Restrict Direct Legislative Proposals to Fundamental Questions:* A survey of the types of proposals presented to the people over the period studied leads to the conclusion that there are those who must consider the electorate's ability to legislate to be infinite. It is difficult to understand how any one can demand that the electorate vote wisely on direct legislation or claim that the electorate is well informed regarding the proposals submitted. Some of the measures presented have been so complex as to tax the ingenuity of legislative experts and experienced jurists. In some cases the complexity of measures has been premeditated in an effort to confuse the voter. In other cases, the very nature of the proposals has necessitated the maze of legal and technical terminology. Regardless of the reason for it, the fact remains that many of the proposals simply do not lend themselves to a simple "yes" or "no" answer on the part of the electorate.

Many students of direct legislation have suggested that direct legislative proposals be restricted to fundamental questions of public policy.⁴⁹ One of them actually concluded that the highly technical nature of many revenue measures, rather than a basic conservatism on the part of the voters, was responsible for the frequent defeat of these proposals.⁵⁰ It has also been generally recognized, however, that it is frequently very difficult to classify an issue as fundamental or non-fundamental. Many proposals which are unquestionably concerned with public policy, such as pensions, county management, and regulation of alcoholic beverages, will frequently contain extremely complex provisions.

But this does not mean that some reform could not be instituted. The people could be given the opportunity to express an opinion on a general principle while leaving the implementation of the principle to the assembly.

⁴⁹See, for example, Barnett, *op. cit.*, pp. 40-41; Lowell, *op. cit.*, p. 161; Walker, *op. cit.*, p. 456.

⁵⁰Barnett, *op. cit.*, pp. 118-119. This author also felt that the complexity of many issues was largely responsible for those instances in which the electorate voted contrary to its real intentions, *ibid.*, p. 111.

Failure adequately to please the voter would result in the defeat of the enacted measure through the obligatory referendum. Failure of the legislature to take any action at all could be checked by a provision permitting the people to present the entire comprehensive statute or amendment through the initiative process.

These constitute the basic changes which the writer thinks should be made in the Oregon system of direct legislation. No suggestion is made that the system be abolished. Two reasons for this may be cited. First, it is clear that a majority of the people in Oregon absolutely favor the initiative and referendum. To many of them, the system represents the nearest possible approach to a pure democracy. They have recognized that the system has its imperfections, but these appear too trivial to warrant any radical change in the basic machinery. Whether or not Oregon will be persuaded to modify the system in the future will be determined, in large part, by the political and economic effects which future measures will have. Second, it would appear that the remedy for the graft and corruption which permeated the legislature prior to 1902 has not been worse than the disease. Corruption has not been completely wiped out, but it has been significantly modified. Other complications have arisen which would seem to indicate that the remedy itself needs some modification, to be sure, but this is a matter for the electorate to determine through the regularly constituted democratic processes of government. Up to the moment, it cannot be demonstrated that the people of Oregon have conducted themselves in a manner which would justify the abolition of direct legislation.

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APPENDIX A

DIRECT LEGISLATION IN OREGON, 1938-1948

Type of proposal and short title	Ballots cast		Proportion of registered electors who voted on proposals	Electors voting in election	
	In favor	Against		Voted on proposals	Voted on winning side
REGULAR GENERAL ELECTION: NOVEMBER 8, 1938			<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
Total number of registered electors: 557,871					
Total number of electors participating: 386,014					
<i>Constitutional Amendments</i>					
Increasing governor's time limit on bill consideration from five to twenty days ¹	*233,384	93,752	58.6	84.7	60.5
Repealing double liability of stockholders in banking corporations ¹	133,525	165,797	53.5	77.6	43.0
Increasing the compensation of state legislators ¹	149,356	169,131	57.1	82.5	43.8
Legalizing certain lotteries and other forms of gambling ²	141,792	180,329	57.8	83.4	46.7
<i>Statutory Measures</i>					
Extending pre-marital physical examination to women ¹	*277,099	66,484	61.5	89.0	71.8
Directing legislature to petition congress for constitutional convention ²	*183,781	149,711	59.7	86.4	47.5
Authorizing transactions tax for maintenance of retirement fund ²	112,172	219,557	59.5	85.9	56.9
Regulating picketing and boycotting by labor unions ²	*197,771	148,460	62.2	89.9	51.2
Authorizing creation of board to study water pollution problem ²	*247,685	75,295	57.9	83.7	64.2
Tightening regulation over sale of alcoholic beverages ²	118,282	222,221	61.0	88.2	57.6
Authorizing sheriffs to seize slot machines and to destroy them on court order ³	*204,561	126,580	59.4	85.7	52.9
Prohibiting slot machines, authorizing summary destruction ³	*197,912	129,043	58.6	84.6	51.3
REGULAR GENERAL ELECTION: NOVEMBER 5, 1940					
Total number of registered electors: 613,428					
Total number of electors participating: 489,441					
<i>Constitutional Amendments</i>					
Removing office time limit on secretary of state and state treasurer ¹	163,492	213,797	61.6	77.2	43.7
Making three years' average people's voted levies new tax base ¹	129,669	183,488	51.0	64.0	37.5
Repealing double liability of stockholders in banking corporations ¹	157,891	191,290	56.9	71.3	39.1
Increasing the compensation of state legislators ¹	186,830	188,031	61.1	76.6	38.4
Legalizing certain gambling, lotteries and other gambling devices ²	150,157	258,010	67.0	83.3	43.7
<i>Statutory Measures</i>					
Abolishing presidential primary; changing primary date from May to September ³	156,421	221,203	61.5	77.1	42.2
Extending the regulation of sale and use of alcoholic liquor ³	158,004	235,128	64.1	80.3	48.0
Authorizing the private sale of alcoholic beverages ²	90,861	309,189	65.1	81.7	63.2
Repealing state milk control law ²	201,983	213,838	67.8	84.9	43.7

DIRECT LEGISLATION IN OREGON, 1938-1948 (Continued)

Type of proposal and short title	Ballots cast		Proportion of registered electors who voted on proposals	Electors voting in election	
	In favor	Against		Voted on proposals	Voted on winning side
			<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
REGULAR GENERAL ELECTION: NOVEMBER 3, 1942					
Total number of registered electors: 534,522					
Total number of electors participating: 288,730					
<i>Constitutional Amendments</i>					
Increasing the compensation of state legislators ¹	*129,318	109,898	44.8	82.9	44.8
Repealing the rural credits loan fund ¹	*101,125	88,857	35.4	65.6	35.1
Specifying exclusive uses for gasoline and motor vehicle tax ¹	*125,990	86,332	39.2	75.2	43.6
Authorizing legislative regulation of suffrage forfeiture ²	101,508	103,404	38.0	70.9	35.8
<i>Statutory Measures</i>					
Authorizing a tax levy on cigarettes ³	110,643	127,366	44.6	82.4	44.1
Restricting net fishing in coastal streams and bays ³	97,212	137,177	43.9	81.1	47.5
Distributing surplus funds to school districts and providing for the reduction of taxes therein ²	136,321	92,623	42.9	79.3	47.2
REGULAR GENERAL ELECTION: NOVEMBER 7, 1944					
Total number of registered electors: 602,013					
Total number of electors participating: 490,711					
<i>Constitutional Amendments</i>					
Permitting banks to provide alternative means of securing depositors ¹	*228,774	115,745	57.3	70.3	46.6
Authorizing creation of managerial form of county government ¹	*175,716	154,504	54.8	67.3	35.8
Authorizing tax for and creating veterans loan fund ¹	*190,520	178,581	61.3	75.2	38.8
Authorizing legislative regulation of suffrage forfeiture ¹	*183,855	156,219	56.5	69.3	37.5
Increasing state tax fund for public school support ²	177,153	186,976	60.5	74.2	38.1
Authorizing gross income tax for maintenance of pension fund ²	180,691	219,981	66.6	81.5	44.8
<i>Statutory Measures</i>					
Levying tax to provide educational aid to certain war veterans ¹	*238,350	135,317	62.1	76.1	48.6
Imposing tax on retail sales of tangible personal property ¹	96,697	209,276	60.8	74.6	54.9
Limiting sale of fortified wines to state stores ³	*228,853	180,158	67.9	83.3	46.6
SPECIAL ELECTION: JUNE 22, 1945					
Total number of registered electors: 560, 536					
Total number of electors participating: 130,049					
<i>Statutory Measures</i>					
Authorizing tax levy for state building fund ¹	*78,269	49,565	22.8	98.3	60.2
Authorizing a tax levy on sale of cigarettes for school support ¹	60,321	67,542	22.8	98.3	51.9

DIRECT LEGISLATION IN OREGON, 1938-1948 (Continued)

Type of proposal and short title	Ballots cast		Proportion of registered electors who voted on proposals	Electors voting in election	
	In favor	Against		Voted on proposals	Voted on winning side
REGULAR GENERAL ELECTION: NOVEMBER 5, 1946			Per cent	Per cent	Per cent
Total number of registered electors: 593,542					
Total number of electors participating: 351,502					
<i>Constitutional Amendments</i>					
Changing line of succession to governor ¹	*221,547	70,322	49.2	83.0	63.0
Authorizing Chinese persons to hold real estate, mining claims ¹	*161,865	133,111	49.8	84.0	46.0
Permitting legislative bills to be read by title only ¹	*145,248	113,279	43.6	73.6	41.3
Increasing number of senators from 30 to 31 ¹	88,717	185,247	46.3	78.0	52.7
<i>Statutory Measures</i>					
Authorizing tax levy for construction of state armories ¹	75,683	219,006	49.8	83.8	62.3
Establishing rural school districts and school boards ¹	*155,733	134,673	48.9	82.3	44.3
Regulating fishing in coastal streams and inland waters ³	*196,195	101,398	50.1	84.4	55.8
Authorizing income tax for state old age pension fund ³	83,374	244,960	55.8	94.3	69.8
Creating basic school support fund by annual tax levy ²	*157,904	151,765	52.2	87.8	44.9
SPECIAL ELECTION: OCTOBER 7, 1947					
Total number of registered electors: 554,044					
Total number of electors participating: 250,249					
<i>Statutory Measures</i>					
Taxing retail sales for school, welfare, and governmental purposes ¹	67,514	180,333	44.7	98.9	72.0
Authorizing tax levy on sale of cigarettes ³	103,794	140,876	44.2	97.8	56.0
REGULAR GENERAL ELECTION: NOVEMBER 2, 1948					
Total number of registered electors: 694,635					
Total number of electors participating: 533,829					
<i>Constitutional Amendments</i>					
Modifying the six per cent limitation on tax levies ¹	150,023	268,155	60.2	78.4	50.3
Authorizing indebtedness for state reforestation ¹	*211,192	209,317	60.5	78.8	39.6
Removing property qualifications from school district elections ²	*284,776	164,025	64.6	84.1	53.3
Providing a state bonus for World War II veterans ²	198,283	265,805	66.8	87.0	49.8
<i>Statutory Measures</i>					
Authorizing creation of a delinquent boys' camp ¹	*227,638	219,196	64.3	83.8	42.6
Restricting state power to purchase private power projects ³	173,004	242,100	59.8	77.9	45.4
Directing legislature to expand old age pension system ²	*313,212	172,531	70.0	91.0	58.7
Increasing personal income tax exemptions ²	*405,842	63,373	67.6	88.0	76.1
Authorizing the sale of liquor by-the-drink ²	210,108	273,621	69.7	90.6	51.2
Prohibiting salmon fishing on Columbia River with fixed appliances ²	*273,140	184,834	65.9	85.9	51.2
Authorizing transfer of income tax surplus to general fund ³	143,856	256,167	57.7	75.1	48.0

¹Submitted by the legislative assembly.

²Submitted by initiative petition.

³Submitted by obligatory referendum.

* Proposals accepted.

APPENDIX B

CONSTITUTIONAL PROVISIONS REGARDING DIRECT LEGISLATION IN OREGON

Article I, section 21. “. . . nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution; provided, that laws locating the capital of the state, locating county seats, and submitting town and corporate acts, and other local and special laws, may take effect or not, upon a vote of the electors interested.”

Article IV, section 1. *“Legislative Authority—Style of Bill—Initiative and Referendum.* The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, 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 8 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 the 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 5 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 90 days after 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 the 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 Oregon.’ 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 justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petitions 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 other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor."

Article IV, section 1-a. "*Initiative and Referendum on Local, Special, and Municipal Laws and Parts of Laws.* The referendum may be demanded by the people against one or more items, section, or parts of any act of the legislative assembly in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of that act from becoming operative. . . ."

Article IV, section 20. "*Subject and Title of Act.* Every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

Article IV, section 21. "*Act to Be Plainly Worded.* Every act and joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms."

Article IV, section 22. "*Mode of Revision and Amendment.* No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth and published at full length."

Article IV, section 28. "*When Act to Take Effect.* No act shall take effect until 90 days from the end of the session at which the same shall have been passed, except in case of emergency; which emergency shall be declared in the preamble or in the body of the law."

Article IX, section 1-a. "*Tax Exemption.* No poll or head tax shall be levied or collected in Oregon. The legislative assembly shall not declare an emergency in any act regulating taxation or exemption."

Article XIV, section 1. "*Seat of Government to Be Determined by Vote of People.* The legislative assembly shall not have power to establish a permanent seat of government for this state. But at the first regular session after the adoption of this constitution, the legislative assembly shall provide by law for the submission to the electors of this state at the next general election thereafter, the matter of the selection of a place for a permanent seat of government; and no place shall ever be the seat of government under such

law, which shall not receive a majority of all the votes cast on the matter of such selection."

Article XIV, section 3. "*Seat of Government, How Removed—Public Institution, Location of.* The seat of government, when established as provided in section 1, shall not be removed for a term of twenty (20) years from the time of such establishment, nor in any other manner than as provided in the first section of this article. All the public institutions of the state not located elsewhere prior to January 1, 1907, shall be located in the county where the seat of government is, excepting when otherwise ordered by an act of the legislative assembly and is ratified by the electors of the state at the next general election following such act, by a majority of all the votes cast on the question of whether or not such act shall be ratified."

Article XVII, section 1. "*Amendments to Constitution, How Made.* Any amendment or amendments to this constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the secretary of state to the people for their approval or rejection, at the next regular general election, except when the legislative assembly shall order a special election for that purpose. If a majority of the electors voting on any such amendment shall vote in favor thereof, it shall thereby become a part of this constitution. The votes for and against such amendment or amendments, severally, whether proposed by the legislative assembly or by initiative petition, shall be canvassed by the secretary of state in the presence of the governor and if it shall appear to the governor that the majority of the votes cast at said election on said amendment or amendments, severally, are cast in favor thereof, it shall be his duty forthwith after such canvass, by his proclamation to declare the said amendment or amendments, severally, having received said majority of votes, to have been adopted by the people of Oregon as part of the constitution thereof and the same shall be in effect as a part of the constitution from the date of such proclamation. When two or more amendments shall be submitted in the manner aforesaid to the voters of this state, at the same election, they shall be so submitted that each amendment shall be voted on separately. No convention shall be called to amend or propose amendments to this constitution, or to propose a new constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular general election. This article shall not be construed to impair the right of the people to amend this constitution by vote upon an initiative petition therefor."

APPENDIX C

INITIATIVE AND REFERENDUM PETITION FORMS

WARNING

It is a felony for any one to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a legal voter.

INITIATIVE PETITION

TO THE HONORABLE EARL SNELL, Secretary of State of the State of Oregon:

We, the undersigned citizens and legal voters of the State of Oregon, respectfully demand that the following proposed law (copy attached) shall be submitted to the legal voters of the State of Oregon, for their approval or rejection at the regular general election to be held on the eighth day of November, A. D. 1938, and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oregon; my residence and postoffice are correctly written after my name.

NAME	RESIDENCE (If in a City, Street and Number)	POSTOFFICE	PRECINCT (Give Name or Number)
1.....
2.....
.....
19.....
20.....

STATE OF OREGON

County of } ss.

I,
being first duly sworn, say: That every person who signed this sheet of the foregoing Petition, signed his or her name thereto in my presence; I believe that each has stated his or her name, postoffice address and residence correctly, and that each signer is a legal voter of the State of Oregon and County of

Subscribed and sworn to before me this.....

day of.....A. D. 193.....

Notary Public for Oregon.

Signature of circulator of this sheet of petition.

(Postoffice address of Notary, including street and number,
if in a City or Town)

MY COMMISSION EXPIRES.....

(Postoffice address of circulator of this sheet of petition
with street and number, if in a City or Town)

Bill Regulating Picketing and Boycotting By Labor Groups and Organizations

INITIATIVE AND REFERENDUM PETITION FORMS (Continued)

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure or to sign such petition when he or she is not a legal voter.

Petition for Referendum

To EARL T. NEWBRY, Secretary of State of the State of Oregon:

We, the undersigned, citizens and legal voters of the state of Oregon, respectfully order that House Bill No. 454 entitled "An act relating to and providing a uniform standard of time in Oregon and requiring certain matters to conform thereto; providing variation thereof under certain conditions," passed by the Forty-fifth Legislative Assembly of the State of Oregon at the regular session of the legislative assembly, shall be referred to the people of the State for their approval or rejection at the regular election to be held on the 7th day of November, 1950, and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oregon; my residence and postoffice are correctly written after my name.

NAME	RESIDENCE (If in a City, Street and Number)	POSTOFFICE	PRECINCT (Give Name or Number)
1.....			
2.....			
19.....			
20.....			

STATE OF OREGON

County of } ss.

I, being first duly sworn, say: That every person who signed this sheet of the foregoing Petition, signed his or her name thereto in my presence; I believe that each has stated his or her name, postoffice address and residence correctly, and that each signer is a legal voter of the State of Oregon and County of

Subscribed and sworn to before me this.....

day of.....A.D. 1949

Notary Public for Oregon.

Signature of circulator of this sheet of petition.

(Postoffice address of Notary, including street and number,
if in City or Town)

MY COMMISSION EXPIRES.....

(Postoffice address of circulator of this sheet of petition
with street and number, if in City or Town)

PROVIDING UNIFORM STANDARD TIME IN OREGON