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THE CASE AGAINST THE REFERENDUM.

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THE CASE AGAINST THE REFERENDUM.

THE proposal to establish the Referendum in this country seems to have entered, temporarily at least, the sphere of practical politics. How long it will remain within that holy of holies probably depends upon how long its official sponsors continue to cherish the illusion that, once established, it can be so restricted as to make it a reliable instrument for the defence of hereditary privilege. It is never wise, however, to count upon the early dissipation of a political illusion, no matter how fragile, and for the present we must assume that the Conservative leaders seriously intend to incorporate the Referendum in our political system at the earliest opportunity.

The proposition has been so little discussed that it is not easy to estimate the forces which will be ranged on either side. So far the Liberals have found no difficulty in making up their minds, since it is fairly obvious that at the moment they have all to lose by the Referendum and nothing to gain. But whether their minds will remain made up in the same sense under all political circumstances may be doubted. The experience of other countries seems to have been that whilst the party in opposition generally favours any proposal to introduce or extend the use of the Referendum, the party in power is always hostile to it—which, indeed, is precisely what one would expect. At all events, there is no reason why Liberals as Liberals should be permanently opposed to the Referendum. Sooner or later the proposal is likely to find friends and enemies in every political camp; and if we are to form any sort of stable judgment upon the worth of the Referendum as an instrument of democratic government we must ignore as far as possible its bearings upon current politics, and examine its intrinsic worth, not as a bar to Home Rule or Tariff Reform, but as a part of some definite and intelligible theory of government. That, at all events, is what is attempted here.

Definition of Terms.

The subject is not sufficiently familiar in England for definitions to be unnecessary.

THE REFERENDUM is a popular vote for or against a law or an alteration of the constitution which has already been passed by the legislature. It may be "compulsory" or "optional," according as to whether it has to be applied as a matter of course or only on the demand of a certain proportion of the electorate.

THE POPULAR INITIATIVE is a device by which a certain number of electors can demand the adoption of a law or constitutional amendment. The demand may (1) be in general terms, or (2) take the

form of a Bill already drafted. In the first case, if the legislature approves it proceeds to draw up a Bill embodying the proposal, which is then submitted to the popular vote; if it disapproves, it may call for the decision of the electorate before it drafts the Bill. In the second case (which is distinguished as the "formulated initiative"), the law which is demanded must be submitted at once to the popular vote in the exact form and phraseology in which it has been drafted by its promoters. Not so much as a comma must be altered by the legislature, which, however, generally has the right, if it wishes, of submitting at the same time an alternative Bill of its own.

DIRECT GOVERNMENT (as opposed to Representative Government) may be said to exist where the Referendum and the Initiative are both freely used by the electors without restriction as to time or subject. By its chief advocates in the United States it is accurately described as "majority rule," pure and simple.

History of the Referendum.

Historically the Referendum is the offspring by unbroken descent of the primitive mass meeting of self-governing citizens. Both in Switzerland and in the United States, the only countries where it flourishes to-day, the whole body of citizens were from the earliest times (in the Swiss cantons from the thirteenth century, and in the American colonies from their foundation) accustomed to exercise all the functions of government for themselves in open assembly. This direct control over the affairs of State was never entirely surrendered, and when the assemblies of all the citizens became impracticable and more and more powers had to be delegated to representative councils, the Referendum came into being gradually and naturally, not as an accession of popular power, but as a mere retention by the sovereign people of certain important powers in their own hands. In its earliest form, in both countries, the Referendum consisted simply in the reference of a law from the Legislative Council to the communes or townships, the citizens of which thereupon met together and decided what answer they should send to the Council. It is thus not easy to say precisely when the Referendum as we know it came into existence.

The United States.—It is clear, however, although it was advocated by Victor Considérant and many of the "men of 1848," that it cannot be described as an invention of modern democracy. It was included in the programme of constitutional reform (the "Agreement of the People") which the Levellers tried to force upon Cromwell in 1647; and it was certainly in use in the Puritan colonies of America in something very like its present form during the earlier half of the seventeenth century.* Throughout the eighteenth century it continued to

* One of the first recorded instances of its use took place in Massachusetts on May 29th, 1644, when the legislative body of this Puritan colony conveyed an earnest request to the elders and freemen to "take into serious consideration whether God do not expect that all the inhabitants of the plantation allow to magistrates and all that are called to country service a proportionate allowance. . . ." This seems to have been an early demand for "payment of members."

Subsequently the Declaration of Independence was agreed to in this and other colonies by Referendum, and the number of votes given for and against the new constitution of 1780 after the war, is definitely on record.

be employed occasionally, and when, after the War of Independence, the young States set about the business of drafting constitutions for themselves they nearly all included as a matter of course a provision whereby the first draft itself, and all future amendments which might be proposed, should be confirmed by a direct vote of all the citizens. One State at least (Georgia) included also a provision for the employment of the popular Initiative for constitutional amendments.

From that time onwards the Referendum has been in regular use for constitutional purposes in all the States of the Union except Delaware. But it was not until almost the end of the nineteenth century that it began to be applied to ordinary legislation. This development was partly due to propaganda, partly to the fact that ordinary laws were so often held to amount to alterations of the constitution that the distinction between the two became uncertain and unimportant.*

In 1898 South Dakota led the way to a still more important development by formally adopting not only the Referendum, but the Popular Initiative as well, for all legislative purposes. Its example has since been followed by ten or twelve other States, and there is no reason to suppose that it will end with these. It appears, indeed, that we are about to witness throughout the United States an experiment in Direct Government on an immense scale, a scale restricted only by the not very important limitations of State, as compared with Federal, legislative activity. Already in a single decade a mass of material has been accumulated which, as soon as it is made available for the political student, will cause him to forsake for ever the little Swiss Republic which has hitherto so monopolized his attention.

Switzerland.—At present, however, Switzerland cannot be ignored. The history of the development of the Referendum and Initiative in Switzerland is remarkably similar to their history in America, and need not be detailed. The Initiative has been in use rather longer in the Cantons than in the States, but otherwise the differences are merely those due to the different character of the populations. At the present time the position in Switzerland is briefly as follows. In the Federal Government the Referendum is compulsory for constitutional amendments, and is applied to ordinary laws upon the demand of thirty thousand electors. The Popular Initiative (for which fifty thousand signatures are necessary) is applicable in either the "formulated" or general form to constitutional amendments, but not to ordinary laws. The distinction, however, here, as in America, is of little consequence, since practically any law can be drafted as an amendment of the constitution. In all the Cantonal Governments the Referendum is compulsory for constitutional amendments, and in some places for all ordinary legislation that is not expressly excepted. The Initiative is also freely used, though its form differs from canton to canton.

* This distinction, which was formerly the basis of the whole political system of the United States, was founded on the consideration that the constitution alone possessed the high sanction of a direct vote of the people. The extended use of the Referendum, by giving all sorts of laws the highest possible sanction, has now practically obliterated the distinction in most of the States. In Federal affairs, however, where there is no Referendum for any purpose, it is still of the utmost importance.

Australia.—The only country outside Switzerland and the United States in which the Referendum is in use is Australia. It appears to have been tentatively introduced in an advisory form in South Australia in 1896, when the Government called for a popular vote on the question of religious teaching in the State schools. The purpose of this vote was not to confirm any law, but merely to elicit the opinion of the electors, and the experiment has not been repeated. When Federation took place, however, the Referendum was definitely adopted in the Constitution of the Commonwealth, which provided that any future amendment must be confirmed both by a majority of all those voting in the Commonwealth and by a majority of those voting in a majority of States. The new Constitution was itself submitted to a popular vote in 1898 and rejected. It was then modified and accepted by another vote in 1900. The first amendment was submitted and passed in 1906, and two further amendments were submitted in April, 1910, one of which was accepted and the other rejected.*

It will be noticed that the three countries in which the Referendum has established itself—if, indeed, it can be said to be yet established in Australia—are all of them federations of States with a very large measure of local autonomy. This is a very important fact, the significance of which will be apparent when we come to consider the practical merits and defects of Direct Legislation as applied to a large and centralized sovereign State.

English Local Government.—All that need be added here to complete the brief descriptive summary which has been given is a reference to the fact that a form of Referendum has long been in use in this country—and possibly elsewhere—in local and municipal affairs. Certain adoptive Acts, such as the Public Libraries Act, have required a poll of the ratepayers to be taken before they could be put into force in any district; and upon various other questions of local government, like the purchase or lease of tramways, the electors have the right of demanding a poll after a Town or Parish meeting has been held.† The public interest, however, attached to the Referendum as a municipal institution has never been very great, and with the growth of large and fully responsible local authorities it seems likely to fall more and more into disuse.

The Inevitable Corollary of the Referendum.

We now come to the real subject of this paper: the pros and cons of the proposal to introduce the machinery of the Referendum

* The amendment which was rejected concerned certain complicated adjustments between the Federal and State finances which had been agreed to at a special conference of the Premiers of the different States. It is improbable that more than a very few of the electors understood the proposal which they voted against—which may have been the reason why they voted against it.

† It is interesting to notice that as with Referendum in America and Switzerland, so with this English practice of taking a "poll of the parish": at no time did it appear as a democratic innovation, it arose as a perfectly natural development when parish meetings and "open vestries" of the ratepayers grew to an unwieldy and impossible size. It was, indeed, in law, merely an adjournment of the vestry meeting in order to take a vote of those whose presence was presumed. See "The Parish and the County," by Sidney and Beatrice Webb.

for use in this country in national and Imperial affairs. The first important point to be considered is whether it would be possible, having once introduced the Referendum, to restrict its application or to prevent the development of a system of Direct Legislation as complete as that which exists in Switzerland and America.

The experience of America goes to show that as long as the use of the Referendum is confined to questions which can properly be described as constitutional there is no marked tendency on the part of the electors to demand its extension to other purposes ; but as soon as for one reason or another it begins to be applied to matters of ordinary legislation the momentum of its development becomes irresistible, and cannot be checked until its scope has been widened to include all possible subjects of legislation, and its inherent limitations corrected by the addition of the Popular Initiative.

Now the actual proposal which has been put forward in this country is clearly to apply the Referendum to ordinary legislation, to anything which the House of Lords or some other undefined authority chooses to regard as "revolutionary"; it may be a Budget, a Church Disestablishment Bill, or even a mere Licensing or Education Bill. There is, therefore, good reason to suppose that if this proposal is carried out by any future Government it will either prove abortive, because incompatible with the spirit of our political institutions, and shortly be repealed ; or else within a comparatively few years the rest of the machinery of Direct Legislation will be added unto it and it will become possible to submit "Right to Work" Bills, and "Conciliation" Bills and the like, to a vote of all the people by means of the formulated Initiative. Moreover, quite apart from the experience of other countries, there are strong reasons why this should happen. It is scarcely likely at the present juncture, when new legislation is being demanded on all hands and the chief complaint that is heard is of the slowness and the comparative barrenness of the Parliamentary machine, that the mass of the electors will remain content with the mere power of checking their representatives. The chief Conservative advocate of the Referendum, Professor Dicey, habitually refers to it as the "National Veto," apparently regarding the description as a tacit recommendation. But it may be safely asserted that the majority of electors at the present time are far more interested in the abolition than in the creation of vetoes upon the action of Parliament. Moreover, it would need but a short experience of the Referendum to teach the electors that the power of framing the question is scarcely less important than the power of voting upon it.

For all these reasons it is impossible to consider the establishment of the Referendum in this country except as a first instalment of a more or less complete system of Direct Legislation which, although it would not of course displace, would modify fundamentally the whole of our representative system. We are therefore justified in treating the issue as one not merely between the adoption or non-adoption of a restricted and rarely used Referendum, but between the essential principles of Direct and Representative Government.

The Case for Direct Government.

Let us consider first the chief arguments in favor of Direct Legislation. The general contention of its advocates is, of course, that by no other means is it possible to ensure that "the will of the people" shall prevail. Thus Mr. J. A. Hobson urges that "there is no certain way of determining this fact (*i.e.*, whether a law is 'acceptable to the body of the people') unless an opportunity is afforded to ask the people." This assertion plainly begs the whole question at issue, namely, whether the people should be asked to give their judgment upon a Bill, a mere legal document, or upon an Act, the practical merits or defects of which they have experienced. The same may be said of all arguments which refer to "the will of the people" as a definite and easily ascertainable fact. They all beg the question of how the real "will of the people" may be discovered, which is, of course, the crux of the whole matter. Instances might be adduced from the experience of the American States of laws having been enthusiastically adopted by large majorities which turned out to represent in practice anything but "the will of the people."

Another argument for Direct Legislation, an argument which in the United States carries decisive weight with the mass of the people, is that it destroys the power of vested interests by making corruption practically impossible. This no doubt is true. Where the representatives of the people not only have their price, but can find some one eager to give it to them, there you have, not democracy at all, but plutocracy in its worst form, and every democrat in such circumstances becomes of necessity a staunch advocate of the Referendum. But it must be remembered that it is only certain flagrant forms of corruption obvious to the elector that can be effectively checkmated by the Referendum, and that the argument has therefore little application in this country. Moreover, it is worth noting that if the possibility of securing honest representatives be granted, the point of the argument is immediately reversed. For it is clear that wealthy vested interests which can control the Press must always be able to influence the electors far more easily than they can influence any reasonably honest and public-spirited representative assembly.*

* In 1890 an amendment of the Swiss Constitution providing for the subsequent establishment by law of universal accident and invalidity insurance was enthusiastically adopted by an enormous majority (283,328 ayes, and 92,200 noes). But before the law itself could be drafted and passed through the legislature a campaign was organized by the insurance companies and wealthy employers regardless of expense. A special paper was started to oppose the law, and posters were showered all over the country. As a result when the voting day came the law was rejected. (*The Swiss Democracy*, H. D. Lloyd and J. A. Hobson.)

This incident is interesting, because it is always contended by advocates of the Referendum that in so far as the electors may require education on any subject which they have to vote upon, it will be effectively provided by the various propagandist societies and leagues and by Members of Parliament anxious to get their measure through. A Referendum is referred to as if it would be like a General Election in miniature, except that, as Lord Courtney puts it, "there would in fact be no candidates, and their hopes and fears and personal interest would not arise." Lord Courtney apparently regards this absence of the hopes and fears of personal interests of candidates as a great advantage. In fact it would be likely to prove the reverse, since there would be no one to spend money on "educating" the electors, except persons who were financially interested in the passage or rejection of the submitted measure.

An argument of far greater force in Great Britain is the contention that the Referendum acts as an immense stimulus to the political education of the people by forcing them to think about their laws and to realize their privileges and responsibilities as citizens of a self-governing State. Only so, it is urged, can they become the "free and enlightened" persons they are expected to be. This argument ignores, of course, the corruptibility of what must always be the chief instrument of such education, namely, the Press; but after making full allowance for that unfortunate circumstance, it remains undeniable that a series of popular votings on important questions would be calculated to have some extremely valuable educational results—results which might startle many of the present advocates of the "National Veto." All that can be said on the other side is that even education may be bought too dearly.

But perhaps the most appealing of all the arguments for the system of Direct Legislation is the sobering and altogether healthy effect which the mere existence of the Referendum and Popular Initiative inevitably has upon revolutionary movements of all kinds. The fact that any reasonably substantial section of the electors can at any moment demand an effective popular verdict upon any legislative project which they like to bring forward, deprives the disappointed propagandist of all those excuses for failure with which he sometimes strives to conceal even from himself the real cause. Socialists need scarcely to be reminded of the forms these excuses take; they are only too familiar. Sometimes it is "the party system" that gets the blame, sometimes the consoling bogey is "a conspiracy of the governing classes," and occasionally we hear significant whispers about some powerful ring of Jewish financiers or, it may be, in Lancashire, of Roman Catholic prelates. Anything is apt to be good enough to explain away the unpleasant fact that the right sort of legislation is not forthcoming.

The moment the Popular Initiative becomes an established fact all these comfortable theories have to be abandoned, and the breath that is wasted in propounding them diverted into more fruitful channels. Far too many Socialists to-day are plainly obsessed with the idea that Parliament itself is the great obstacle to Socialism, and that if only the people could make their will directly effective all would be well—the Utopia would be at our doors. Twenty or thirty years ago when Socialism was young such errors were perhaps permissible, almost necessary; to-day they are deadly. Nothing is more vital at the present moment to the continued advance of Socialism than a clear realization of the facts, that the working classes of England are not yet Socialists; that, until they are, Socialist legislation is impossible and undesirable; and that in the meantime no energy can be spared from the work of education for mere abuse of political machinery. That it automatically keeps all revolutionary propagandists in clear and continuous touch with the hard facts of the situation is one of the most attractive features of Direct Legislation.

The Case Against Direct Government.

The system of Direct Legislation is always identified by its advocates with "majority rule." The issue which they raise is therefore a perfectly clear and straightforward one, namely, whether "majority rule" is superior or inferior to "government by consent." The difference between these two forms of government is, of course, essentially a question of how minorities are to be treated. Under a system of majority rule the only right possessed by a minority is that of complete submission. A system of government by consent, on the other hand, recognizes the claim of any minority to be granted all such rights as do not seriously conflict with rights of *an equally important nature* of the majority.

An imaginary example will illustrate the point. Suppose that a small group of persons dwelling in a certain street enjoy a sincere conviction that it is necessary to their eternal salvation that they should sing hymns at the top of their voices between nine and ten o'clock every Sunday morning, and at no other time. And suppose that that is exactly the time which the other inhabitants of the street, who form a considerable majority, have selected for a pleasant extra hour of sleep. How is the issue between the two parties to be settled? If it is settled on the principles of government by consent the noisy minority will be allowed to continue their matins, with a strong suggestion that they should moderate their tones as much as ever their consciences will allow. The majority will no doubt grumble until they get hardened to the disturbance, but comparative peace will reign. If, however, the dispute is settled by a majority vote, the singers will be suppressed, and from thenceforward will constitute an outraged, and therefore dangerous, minority, whose respect for the justice of the law is gone for ever. Both solutions may be called "democratic"; but one is a good solution, and the other a very bad one.

This is an illustration of the first great argument against any system which approximates to pure majority rule: that it takes no account, and can take no account, of the quality or intensity of the feeling behind any individual vote. For it is just that intensity which matters, and which must constantly be considered and allowed for if any form of government is to be satisfactory. The primary, indeed the only, object of having any government at all is that it may reconcile conflicting interests and conflicting desires and arrange a general *modus vivendi*. And the only test of whether a Government is good or bad is whether or not the *modus vivendi* which it has arranged secures the voluntary respect and adhesion of the great mass of the community. No law can fully satisfy everybody. The most—and the least—we must ask is that the inevitable dissatisfaction should be reduced to a minimum, and especially that no section of the people should be given cause to regard themselves as unjustly treated. The greatest crime which any Government can commit is to deal with any section of the citizens in such a way as to alienate their loyalty towards the common institutions of the nation and

make them feel that resistance to the law is a moral duty. For such action must endanger the very foundations of civilized human society.

The ideal of those who uphold majority rule is apparently that upon every separate subject of legislation the will of the majority should be made to prevail. So simple a definition of the problem of democracy begs every question and shirks every real difficulty. Ultimately any form of democratic government must stand or fall not so much by its perfect subservience to majorities as by its just treatment of minorities—a far more difficult condition to fulfil. That minorities must not rule is only the first canon of good government; the second is that they must not be ignored. Yet how, under a system of Direct Legislation, can they be other than ignored? It must handicap them in two ways. In the first place, it is obviously far easier for a minority to submit their claims, to a representative assembly than to the whole body of electors; and in the second place, representatives are far more likely than are the electors to give such claims adequate consideration. An individual elector in casting his vote for or against any proposal has naturally and properly no other object than to give expression to his own individual opinion upon the matter as it affects himself. But the same individual voting on the same proposal in the capacity of a representative would approach the question in quite a different way, and would feel it his duty, on account of the trust reposed in him, to take into account claims which as a mere elector he would ignore.*

Apart, however, from this sense of duty towards the community as a whole, there are factors which tend to make representatives duly sensitive to the claims of minorities. The average Member of Parliament holds his seat by a fairly steady party vote. Once he has got it, he can generally count upon keeping it, provided he does not arouse violent and active resentment amongst any section of his constituents. Consequently, where the feelings of the majority about any issue are lukewarm, whilst those of the minority are deep and strong, he will probably be guided rather by the latter than by the former. In other words, he will attempt to go behind mere numerical votes and take into account the *relative intensities* of conflicting desires. He will thus tend to support such solutions of the various problems which arise as satisfy the fundamental requirement of good government, that popular dissatisfaction should be reduced to a minimum with a view to the maintenance of universal respect for the law.

* The difference of attitude here referred to is the essential factor in the distinction, often misunderstood, between a delegate and a representative. The former has nothing to do but to carry out the instructions actually given to him by the majority of his constituents, and is responsible to that majority alone. The latter is responsible to *all* his constituents, and has the semi-judicial function to perform of deciding how far it may be right that the wishes of this or that minority should receive consideration. In other words, whilst the representative is a device for securing the presence, as it were, of all the people at the making of their laws, the delegate is a mere telephone to which the majority in any given constituency alone has access.

Territorial Minorities.

In considering the application of majority rule to this country a question of immense practical importance arises. Any given law is to be decided by a majority; that is clear. But by a majority of whom? Of the persons who are directly affected by the law, or of all the adult inhabitants of the United Kingdom? This difficulty is fundamental with a system of government so centralized as ours. Take, for example, the question of Welsh Disestablishment. What is the value upon this issue of the vote of, say, a Kentish farm labourer or a Yorkshire manufacturer? What does either of them know or care about the subject? They will be no more affected by the disestablishment of the Anglican Church in Wales than they are now by the establishment of the Presbyterian Church in Scotland—a fact of which, by the way, they are both of them most probably unaware. By what conceivable theory of government could a Referendum of the United Kingdom on such an issue be justified? The result of the vote outside Wales would be merely irrelevant, that is to say, would afford no guide whatever to the statesman as to the decision which he ought to take in the interests of *good democratic government*.

The same reasoning applies to Irish Home Rule. The fact that the mass of the Irish people have been in rebellion for a century against the government under which they live may be deplorable, but it is the only fact in the whole situation which can carry any weight with the democrat. Home Rule may have bad results for Great Britain, and even for Ireland herself. Union may have been worth trying, but it has failed because it has not secured the assent of the Irish people. They do not respect the law because they do not feel it is their own law. Home Rule, in short, appears to be the only plan by which this unconquerably romantic race can realize the blessings and responsibilities of self-government; and that, as far as the democrat is concerned, is the last word on the rights and wrongs of the problem. A knowledge of the views of the electors of Great Britain would not contribute to its right solution in the least degree.

These two cases are of course rather exceptional. They belong to the category of questions, mainly or exclusively affecting a single locality, to which the Referendum has never been applied in any part of the world, and has never been regarded as applicable by any of its advocates outside the English Conservative party. The very significant fact has already been noted that the Referendum has only been adopted where a very complete system of local autonomy already exists. Consequently one of the most obvious dangers of Direct Legislation, the oppression of territorial minorities, has in practice been largely avoided.

Racial, Religious, and other Minorities.

But the danger to other minorities, more or less permanent, which are *not* concentrated in one locality, and which, therefore, can enjoy no autonomy, remains, and has proved to be very real. Two instances may be cited.

First, there is the well-known case in Switzerland where the Popular Initiative was employed by an anti-Semitic faction to introduce a Bill imposing pains and penalties on all persons slaughtering animals in a certain manner, namely, the manner prescribed by the Jewish law. Under cover of a humanitarian agitation, and in the face of the opposition of both Houses of the Legislature, the Bill was carried into law. Fortunately its drafting was imperfect, so that the Executive authorities in the Cantons have been able largely to ignore its tyrannous provisions. It should be added that this is the only case up to the present where the Federal Initiative in Switzerland has been successfully employed.

The second instance refers to America and is much more serious. It is that in State after State at the present time the Referendum is being used to disfranchise the negroes; not, of course, by actually laying down a colour line—that is prohibited by the Federal Constitution—but by imposing qualifications which are quite as effective a bar to the black man, and the purpose of which is understood by every one.*

Now is there any democratic advocate of "majority rule" who would defend this application of its principles? *And if not, why not?* There is no question but that in these States there are large majorities in favour of the disfranchisement of the negroes. Why should not the will of the majority prevail? The answer to that question strikes at the very root of the principles of Direct Legislation, because it must involve an admission that laws are of different sorts, some properly requiring much more than a bare majority of votes, and some much less. Mr. J. A. Hobson, arguing in favour of the Referendum, urges that "experienced statesmen . . . know that many laws . . . fail to work chiefly because of their unpopularity among the people." Surely what experienced statesmen know is that when laws fail to work it is generally due, not to a majority, but to an active minority, of malcontents. The Referendum only intensifies the danger. Witness the history of Prohibition in the United States. Laws actually passed by a majority vote forbidding the use of alcohol have notoriously failed to work, simply for the reason that such an interference with individual liberty requires something approaching unanimity amongst the electors before it ought to be enacted. There are lots of similar questions upon which from time to time legislation is proposed, and which ought not to be dealt with by anything less than, say, a 75 per cent. majority.

On the other hand, there are propositions for which a majority ought not to be required at all. Laws of a type already referred to affecting mainly or solely the inhabitants of a single locality come

* It may be urged that in some States the feeling against the negroes being allowed to exercise the rights of citizenship is so strong that the Representative Assemblies would have been, and in fact have been, obliged to adopt these measures on their own initiative. This may be true, but on the other hand it is unlikely that a representative body would consent to such an abuse of power without a really overwhelming mandate. The danger, therefore, is much less under a representative than under a direct legislative system.

under this heading together with others affecting minorities of different sorts. Broadly, it may be said that if a substantial minority want something very badly indeed, whilst the majority are mildly opposed, then the minority ought to have their way. This proposition is but the corollary of the proposition laid down earlier in this paper, that legislation must not so outrage the feelings of any section of the electors as to make them rebels against the law. Faults of omission may have as serious results in this respect as faults of commission. The Trades Disputes Bill of 1906 is a case in point. Whether the majority of voters were behind that Bill may be doubted, but about the intensity of feeling and the moral force behind it there can be no doubt at all; and it is to be noted as a signal instance of the success of our representative system that the Bill did actually become law. That is the answer to those people who complain that the present machinery of legislation enables the will of the people to be ignored. The truth is that where any substantial section of the electors know clearly and definitely what they want, they get it. The real difficulty is that generally they do not know what they want.

What is "The Will of the People"?

This brings us back to the question already asked: what is "the will of the people"? It is not a question which can be answered offhand, but this much is certain, that you cannot discover the will of the people by any system of counting heads that was ever invented. The ideal elector who always knows exactly what laws he wants and always deliberately uses his vote to obtain them, is unknown to the practical politician. He is, indeed, every whit as much a figment of the academic imagination as was the "economic man" with whom the *laissez-faire* economists used to juggle. The votes of most electors, whether they be educated or uneducated, wise or foolish, are influenced by a hundred and one considerations entirely foreign to the merits of the matter in hand.

Thus the experience of both Switzerland and America is conclusive on this point, that proposals submitted to a popular vote at the same time tend to stand or fall together. "An unpopular proposal will frequently carry down to defeat proposals which if submitted alone might easily have been adopted; and a popular proposal will aid others submitted at the same time."* On one occasion in Switzerland an entirely harmless Bill for amending the law as to patents happened to be submitted at the same time as a law to establish compulsory vaccination. The latter was extremely unpopular, and both proposals were decisively rejected. Subsequently the law about patents was put forward in better company and accepted by an enormous majority. Astute politicians will no doubt soon learn how to turn this tendency to account for their own ends, but the existence of such a tendency shows how uncertain is the relation between the vote and the real will behind it. And this is

* *Revision and Amendment of State Constitutions*. By W. F. Dodd. U.S.A. 1910.

but one instance out of a hundred that might be adduced of that uncertainty.*

The Necessity of Compromise.

But even if it were always possible to discover the will behind the individual vote, the problem of discovering "the will of the people" would not be solved. For clearly where there is a definite and serious cleavage of opinion on any subject the will of a bare majority must be a very different thing from "the will of the people," if any intelligible meaning is to be attached to that phrase. "The will of the people" would be best interpreted in such a case by some sort of compromise representing, not merely the resultant of so many conflicting wills, but their greatest common measure, their substantial agreement.

The writer happens to have the honour to serve upon the Executive Committee of the Fabian Society, a body whose methods of transacting business may or may not be unique, but are certainly instructive. There is an unwritten rule or custom, almost invariably observed, that divisions should never be taken upon really important questions, except in the very last resort. The use of divisions is to clear away unimportant matters so that time may not be wasted in discussing them at length. In matters of real consequence when there are two diverse opinions it is clearly absurd to divide and adopt the one which happens to have the odd vote behind it. The reasonable course is to go on discussing the question until a solution is discovered which everybody is ready to accept as a compromise. That compromise represents the substantial agreement of the Committee, and by the time it is reached the chances are that most of the members will regard it not in the light of a compromise at all, but as the best possible solution, and will be ready to give it active support without feeling that they have sacrificed to it any part of their better judgment.†

No one surely will deny that the character of all legislation ought to be determined by some such process as this. At all events a system under which nothing of the kind is possible must stand condemned.

The subject of compromise, however, vital as it is to the success of any kind of government, is too wide to be pursued here. It must suffice to suggest that, after all, the device of counting heads is at best a very crude and unsatisfactory method of deciding important or complicated issues in accordance with "the will of the people." We may be obliged to resort to it from time to time, but we need not glorify it as if it were in itself the pure quintessence of democracy. For in reality it is its *reductio ad absurdum*.

* An interesting sidelight is thrown on the practical working of Direct Legislation by the Constitution of North Dakota, U.S.A., which contains a provision to the effect that if two conflicting measures dealing with the same subject should be submitted at the same time and both should be passed (!) the one with the greatest number of affirmative votes behind it is to be taken as accepted, and the other as rejected.

† This, in point of fact, is the usual custom of a body much older than the Fabian Society, the Society of Friends; and is also the way in which the Mir manages the affairs of every Russian village.

Public Opinion v. Popular Opinion.

There is another point connected with the determination of the real will of the people which demands brief reference. Every one who has paid any attention to political history knows that from time to time laws have been passed which would have been emphatically rejected by the people at the time of their enactment, but which would have been equally emphatically accepted if submitted after being in operation for a year or two. Obvious instances are Catholic Emancipation and compulsory Education. It would seem that certain propositions can never hope to be "popular" until *after* they have become accomplished facts. At the present moment there are at least two issues before the country which are probably of this character: Women's Suffrage and the raising of the school age. Public opinion—which is not necessarily the same at any given moment as the opinion of the majority—supports both these proposals. Both will certainly be adopted within a few years, and a little later will be fully, if tacitly, endorsed by the people. Yet if they were submitted to a popular vote before enactment they would just as certainly both be rejected, even if in the case of Women's Suffrage women were allowed to vote.

These statements in regard to the particular questions selected may be doubted, but it cannot be denied that there are questions about which they would be true. We have here a definite political phenomenon which theoretical advocates of Direct Legislation must find some means of dealing with. There appears to be only one way of meeting the difficulty, and that is to legislate through representatives, and throw upon them the responsibility of deciding—on penalty of losing their seats in case of error—not what Bills but what Acts will secure the approval of the people. To discover the real will of the people, writes Mr. Ramsay MacDonald, "is the task of the statesman who knows how far expressed desire is not real desire, who understands how he is to speak for what is in the heart but not on the lips of the people, and who, without mandates, and even against mandates, does what the people really want."*

The Responsibility of the Representative.

Most, if not all, of the simple issues of modern politics belong to one of the categories described above. Either because they deal solely with small minorities, or for some other reason, they are obviously unsuitable for the application of the Referendum. But what of those more complicated issues and projects which form the bulk of our legislative output at the present time?

The average elector may be able to judge principles, but he has neither the time nor the knowledge nor the will to consider details. It is common knowledge amongst State politicians in America that a Bill which exceeds certain very narrow limits of length and complexity is almost certain to be rejected by the electors. Advocates of

* *Socialism and Government*, Vol. I., p. 9. No student of Socialism, or, indeed, of any aspect of modern politics, can afford to miss this original and really masterly study of political theory.

Direct Legislation, indeed, constantly cite this as one of the great advantages of the system, that it leads to a simplification of the laws. But whatever may be the advantages of simple drafting, they are surely insignificant compared with its drawbacks. For not only must it largely exclude concessions to minorities, but it carries with it as a necessary corollary that the executive officials should be given a free hand to deal with points of administration which in England, for example, would be dealt with in the Act itself and settled by Parliament. Both in Switzerland and in America the officials do, in fact, exercise unheard of powers which, if administration were anything like as centralized as it is in this country, would be intolerable.

This difficulty becomes overwhelming in regard to that large class of modern legislation in which details are everything and principles comparatively nothing. The creation or alteration of duties on imported articles is an example. It is impossible to conceive a more insane or a more dangerous proposal than that Tariff Reform should be decided by popular vote. Apart from objections to indirect taxation *per se*, not one elector in a thousand, be he wage-earner or University don, is in a position to form an opinion of any intrinsic value upon the question of whether Tariff Reform is likely to do the nation more harm than good. If the object be to reach a right decision you might almost as well save the cost and trouble of a Referendum by tossing a halfpenny instead.

Suppose that, dismissing all preconceived theories of government, the reader were called upon to devise a satisfactory method of settling such a question. What would he propose? Would he not say something like this? "Let us select a number of men, as intelligent as possible, representing all classes in the community; let us insist that they shall have access to every possible source of information and opportunity of weighing expert opinion on all sides; and then let us leave the decision to them, *holding them responsible for the consequences.*" If he were wise, he would add that the representatives should not be allowed, upon any pretence whatever, to shift the responsibility for the decision on to the electors by referring the matter to a popular vote at the last moment. That is to say, he would choose the representative method and the representative method alone.

It may be argued that Tariff Reform is a very exceptional case. But it is the case chosen for the first application of the Referendum. Besides, an ever-increasing proportion of our most important legislation is of a similar character, that is to say, its merits and defects are so much a matter of details that they can only be appreciated with the assistance of experts, and pronounced upon by persons who have devoted much attention to the art of legislation. If Great Britain were governed by counties it might be otherwise, but it is governed as a single community, and the consequences of that fact must be accepted. It is often asserted that all opposition to the Referendum is inspired by the belief that representatives are wiser than the people, and know better what is good for them. In other words, that the arguments against the Referendum might equally be employed to

justify a system of oligarchy. Such assertions, ignorantly or intentionally, are altogether wide of the mark. No doubt it is true, though one can call to mind many exceptions, that a representative is usually superior in general intelligence and ability to the average of the persons who have chosen him to represent them ; and this is an important fact. But the case against the Referendum requires no such assumption. The point is that the representative has opportunities which in the nature of things are denied to the individual elector of hearing not some, but all, of the evidence for or against any proposal ; and it would be just as valid if representatives were chosen by lot instead of by election. A representative body is "superior" to the electors for the purpose of legislation in precisely the same sense as a jury is superior to the general newspaper-reading public for the purpose of giving a just verdict. Inherently there is no more "oligarchy" about one than about the other.

There is, however, one essential condition which is by no means always fulfilled at present but must be fulfilled if representatives are really to represent ; and that condition is that they should be held strictly responsible for the consequences of their action or inaction on any subject. The right of the elector must be recognized even to give his representative a mandate for a certain policy and then to blame him if it turns out badly. Otherwise there can be no security for the proper exercise of those powers which under any system of democracy must be entrusted to the representative assembly. The experience of Switzerland proves, if proof be necessary, that the habitual use of the Referendum does, in fact, destroy this safeguard. Elections are rarely contested except for some personal reason, and the representative becomes in effect an irresponsible official, acting as he pleases in regard to all those matters which are not submitted to a popular vote. In Switzerland the volume and importance of the legislation not so submitted are small, and the danger of excessive bureaucracy is so far mitigated. But in England the bulk of the legislation must under any circumstances be left to the discretion of Parliament, and the evils that would surely flow from any diminution of its responsibility to the electorate are hard to exaggerate.

The Practical Working of Direct Legislation.

There is no space here for any sort of detailed analysis of the actual results of the Referendum and Initiative where they have been adopted. Nor is it likely that such an analysis would afford a basis for judging the effect of the same machinery in this country. The total population of Switzerland is less than half that of Greater London, and is divided amongst twenty-five cantons, each of which is autonomous for almost all the ordinary purposes of government. For Great Britain to adopt the Referendum on the strength of Swiss experience alone would be about as reasonable as for the House of Commons to adopt the principle of co-option on the strength of the experience of a Board of Guardians. In America the unit of government is larger ; but there Direct Legislation is still in the early experimental stage, and neither the triumphs which it has achieved nor the absurdities

which it has been responsible for afford a fair basis for generalization at present.*

It should be said, however, that the widely prevalent notion that the Referendum has a conservative effect upon legislation appears to be based on very insufficient evidence. It is true that in Switzerland a disproportionate number of measures submitted by the Federal Government are rejected, but this may be explained by the deep-rooted preference of the Swiss elector to be governed by his Canton rather than by the Federation. The proposals of the Federal authorities are thus always more or less suspect, and opposition to them is no proof of conservatism. In America, on the other hand, the weight has been deliberately thrown into the other scale in some of the States, by allowing new measures to be placed on the ballot-paper as affirmative propositions, which must be crossed out by those who object to them; that is to say, the non-voter is counted on the affirmative side. Elsewhere a definite anti-conservative bias has appeared without any such artificial aid, owing to the increasing number of proposals submitted at one time. In Oregon in 1906 the ballot-paper contained the names of thirty-seven candidates and the titles of thirty-two measures. Very few electors take the trouble to go more than halfway down the paper. Consequently proposals put forward by a small active minority tend to get passed, because the affirmative is organized and the negative is not. The only people who understand or are interested in the proposition sufficiently to vote upon it at all are mostly its supporters.†

To sum up, there seems no particular reason to suppose that the adoption of the Referendum in this country would result in special advantage to any party. A certain conservatism would no doubt become apparent amongst the electors in regard to large constructive schemes of social reorganization. But to balance this there would be the unquestionable popularity of land taxes, supertaxes, heavy death duties, and the like.‡ The case for and against the introduction of the beginnings of Direct Government rests, therefore, solely upon the merits of that system compared with the Representative System as a

* The experience of the English Trade Unions has provided data as valuable perhaps as any for a study of the working of Direct Legislation. In this connection the reader is directed to *Industrial Democracy*, by Sidney and Beatrice Webb, where he will find an analytical account of how the Referendum and Initiative were adopted and enthusiastically employed by some of the largest Trade Unions during the nineteenth century, and how they fell steadily into disuse and discredit, until finally it was seen that the practice of taking a general poll was practically useful only for some such purpose as that of discovering whether the members might be relied upon to support individually a proposal requiring concerted voluntary action, e.g., a strike.

† It might be suggested that this tendency meets the objection urged above, that the Referendum tends to the oppression or neglect of minorities. But it is to be observed (1) that it is only a safeguard upon issues of little public interest, and (2) that to give minorities an improper influence in certain matters is no remedy for allowing them none in others.

‡ A vote taken in the Canton Grisons on Sunday, March 6th, 1911, suggests the possibility of other sorts of anti-capitalistic legislation. By a majority of more than three to one the electors decided to prohibit absolutely the use of motor cars upon any public road within the area of this Canton.

satisfactory instrument of democracy. It must be admitted that when the unit of government is small and the population homogeneous in character, the advantages of the Referendum (as also, when practicable, of the mass meeting of citizens) are very considerable. But when the unit of government is large and the population heterogeneous, the inherent defects of "majority rule" assume overwhelming importance.

The choice which must be made is a momentous one, fraught, perhaps, with the most profound consequences in relation to the future prospects of democracy. For democracy is still upon its trial. Nowhere in the world as yet can it be said to have worked to the complete satisfaction of everyone. Everywhere still there are doubters, even in the foremost ranks of the democratic movement itself; people who despair of their faith and are turning to alternative theories, to Plato, to government by the best, government by a semi-ascetic voluntary order or government by a specially trained, or even specially bred, class. No great attention need be paid to the views of such pessimists, but they suffice to illustrate a fact which does deserve consideration, that the permanent success and stability of democracy have not yet been conclusively demonstrated. Developments are perfectly conceivable which would lead to such widespread disgust with popular government as to cause a revolt in favour of some other alternative, possibly a personal dictatorship.

How can these dangers best be avoided? By following the ideal of "majority rule" or the ideal of "government by consent"? In other words, is legislation to be determined by a mere counting of heads or by methods which allow of a more or less accurate estimation, both quantitative and qualitative, of all the forces and currents of opinion in the community? It may be that upon the answer to that question hangs the fate of democracy itself.

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