TO MY MOTHER.

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—THE—

REFERENDUM IN AMERICA.

A DISCUSSION OF

LAW-MAKING BY POPULAR VOTE,

—BY—

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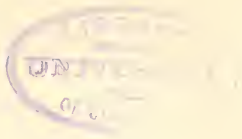
CONTENTS.

NOTE.

The present work is the outgrowth of studies begun and pursued in the Political Science Seminary of the University of Pennsylvania. The interest aroused in the study of government and society by the course in the Wharton School of Finance and Economy culminated, naturally, in the desire to investigate more thoroughly some of the leading political and economic tendencies in our American communities. The substance of a portion of this essay has already been published in the form of two papers entitled "Law-Making by Popular Vote; or, The American Referendum," and "Home Rule for our American Cities," which were submitted to the American Academy of Political and Social Science, and published in the proceedings of that body. [*Annals* of the American Academy, Volume II, page 324, and Volume III, page 736, respectively.] They are also reprinted as Nos. 40 and 90, in the separate editions of the important papers published by the Academy.

The Appendix will be found useful chiefly for reference. The author does not claim for it absolute completeness or accuracy in that feature of it relating to State statutes. These embrace so many volumes, and are changed so frequently by the Legislatures that it would be a far too laborious undertaking to get a full record of such legislation. The examples given in each State, however, will show sufficiently well the tendency that exists in different parts of the Union to submit certain classes of laws to vote of the people.



CHAPTER I.

Introductory Remarks.

It is the author's purpose in this volume, to make an investigation into the origin and growth in the United States of that popular governmental principle known in Switzerland as the Referendum. As it occurs in Switzerland it has, in the last few years, received a large amount of attention from constitutional observers everywhere, and the institution has been looked upon as a peculiar feature of the Swiss system. It has been studied by Englishmen and Americans as a *sui generis*, and many, who have staked their hopes upon it, as a useful political reform, have advised that it be adopted in this country. It is to be shown in this volume, that in America, we have already had much experience with the Referendum, and that, in every State of the Union, in the county, the city, the township and the school-district, we employ, and in New England, have employed, since the Revolution, this same popular political principle.

The Referendum may be defined as the submission of laws, whether in the form of statute or constitution, to the voting citizens for their ratification or rejection, these laws first having been passed upon by the people's representatives, assembled in legislature or convention. By a narrower definition the name might be held to apply only to laws submitted by a legislature, but the people, when they vote upon a constitution or an amendment to a constitution, are engaged in what is quite as much a legislative act as voting on a statute law, and especially is this so in our American States, at the present time, since the framers of constitutions have enlarged the concept, and, therefore, altered the nature of the term constitution.

Although it is my province in this essay to review the direct share of the people in the making of their laws in the United States, it may be well, in the first place, to look briefly at the Referendum as it has been developed in Switzerland. It exists there, side by side, with a related institution, the Initiative, by which the people may initiate, as well as vote, upon their laws, and with which we are, at present, not concerned. The name, Referendum, if traced back to its origin, could be shown to be very old, some writers even stating that it was in use in several Alpine cantons as early as the sixteenth century. At any rate, the delegates from the cantons to the early Federal Diets were only empowered to assent to important measures *ad referendum*, that is, subject to the approval of the government which sent them. The institution, in the perfected form in which it appears in Switzerland to-day, however, is a development of this century. Beginning in some of the Teutonic cantonal governments, the outgrowth of the *Landsgemeinden* and the extremely democratic political inclinations, of a people bred in the traditions of a folkmote system of government, it very soon fastened itself firmly in public favor. To-day every one of the twenty-two cantons of the Confederation employs the Referendum in some of its forms, not excepting Freiburg, whose clerical majorities, however, up to this time, have been able to prevent its introduction, except in the matter of a revision of the constitution.

In two cantons, Uri and Glarus, and in the two half-cantons of Appenzell, and the two half-cantons of Unterwalden, the *Landsgemeinde** still survives. On account of the increase of population, and the resulting cumbrousness of legislation by mass meeting, it has been abandoned within recent times in Schwyz and Zug. The *Landsgemeinde* is only a means of securing the Referendum without the expense or

* For a history and description of the curious ceremonies attending these *Landsgemeinden*, see Adams and Cunningham, *The Swiss Confederation*, pp. 118–119, and John Martin Vincent, *State and Federal Government in Switzerland;* Johns Hopkins series, 1891, pp. 107–114.

trouble of a ballot, and is not possible except in a district of limited territorial extent and small population. Each of these two cantons and four half-cantons has an executive power—the *Regierungsrath*—and a representative assembly—the *Landrath*. Laws are framed and prepared for enactment by this representative assembly, but it has no powers beyond those of a committee, everything being referred for ratification, rejection or amendment to the people who meet semi-annually in the *Landsgemeinde*.

In the other cantons two kinds of Referendum are distinguishable—the compulsory and the optional. The compulsory Referendum is one made obligatory by the cantonal constitution, according to which laws cannot go into effect until ratified at the polls by the people. The optional Referendum is one in which there is no element of obligation, the act of submission only taking place if the people desire it. If a certain number of signatures of voting citizens are not received within a specified time after the representative legislature approves a law, it goes into force without an expression of the popular will.

The compulsory Referendum, where laws passed by the representative legislature *must* be submitted to the people, exists in the seven cantons of Zurich, Berne, Solothurn, the Grisons, Aargau, Thurgau, and the Valais, and the rural half-canton of Basel. In some of these cantons, all the laws must be voted on by the people, concordats and resolutions for the appropriation of money beyond certain specified sums included. In the Valais there is a Referendum only on constitutional and financial matters. In Schwyz and Vaud, the Referendum exists in both its compulsory and optional forms. A poll of the people is taken upon all matters, which must, constitutionally, be laid before them, usually twice a year, in the spring and fall. Zurich has gone farther than any of the other cantons in developing the Referendum. Not only are all new laws, concordats and resolutions for the appropriation of any considerable sum of money submitted, but, when

5,000 electors demand it, the people must vote on the repeal or modification of existing laws. There is, also, in this canton, and in a number of others, the right of Initiative, an institution which we have mentioned on an earlier page.

In all these cantons, having the compulsory Referendum, there are constitutional provisions requiring the popular consent to expenditures of public money beyond the following specified amounts, which vary according to the territorial extent, population and requirements of the different cantons:*

Vaud, ...	1,000,000	francs.
Berne, ...	500,000	"
Zurich, ...	250,000	"
Aargau, ...	250,000	"
The Grisons, ...	100,000	"
Solothurn, ...	100,000	"
Valais, ...	60,000	"
Schwyz, ...	50,000	"
Thurgau, ...	50,000	"

In Vaud and Berne, the people have additional guarantees of a vote on the cantonal budgets.

All the rest of the cantons, and the other half-canton of Basel, excepting Freiburg, and those cantons enjoying the *Landsgemeinde*, have only an optional Referendum. Any law may be submitted if a certain number of electors demand it. The signatures of 5,000 are needed in Lucerne, 500 in Zug, 1,000 in the urban half of Basel, 1,000 in Schaffhausen, 6,000 in St. Gallen, 5,000 in Ticino, 6,000 in Vaud, 3,000 in Neuchatel, and 3,500 in Geneva. In all the cantons, Freiburg included, there is a compulsory Referendum on every proposition to alter or amend the cantonal constitutions.

It is since 1874, however, when the Referendum was lifted out of the cantonal systems into the Federal Constitution,

* Vincent, *State and Federal Government in Switzerland.*

that the institution has laid most prominent claim to the notice of students in the science of government. Previous to that time, by the Constitution of 1848, there was a Referendum on questions relating to constitutional revision, but in this matter only. By the Constitution of 1874, the present Constitution of the Federation, there is, besides the old compulsory Referendum on constitutional amendments, the following guarantee of an optional Referendum : " Federal laws, as well as general Federal decrees—if not of an urgent nature—must be submitted to popular vote upon demand of 30,000 qualified voters, or of eight cantons."*

The outcome of the experiment in nationalizing the Referendum has been watched with great interest by political observers everywhere. In four years, from 1875 to 1879, the people demanded the Referendum on eight laws. In sixteen years, or from 1875 to 1891, the Referendum was taken on twenty-seven laws, including several constitutional amendments, or an average of something over three in two years. Of these, twelve were accepted and fifteen rejected. In this period, the Federal Assembly passed one hundred and forty-nine laws, so that it will be seen that the people demanded the submission of less than twenty per cent. of the work done by their representative legislature. The judgment of the people may be considered, for the most part, to have been expressed very intelligently if we except the votes on a number of laws submitted during the period from 1879 to 1885, when there was a wave of extreme jealousy of the Federal influence, and a fear in the cantons that they were being overshadowed by the Berne government.†

During these six years the Referendum was demanded on nearly all the laws of much importance which the Chambers passed, and, without regard to their character or value, they were defeated by large majorities. Of late there seems to be

* Article 89. *The Federal Constitution of Switzerland*, translated by Dr. Edmund J. James, Publications of the University of Pennsylvania, No. 8.

† Adams and Cunningham, *The Swiss Confederation*, pp. 84–86.

less hostility to legislation tending towards centralization, if the votes on the liquor monopoly, the bankruptcy code and the insurance law are in any measure indicative.

It is true, that in this country, we have not engrafted the Referendum upon the National Constitution; but the rights of the people to direct consultation in the regulation of certain local matters, have long been recognized by Congress and the other departments of Federal administration.

In the States, on the other hand, there are many examples of law-making by popular vote, and the present constitution of every State in the Union, except Delaware, contains a greater or less recognition of this democratic principle. The people, in practically all the States, by the development of over a century, are, to-day, competent, and they alone are competent, either by express guarantee of the State constitution, or by the accepted custom, to decide whether they shall have a new form of State government. This is determined in a Convention Referendum—when the vote is upon the question of "Convention" or "No Convention." Having decided in favor of a new form of government, it rests with the people to say what that new form shall be—when, after a new constitution has been framed by the convention, and is submitted to the people, the vote is "For the Constitution," or "Against the Constitution." Later, at any time, it is for the people to say whether or not, and in what manner, their constitutions shall be altered or amended—when the vote is for or against the separate amendments. In respect to constitutional matters, therefore, the American system is exactly similar to the Swiss.

A study of the constitutions reveals questions of certain other classes, which, for a long time, have been looked upon as properly subject to popular disposal.

1. In a number of States the constitutions forbid a change in the location of the seat of government, unless the law be first submitted to and ratified by a vote of the people. The people being qualified to determine the form of government

under which they must live, might naturally be allowed to say at what point that government shall be administered, and in what section of the State their capitol buildings shall be located.

Of the same class are several Referendums provided for by the Constitution of Wyoming; the people in this State being qualified, by vote, to locate the State University, Insane Asylum, State Penitentiary and other public institutions. A similar Referendum is to be found in the last Constitution of Texas; the people there being allowed to locate the State University and a college for the education of colored youths.

2. There are Referendums, relating to the collection and expenditure of the public money, the establishment of banks, the leasing and sale of public lands and other State property. Several State constitutions place a limit upon the power of the Legislatures to contract indebtedness, and to levy tax, all propositions for expenditures and levies, beyond these limits, to be submitted to popular vote.

3. Questions upon which there are likely to be violent differences of opinion, and enactments in regard to which the representative legislatures desire to escape responsibility. Of this class, are propositions for the prohibition of the liquor traffic; for the extension of the suffrage, at an earlier day, to the negroes, and, at the present time, to women; for determining between several plans of legislative representation, as, by the Constitution of 1850, in Virginia, and by the present Constitution of West Virginia, etc.

In counties, municipalities and local divisions of the State, very much the same classification may be followed.

1. The people can determine by direct vote, within certain limits, the form of the local government. Of this class is the vote in counties upon the question of township organization, which is the rule in several States, either by constitutional provision or legislative statute. Of this class also, are laws which are usual in some States, defining the methods of local government, and which are passed by the Legislatures conditional upon their acceptance by a vote of the people of

the separate counties. The people of more populous communities within the States, may, similarly vote upon the form of their government, whether it shall be town, borough or city government. They may vote in some States, as has recently come to be the custom in New Jersey, to accept or reject certain laws relating to the details of their systems of government, submitted to them by the State Legislatures. In three States, Missouri, California and Washington, cities reaching a specified limit in population may elect their own charter boards; the charters so framed, being subject to the direct approval of the people, and amendments thereto, at a later period, proposed by the city legislature, being likewise subject to the popular acceptance.

2. In the counties as in the States, the people may choose their seats of government. In cities, the sites of city buildings are often determined by popular vote; and in towns the voting places are sometimes so selected. An allied question is that of local territorial boundaries, and change of governmental jurisdictions. The people thus vote upon the following questions: in counties, county division and the change of county lines; in cities, annexation and the surrender of territory; in townships, alteration in boundary lines; and in city wards, division of wards and organization of new wards.

3. The Referendum occurs in the local divisions of the States on many revenue questions; such as the creation of loans to carry on various local improvements, the levy of taxes to meet special expenditures, the loan of the public credit to corporations and subscription to the stock of such corporations, and the leasing and sale of school lands and other public property.

4. The people of counties, cities, townships, etc., as in the States, vote upon questions in regard to which there is likely to be violent popular disagreement. Thus there are "local option" laws for the control of the liquor traffic; "local option" stock laws, permitting the people to decide whether

owners shall build fences, or whether cattle and other domestic animals shall be allowed to run at large; laws leaving it to localities to decide whether tax-payers shall contribute to the maintenance of the public roads, by money payment only, or whether labor shall be accepted instead; the taxation of dogs, etc.*

Just what is in store for us in the future, in the nature and growth of the Referendum, in this country, must be largely a subject for conjecture. Propositions for enlarging the rights of the people, in this respect, have appeared in a number of recent State constitutional conventions. Such a proposal, for instance, appears in the records of the convention, which in 1889, framed a constitution for the new State of Washington. One appeared, also, in the convention of Pennsylvania, which, in 1873, framed the present constitution of that State. Here Mr. Samuel C. T. Dodd, delegate-at-large from Venango county, maintained, in a speech on the floor of the convention, that laws should be referred to the people. He proposed that the new constitution should contain a section as follows :—†

"The Legislature shall have power to refer the adoption or rejection of any law to a vote of the qualified electors of the State, or that portion of the State to be affected thereby."

Here the option was made to rest, not with the people, as in Switzerland, but with the Legislature.

It would look, indeed, as for instance, at the November election in 1892, in California, that the Referendum in this country had already reached almost the stage it has attained in Switzerland. The ballots, in that State, at that election, invited the people to vote on the nine following propositions [In the spaces which were left blank on the original ballots to receive the pencil marks of the voter, I have placed the figures giving the total vote in the State on each proposition] :—

* Some laws of this class are not easy to distinguish from those given in the preceding class.

† Debates Pennsylvania Convention 1873, Vol. II., pp. 587–588.

CONSTITUTIONAL AMENDMENTS.

Senate Constitutional Amendment No. 10. (Increasing legislative session to one hundred days.)	YES.	36,442
	NO.	153,831
Assembly Constitutional Amendment No. 7. (Limiting Debts of counties, cities, towns, townships, Boards of Education, and School Districts, to a year's revenue, except by a two-thirds vote.)	YES.	18,942
	NO.	59,548
Senate Constitutional Amendment No. 11. (Increasing duties and compensation of Lieutenant-Governor, and removing limitation on pay of clerks in State offices.)	YES.	43,456
	NO.	128,743
Assembly Constitutional Amendment No. 5. (Manner in which an officer of the State may incur a deficiency, and prohibiting Legislature from appropriating money to pay same, if otherwise incurred.)	YES.	69,286
	NO.	87,708
Senate Constitutional Amendment No. 14. (Manner in which cities containing more than thirty-five hundred inhabitants may frame and adopt charters.)	YES.	114,617
	NO.	42,076

PROPOSITIONS TO BE VOTED UPON.

For the election of United States Senators by the direct vote of the people	187,958
Against the election of United States Senators by direct vote of the people	13,342
For the San Francisco Depot Act	91,296
Against the San Francisco Depot Act	90,430
For an educational qualification requiring every voter to be able to write his name and read any section of the Constitution in the English language	151,320
Against an educational qualification requiring every voter to be able to write his name and read any section of the Constitution in the English language	41,059
Refund the Debt . . . . . YES.	79,900
Refund the Debt . . . . . NO.	85,604

There are signs that the Swiss experience is now being closely studied by certain political elements, which have recently come to be an influential force in shaping the thought and policy of the times. It is being advocated here, as in other countries, by the leaders of the labor parties, who see in it a means of removing some of the inequalities in legislation and other governmental evils which they allege to exist. It has recently been the subject of much discussion in Belgium.

Several years ago, the Referendum was introduced into a number of local communities in that country, through the efforts of some reformers who had been studying the political system of Switzerland.*

The question of the revision of the constitution had long been agitating the Belgians, and in 1891–92, when this work was actually undertaken, it was designed by the "Liberals" to insert a Referendum provision in the new instrument. The King was reported to be in favor of the Referendum, but in the proposals which the Government finally submitted to Parliament, this clause did not appear. In February, 1893, the "Liberal Societies" took a Referendum throughout the kingdom on the question of universal suffrage. The vote was entirely unofficial, though there was a large poll, the electors showing much interest and enthusiasm.

In England, also, thought on this subject has advanced beyond the first stages. The student has been made familiar with the system through the writings of Mr. A. V. Dicey and other authorities on constitutional questions.† The laboring man has been brought to know about it through the eight-hour leaders. The Referendum, to-day, forms a part of most of the English labor platforms, and was one of the issues upon which Mr. John Burns was elected to the present Parliament.

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* *Le Referendum*, M. Georges Lorand. Brussels: 1890.

† For a recent article of Mr. Dicey's on this subject, see *Contemporary Review*, April, 1890.

At Toronto, Canada, in September, 1892, the Dominion Trades Congress, in session there, decided to petition the Dominion Government to submit to the people of Canada for their decision, by direct vote, the questions of the retention of the colonial status, imperial federation, independence or annexation.

In this country, likewise, the movement for a fuller and more general employment of the system is in charge of the labor leaders. The platform adopted by the National "Socialistic Labor" party, which met in convention at Chicago, October 12, 1889, made, as one of its "Demands," that "the people have the right to propose laws and to vote upon all measures of importance according to the Referendum principle."

This demand was repeated in the platform adopted by the same party at a convention held in New York city, in 1892. The subject was also treated in another national platform in 1892. The "People's Party," in convention at Omaha, July 4th, resolved "that we commend to the favorable consideration of the people, and the reform press, the legislative system known as the Initiative and Referendum." This was the party which at the election in the ensuing November, carried four States—Colorado, Idaho, Kansas and Nevada—polled 22 votes in the electoral college, and a popular vote for its presidential candidates in all the States, amounting to 1,122,045.

The State conventions of this and its allied parties also paid a considerable attention to this subject in the State platforms of 1892.

In March, of that year, the Republican State Central Committee of Minnesota, in session at St. Paul, authorized a committee "to investigate the law-making system of Switzerland, which requires that laws shall be ratified by a vote of the people after their passage by the Legislature." This investigation, however, was not productive of any result in influencing the policy of the party in the ensuing election.

The People's Party of Wisconsin, which met in convention at Milwaukee, May 24, made the following declaration in its platform: "We demand the establishment of the Initiative and the Referendum by which the people will be called to vote down obnoxious laws, and remove dishonest and inefficient officials; thus placing the veto power in the hands of the people, where it belongs."

The Indiana People's Party, on May 27, resolved "that we favor the enactment of laws, under which the people may vote, periodically, upon doctrine and policies; the results of these elections to be considered as instructions to our legislative servants, and to be enforced by impeachment when such instructions are disregarded."

The Minnesota Prohibitionists, on June 1, at St. Paul, resolved: "As a check upon the corrupting power of the moneyed lobby, and the alarming venality of municipal and legislative bodies, we favor a judicious Referendum system in State and municipal legislation touching police regulations, and the political, economical, and industrial interests of the people."

In South Dakota the People's Party, on June 22, declared: "We favor a constitutional amendment, incorporating the Referendum, and Initiative in our State Constitution."

The Michigan People's Party, on August 3, said in its platform "That the people should have the right to propose laws, and to vote upon all legislative measures of importance; and we demand the Initiative and the Referendum."

Similar declarations were made in the People's Party platforms in Kansas and other States, and at the sessions of the State Legislatures in 1893, several bills, designed to put the system into more general effect, were presented for passage. Amendments to the State Constitutions, embodying the Referendum and Initiative ideas, were proposed in Kansas, New Jersey and California, and reached the point of arousing considerable public discussion.

The New Jersey proposal was as follows:—

"AMENDMENT TO ARTICLE IV OF THE CONSTITUTION OF THE STATE OF NEW JERSEY.

"1. The right to approve or to reject proposed State laws shall rest with a majority of the citizens of the State. The right to approve or to reject the proposed laws of any political subdivision of the State (such as county, city, town, township, borough or village) shall rest with a majority of the citizens of such political subdivision. The method of such approval or rejection shall be that known as the Referendum.

"2. The right to propose laws for the State shall (in addition to being exercised by members of the Senate and the House of Assembly) rest with any proportion of the citizens of the State, between five and twenty-five per cent., which may be determined by statute law. The right to propose laws for any political subdivision of the State (such as county, city, town, township, borough or village) shall (in addition to being exercised by members of its legislative body, as at present) rest with any proportion of its citizens, between five and twenty-five per cent., which may be determined by a law of such political subdivision. The method to be employed in so proposing measures shall be that known as the Initiative."

A statement of the main features of the amendment, proposed in California, will serve to show what form the movement is taking in that State. On receipt of a petition signed by five per cent. of all the voters in the State, or ten per cent. of all the members of the Legislature, in each house, in favor of the submission of any law or proposition to the vote of the people, the Governor, at the next ensuing election, must submit such a law or proposition. On receipt of a petition signed by five per cent. of the voters of any city, the Mayor or Supervisors, or other officers must likewise submit any proposition to popular vote. The percentage of petitioners required was to be ascertained upon the basis of the whole number of votes cast at the last preceding election.

To further the movement, a Direct Legislation League has been formed in New Jersey, which it is designed shall be a national organization, with branches in every State in the Union. Several books and pamphlets have recently appeared in advocacy of this reform.*

The present general feeling of distrust for State legislatures which has already resulted in a large curtailment of their authority, appears likely to result soon in further curtailments. With the extension of the Federal power on the one hand, which is giving the States a more limited field for the exercise of what were formerly esteemed their prerogatives, and the tendency on the other to remove what authority is still preserved to the States from the custody of the legislatures, and entrust it to other agents, these bodies are coming to have a greatly diminished influence. Much of the authority earlier exercised by the legislatures has been absorbed by the constitutional conventions, which frame long codes, limiting the sessions of the legislatures to a short term, once in two years; and minutely defining upon what subjects within this short term these bodies may and may not legislate. These codes or constitutions then are not repealable or alterable by the legislatures.

At the same time this movement has been going on within the conventions, the people themselves have absorbed additional authority, The constitutions are referred by the conventions which frame them to popular vote. Constitutional amendments, though proposed by the legislatures are submitted to the people for their ratification or rejection. Laws, applying to the whole State, and laws relating to the various local districts of the State, on certain subjects, by force of obligatory constitutional provisions, or by custom, are submitted to direct popular vote.

These are already important incursions upon the province of the legislatures. The transactions of these bodies are

* See *Direct Legislation* by J. W. Sullivan, New York, 1892, and *Direct Legislation by the People*, by Nathan Cree, Chicago, 1892.

constantly receiving the bitterest public criticism. They retain the power granted them by the Constitution of the United States, each to elect two representatives to the United States Senate, and they have become, in many cases, simply the machines for the election and re-election of party managers to this high office. The election of Senators by direct vote of the people is being actively advocated in many States, and, with the development of the Referendum, there is real cause for wonder whether or not at no very distant day, our legislatures will be superseded by some kind of administrative commissions, which may attend to the mechanical details of legislation, leaving the actual work of enactment to the voters themselves. And this will be indeed, as a current writer has well said, "curing democracy with more democracy."

CHAPTER II.

Constitutions and their Amendments.

There is, perhaps, no direct evidence to show a connection in this country between the Referendum and the New England town meeting, as there is in Switzerland between the Referendum and the *Landsgemeinde*. At any rate, it is a coincidence that of the eleven of the thirteen original States, which framed constitutions during the Revolutionary period—Connecticut and Rhode Island remaining under their old charters—only two submitted their first constitutions to popular vote, and these were Massachusetts and New Hampshire, where the people had long met together in town meetings to make their local laws. It was forty years later before a popular vote on this subject came to be looked upon as an indispensable feature of our State constitutional system.

It had been the custom in New England, from the foundation of the settlements, to call the people into consultation, by one method or another, whenever a question arose of especial public concern. The first body of laws compiled for the government of the Colony of Massachusetts was referred to the elders of the churches and the freemen of the towns for their suggestions, amendments, etc.* And when, in 1643, the Massachusetts Bay, Connecticut, Plymouth and New Haven Colonies formed a confederation of "The United Colonies of New England," for their mutual protection against the Indians, the first confederacy organized in America, the Plymouth representatives did not sign the Articles of Union until the latter had first been submitted to and approved by the inhabitants of the Colony.†

* Whitmore's edition of the *Colonial Laws of Massachusetts*, vol. I, p. 7, *et seq.*

† Introduction to *Preston's Documents*. Also, Austin's *History of Massachusetts*, p. 74.

At the outbreak of the Revolution against England, when it became necessary that the colonies should adopt new governments, there were no precedents to follow. The Americans had had no experience with self-government, and it was an important question with all the thinkers of the time, as to what course should be pursued. There was no one among the leaders of men during this period better fitted to speak on this subject than John Adams, of Massachusetts.

He at once became an active influence in shaping constitutional thought and made studies of the governmental systems of the world, later collected and published in his *Defense of the American Constitutions*, an essay written in reply to Turgot and those leaders in the French political philosophy, whose doctrines were at that time so strongly contending for a place in all parts of America, which remains to this day a work of much permanent merit.

Mr. Adams from the first, as a member of the Continental Congress before independence had yet been declared, argued that the colonies should take up new governments and assume the dignity of separate States. He wanted the people of each colony to elect a convention which should frame a constitution suitable to the needs of a free community, and in 1775 advocated this course, amid much opposition, on the floor of Congress. Of this contest for State constitutions, Mr. Adams writes in his *Autobiography*, that many questions were asked him, and an extract will show that he even at this early time contemplated a direct consultation with the people.*

"How can the people institute governments?" Mr. Adams was asked. His answer was: "By conventions of representatives, freely, fairly, and proportionably chosen."

"When the convention has fabricated a government, or, a constitution rather, how do we know that the people will submit to it?"

**Life and Works of John Adams*, vol. III, pp. 19–20.

"If there is any doubt of that the convention may send out their project of a constitution to the people in their several towns, counties or districts, and the people may make the acceptance of it their own act."

"But the people know nothing about constitutions?"

"I believe that you are much mistaken in that supposition: if you are not, they will not oppose a plan prepared by their own chosen friends, but I believe that in every considerable portion of the people there will be found some men who will understand the subject as well as their representatives, and these will assist in enlightening the rest."

A resolution finally passed the Congress, on May 10, 1776, which, as Mr. Adams himself says, he had "invariably pursued for a whole year and contended for through a scene and a series of anxiety, labor, study, argument and obloquy." This resolution was as follows:—

"That it be recommended to the respective Assemblies and Conventions of the United Colonies, where no government sufficient to the exigencies of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general."

Adams was the chairman of a committee to draft a preamble to the resolution. Of those colonies which took action in obedience to the authority conferred thus upon them by the Continental Congress, Massachusetts was the first, followed by New Hampshire, to submit its constitution to popular vote. The General Court of Massachusetts, as the legislature of that colony was called, had framed a constitution, which upon being submitted, on March 4, 1778, was rejected in the town meetings. At this election, however, there were one hundred and twenty towns which neglected to express any opinion at all, and but twelve thousand persons in the whole State went to the polls. Five-sixths of these voted in the negative "under the lead of a unanimous

sentiment in Boston the influence of which was at that time at its height."*

It was thought that this hearty opposition was partially due to the fact that the constitution had been framed by a legislature instead of a convention—a method which the people had been led to regard as irregular. On February 19, 1779, the people in their town meetings were consulted upon two questions: Firstly, whether they wanted a new government, or would prefer to continue under the charter? and, secondly, whether a convention should be called to frame a constitution? The vote on these two questions was in the affirmative, though nearly one-third of the towns failed to make any returns.

A convention was therefore called, John Adams and other men of much recognized ability, being among the members. After labors which covered a considerable period, there was framed another constitution which was ratified by more than two-thirds of those who voted, and which, with amendments, is still in force within the State.

This constitution provided that in 1795, the voters of the towns and plantations should express themselves upon the question of revision.† There was, doubtless, an influence in securing such a speedy ratification, in the knowledge that if the constitution proved unsatisfactory or inadequate the people were to have a part in amending it.

There was still greater difficulty in getting a constitution to the mind of the people of New Hampshire. On January 5, 1776, New Hampshire adopted a temporary constitution through a convention, or "Congress" assembled at Exeter. This was the first written constitution adopted by any of the States now constituting the American Union, and was not submitted to the people. This instrument not being suited to the permanent needs of the State, another convention was called, which met in 1778. It was the next year submitted

* *Life and Works of John Adams*, vol. IV. p. 213, *et seq.*

† Chapter VI. Art. X.

to the people in their town meetings, but was rejected. Another constitution submitted by a convention which met in 1781, was so amended in the town meetings that the convention was compelled to re-assemble, and finally completed a document which the people approved, and which went into effect in 1784. It provided, as had the Constitution of Massachusetts, that the people should be consulted on the question of constitutional revision, a vote to be taken at the end of seven years to determine their wish as to the calling of a convention. The constitution further provided: "No alteration shall be made in this constitution before the same shall be laid before the towns and unincorporated places and approved by two-thirds of the qualified voters present and voting upon the question."

The Constitution of Georgia, framed in 1777, contained the following provision :—

"No alteration shall be made in this constitution without petitions from a majority of the counties, and the petitions from each county to be signed by a majority of voters in each county within this State, at which time the Assembly shall order a convention to be called for that purpose, specifying the alterations to be made according to the petitions referred to the Assembly by the majority of the counties as aforesaid."

By this method a convention was called which framed the Georgia Constitution of 1789.

In Pennsylvania, not a year after the Constitution of 1776 was adopted by convention and put into effect, we learn there was much dissatisfaction among the people. On June 11, 1777, the Supreme Executive Council addressed a communication to the General Assembly, representing "that they are sorry to find the present constitution of this State so dissatisfactory to any of the well-affected inhabitants thereof, and would gladly concur in any suitable and safe measure for the removal of this uneasiness; that they are of the opinion this might be greatly attained by taking the sense of the majority

of the electors throughout the counties on the important question whether a convention be holden at some proper time to reconsider the frame of government formed by the late convention; that to fix the exact mode of obtaining the mind of the majority on the subject most properly belongs to their representatives; that the Council hope that if some suitable mode of advising and getting the people at large to declare themselves, and, if this were advised and published at this time, great ease and relief would thereby be given to some persons who are dissatisfied as aforesaid; and that unanimity in the common cause so necessary at this time will be promoted." *

The Assembly at once took the scheme into consideration, and on June 12, after considerable debate, resolved that it would "recommend it to the inhabitants of the Commonwealth to give their sense of the present dispute respecting the calling of a convention."

A committee was appointed to draft resolves defining the manner in which such "sense" of the people should be taken. This committee reported, and it was ordered by the Assembly, on June 17, that the freemen of each township, borough, ward and district in the city and different counties, at the time of choosing their inspector for the ensuing election of assemblymen, should also select one freeholder, to be called a commissioner. In the language of the resolutions, the "duty and business" of these commissioners were to be as follows:—

"To go to the house or place of residence of each and every freeman entitled to vote for members of General Assembly within their respective townships, boroughs, wards or districts, or to take some other opportunity of meeting with them. The said commissioner shall ask each and every of the said freemen whether he desires that a convention be now called, and the freeman shall give in writing on a scroll or piece of paper, his vote or answer, which he shall put into

**Colonial Records*, vol. XI, p. 220.

a box provided for that purpose which he shall keep shut and in his own possession and return the same on or before the tenth day of November to the sheriff of the city or county to which he belongs, or, in case of the death, sickness or absence of the sheriff, to the coroner, who, with the assistance of the said commissioner shall examine the said box or bag and cast up the number of votes therein contained on each side of the question, and the sheriff or coroner shall deliver to such commissioner a certificate of the said numbers and also return a true account thereof, under the hands and seals of the said sheriff or coroner and of the said commissioner, to the next General Assembly at their first sitting."*

The invasion of the State by the British prevented this vote being taken as it was arranged for. The army evacuating Philadelphia in 1778, expressions of dissatisfaction with the constitution were renewed, and on November 28, 1778, the Assembly again "resolved, unanimously, that the people throughout this State qualified to vote for members of Assembly, meet at the usual places of election on the 25th of March next, and choose judges and inspectors as by law directed in case of representatives, and the said judges and inspectors being so chosen and sworn as at the election of representatives, shall provide two boxes for the city and each district of every county, and on the first Tuesday of April next they shall receive the votes of the freemen qualified at the time of said election by law to vote as aforesaid, making at the same time a list of the voters' names, and put into one box all the votes for and against a convention, the voters in favor of a convention writing on their tickets 'For a Convention,' and those against it writing on their tickets 'Against a Convention,' and in the other box they shall put the votes for the members of such convention, as that if the majority of votes should be in favor of a convention, the minority may not be precluded from a choice in the persons who are to

**Journals of the Assembly*, p. 145.

compose it or the people put to the inconvenience of a second meeting."

After stating how the boxes should be sealed by the election judges and delivered to the sheriffs at the county court-houses, and by them brought up to the Assembly, the resolution continued:—

"Then the said boxes shall be opened in the House, and if a majority of votes shall appear to be against a convention, then no further proceedings shall be had, but if a majority of votes shall be for a convention the Assembly shall then proceed to open the boxes containing the names of the members for the city and each county, and shall declare the six highest in number from each city and county to be the members to represent the said city and counties in the convention, and shall direct the convention to meet at Lancaster on the first day of June next."

The convention was to determine on nine points, among which were whether the legislative power should continue to be vested in a single branch, whether the Council of Censors should be retained, etc. "And the said convention, having finished," the resolution continued, "shall publish their proceedings and determinations, which shall be received and adopted by the inhabitants of the State at and after the next general election as parts of the constitution by which they are in future to be governed." *

This vote was not taken either, however, for remonstrances being received from many parts of the State, the resolution respecting the election was rescinded by the Assembly, 47 yeas and 7 nays, on February 27, 1779. †

The first constitutions, then, of Pennsylvania and all the original States, except Massachusetts and New Hampshire, went into force without a popular ratification. Here in these two New England States the Referendum, as we understand the term to-day, made its first appearance in the political

* *Journals of the Assembly*, pp. 246–247.

† *Id*, pp. 323–324.

practice of America. It may be argued (1) That the institution was an outgrowth of the town-meeting system. The fact of it only occurring in those States, where the people for a long period had been accustomed to meet together in their local communities, and themselves directly passed upon questions intimately affecting their welfare, would furnish a reasonable ground for such an argument. (2) That it was due to the teachings of John Adams, it being further a natural development from the necessities and tendencies of the times. There is reason for this, also, when it is considered that Massachusetts, where Adams lived, was the first State in which such a vote was taken; New Hampshire, being a neighbor, simply following the Massachusetts example.

The proposal for an election in Pennsylvania came from the followers of Adams, who wanted a legislature with two houses and three distinct departments of government. Here, however, it was a mere expedient to accomplish a desired purpose—the overthrow of an old constitution and the establishment of a new. It was in this case rather one of necessities. The vote was ordered to bring about greater popular content, it being thought that after an election should be held on the subject, whichever party found itself in the minority, would give more gracious support to the government. There appears to be much reason for the thought, however, that the town meeting had an important influence in engrafting this method upon our constitutional system.

It has been said that in the States other than Massachusetts and New Hampshire the propriety of submitting the first constitutions to the people was not denied, but the Tories forming so uncertain an element, it was thought dangerous to do so.* However this may have been, it is to be observed that the States outside of New England had no easy or economical method of getting an expression of the popular judgment. In the town meeting the people could be reached directly, and while assembled to do the public business of

*Jameson on *Constitutional Conventions*, p. 499.

their respective communities, could at the same time confer upon matters affecting the State government. This view is strengthened after considering the course which it was proposed in 1777 should be taken in Pennsylvania, a State unfamiliar with the town meeting. The devices to be here employed, as we have seen, were special officers, one chosen in each election district, who should travel about from house to house with a box or bag in which to collect the votes for or against a convention. This would have been a tedious, expensive and inconvenient plan, and particularly so in the sparsely-settled parts of the State. There is surely a good reason here why the Referendum should not have been earlier employed by the States outside of New England.

When the convention finally met to frame a new constitution for Pennsylvania it assembled without resort to a popular vote. By a resolution which passed the Legislature March 24, 1789, the question of a convention was recommended to the consideration of the people, as a means of reaching an amicable settlement in the State's long-raging constitutional dispute. The convention was ordered September 14, the members of the Legislature, according to the *Journals*, "having taken effectual measures for satisfying themselves of the sense of the good people of this commonwealth," and being "well assured from the petitions referred to them from inquiries made and from information given by the several members that a large majority of the citizens of the State" desired a convention.* Neither was the constitution which the convention framed submitted to popular vote.

Before the Referendum had yet come into general use, New Hampshire gave it another trial in 1792, the constitution of that year, the constitution which is, with amendments, still in force in that State, having been submitted to popular vote. Connecticut and Maine, in 1818 and 1819, respectively, both States in which the town meeting was a familiar institution, referred their first constitutions to the people, Rhode

* *Minutes of the Thirteenth General Assembly of Pennsylvania*, p. 250.

Island, another New England State, following in 1824, with a constitution which the people rejected.

The first State outside of New England, so far as the records show, to submit a constitution to popular vote, was Mississippi, August 15, 1817, which State was followed by Missouri, in 1820.

The Constitution of New York, about 1820, became notably unsatisfactory. Governor Clinton, in a message to the Legislature, recommended :—

First.—That the question of calling a convention should be submitted to the people, and decided by them by a majority vote at the polls of election ; and

Second.—That if a convention should in this way be called, that the business done therein should again be referred to the people for their confirmation or rejection.*

A bill was passed by the Legislature, according to the Governor's recommendations ; the people voted "Convention" or "No Convention," with a large majority in the affirmative, and a subsequent law, ordering the election of delegates, stated that it should be the duty of the convention to submit its proposed amendments to the decision of the citizens of the State, entitled to vote under the act, either together or in distinct propositions as might appear most expedient.†

From this time forth, nearly all the States came into the Union with constitutions which had received the direct sanction of the people, and the old States, as fast as new constitutions were found to be necessary, adopted the same plan.

Virginia followed New York in 1829, Georgia in 1833, Tennessee in 1834, and North Carolina and Michigan in 1835. The town-meeting principle had developed into the Referendum, and it was a firmly-established institution the country over. To-day, the people of not more than one or

* Hammond's *History of Political Parties in the State of New York*, vol. 1, p. 539.

† *Id*, pp. 559–560.

two States in the Union would be likely to be denied, nor would they allow themselves to be denied, the privilege of voting upon their constitutions. It has become an almost uniformly recognized rule in the constitutional practice of this country, which the people will jealously guard as one of the features of the American system of government.

It is to be noted with some surprise that the present Constitution of Mississippi, which was framed by a convention which met in 1890, was not submitted to the people. The irregularity of the proceeding was brought to the attention of the State Supreme Court, which body, on grounds that seem very little in harmony with the spirit of history and present tendencies, found the Constitution to be valid and a ratification of the people unnecessary.*

* *Sproull* v. *Fredericks*, 69 Miss., 898, April Term, 1892.

The Court in part said :—

"We have spoken of the Constitutional Convention as a sovereign body, and that characterization perfectly defines the correct view, in our opinion, of the real nature of that august assembly. It is the highest legislative body known to freemen in a representative government. It is supreme in its sphere. It wields the powers of sovereignty specially delegated to it for the purpose and the occasion by the whole electoral body for the good of the whole Commonwealth.

"The sole limitations upon its powers is that no change in the form of government shall be done or attempted. The spirit of republicanism must breathe through every part of the framework, but the particular fashioning of the parts of this framework is confided to the wisdom, the faithfulness and the patriotism of this great convocation representing the people in their sovereignty.

"The theorizing of the political essayist, and the legal doctrinaire, by which it is sought to be established that the expression of the will of the Legislature shall fetter and control the constitution-making body, or, in the absence of such attempted legislative direction, which seeks to teach that the Constitutional Convention can only prepare the frame of a Constitution, and recommend it to the people for adoption, will be found to degrade this sovereign body below the level of the lowest tribunal clothed with ordinary legislative powers.

"This theorizing will reduce that great body, which, in our State at least, since the beginning of its existence, except for a single brief interval in an exceptional period, by custom and the universal consent of the people has been regarded as the repository and executor of the powers of sovereignty, to a mere commission, stripped of all power, and authorized only to make a recommendation."

This action in Mississippi was induced by considerations of expediency on the part of the white citizens of the State. The constitution, as the convention framed it, contained a provision establishing a stringent educational qualification for the exercise of the suffrage, designed to operate against the negroes. The State having a larger negro than white population, it was desired to escape the uncertainty of a submission to popular vote.

The methods employed in voting on constitutions have been various. In the early cases in New England, as we have seen, it was done through the convenient instrumentality of the town meetings. When the custom became familiar in the other States the vote was taken *viva voce*, or by ballot, as was the method prevailing in the case of other elections. In Tennessee, in 1834, the election to determine the will of the people in regard to the constitution of that year was by ballot. The ballots were to have written thereon, "I ratify the Amended Constitution" or "I reject the Amended Constitution;" or else the words "Ratification" or "Rejection."

In Florida, in 1838, the vote was *viva voce*, the election officers writing opposite the name of each elector, as he might prefer, "Constitution" or "No Constitution."

Other plans have been employed, as for example, in Michigan, in 1850, when the ballots contained the words "Adoption of Constitution—Yes" or "Adoption of Constitution—No;" Wisconsin, in 1848, when the ballots read simply "Yes" or "No;" Louisiana, in 1845, when the words were "The Constitution accepted" or "The Constitution rejected;" Tennessee, in 1870, "Old Constitution" or "New Constitution."

The simpler methods, and those now in most general use, provide that the ballots read, "For the Constitution" or "Against the Constitution;" or "For the New Constitution" or "Against the New Constitution;" or "Constitution—Yes" or "Constitution—No;" or "New Constitution—Yes" or "New Constitution—No."

Formerly, when the public mind was much troubled as to the rights of minorities, a two-thirds vote was requisite for ratification; this was sometimes two-thirds of the qualified electors in the State, and sometimes only two-thirds of those voting. In later years the development has been to a simple majority of those voting on the question.

It is very usual for conventions in late years at the time of submitting constitutions, to submit special articles, or sections of articles, for separate consideration by the people. These pertain to subjects upon which there is likely to be much public feeling, which the convention does not care to take responsibility for and recognizes to be of so debatable an expediency that the propositions, unless submitted in such separate manner, may work to defeat the whole constitution. Subjects so treated by the conventions have been slavery, woman suffrage, the prohibition of the liquor traffic, the location of State capitals, etc.

Related to this Referendum on entire constitutions are two others—the Convention Referendum and the Amendment Referendum. The Convention Referendum made its appearance simultaneously with, if not before, the Referendum on constitutions. The first question to be decided was whether there should be a new constitution, and after that, in the natural sequence of things, would follow the question as to what that constitution should be. It was this Referendum which was proposed in Pennsylvania in 1777; which was employed in Massachusetts in 1779, and which has later come to be as firmly established an institution as the Referendum on completed constitutions. It had a wider use formerly, as being the sole method of effecting constitutional amendment.

The Constitution of Massachusetts adopted in 1780 contained an article which provided that in order to decide whether the constitution should be amended or not, the Legislature in the year 1795 should "issue precepts to the selectmen of the several towns and to the assessors of the unincorporated

plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity and expediency of revising the constitution in order to amendments, and if it shall appear by the returns made that two-thirds of the qualified voters throughout the State who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the General Court shall issue precepts or direct them to be issued from the secretary's office to the several towns, to elect delegates to meet in convention for the purpose aforesaid."

The New Hampshire Constitution of 1792 provided that at the expiration of every seven years the question should be voted on in the town meetings whether a convention to revise the constitution should be called or not, and further, that no alteration should be made before the same should be "laid before the towns and unincorporated places, and approved by two-thirds of the qualified voters present and voting on the subject."*

This constitution is still in force in New Hampshire. A number of amendments have been made by this inconvenient process, the last convention for such a purpose having met in 1889.

Amendment by convention was at the beginning the only means of amendment and it still continues to be the method when a new constitution is wanted, or the old one requires radical revision. When to submit the question of calling a convention is usually left to the judgment of the legislature, though the Referendum is sometimes made self-executing by the constitution which specifies that a vote shall be taken at the end of a certain prescribed interval of years. Thus by the present constitution of Iowa, an election must be held on this subject every ten years; in Maryland, New York, Ohio, and Virginia, every twenty years, and in Michigan every sixteen years.

* Sections 99 and 100.

A usual way of treating the subject in the recent constitutions is the following, from the Constitution of Missouri, framed in 1875 :—

"The General Assembly may at any time authorize, by law, a vote of the people to be taken upon the question whether a convention shall be held for the purpose of revising and amending the constitution of this State; and if at such election a majority of the votes on the question be in favor of a convention, the Governor shall issue writs to the sheriffs of the different counties, ordering the election of delegates to such a convention."*

Ordinarily, a simple majority of the votes cast on the question, as in the example here given, decides the matter, but the Constitution of Kentucky of 1850,† required a majority of all of the electors in the State qualified to vote for State representatives, and, to make the conditions yet more difficult of fulfillment, this vote must be secured at two successive elections, a result only accomplished in 1889. Delaware finds this kind of a majority vote necessary also, but it is sufficient if expressed at one election.‡ In such elections the ballots usually take the form of "For a Convention" or "Against a Convention;" or "Convention" or "No Convention."

To find a method of amendment easier than by convention was reserved for Connecticut in 1818, when the Amendment Referendum was invented in the form it has since very generally taken, the passage of two successive Legislatures followed by a vote of the people.§ A convention met in Massachusetts, in 1821, to propose amendments to the State constitution, and a few months later a body of delegates assembled in New York for a similar purpose. Among the proposals made by each convention were articles embodying the Connecticut plan. Henceforth the Amendment Referendum

* Art. XV, Sec. 3.

† Article XII.

‡ Constitution of 1831, Article IX.

§ Constitution of 1818.

by Legislature became an admittedly necessary feature in every State government. The present Constitution of New Hampshire alone does not allow of amendment by this process.

The constitutions prescribe several different forms of treatment before the Legislatures may submit amendments. Most in favor is, either the passage by two-thirds of the members of each house of one Legislature, or majority passage by the members of each house of two successive Legislatures, the former being the favorite method in the States having new constitutions. There are other plans in States which have old constitutions.*

In Delaware alone, the people have no direct share in constitutional amendment by Legislature.† In every other

* Two-thirds passage by one Legislature: Alabama, California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Texas, Washington, West Virginia and Wyoming.

Majority passage by one Legislature: Arkansas, Minnesota, Missouri, and South Dakota.

Three-fifths passage by one Legislature: Florida, Kentucky, Maryland, Nebraska, North Carolina and Ohio.

Majority passage by two successive Legislatures: Indiana, Iowa, Nevada, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Virginia and Wisconsin.

Majority passage by two successive Legislatures, and three-fifths vote of the people: Rhode Island.

Majority of one Legislature and two-thirds of the next: Tennessee.

Majority of the House of Representatives of one Legislature, and two-thirds approval of both Houses of the next: Connecticut.

A majority in the Senate and a two-thirds vote in the House of Representatives, same in two Legislatures: Massachusetts.

Two-thirds vote of the Senate and majority vote of the House of Representatives of one Legislature, and a majority vote of both Houses of the next: Vermont. New Hampshire, amends only by convention.

† Constitution of 1831, Article IX. "The General Assembly, whenever two-thirds of each House shall deem it necessary, may, with the approbation of the Governor, propose amendments to this Constitution, and at least three, and not more than six, months before the next general election of representatives, duly publish them in print for the consideration of the people, and if three-fourths of each branch of the Legislature shall, after such an election, and before another, ratify the said amendment, they shall be valid to all intents and purposes as part of this Constitution."

State they are given the final disposition, except in South Carolina, where, after passing the Legislature once, then going to the people, amendments revert to the Legislature again. *

When it is said, however, that the people vote upon their constitutions and the amendments thereto, there is still lacking any complete understanding of the extent to which this custom has gone. There has been within recent times a radical change in our ideas in regard to State constitutions, and our conceptions as to what matters are suitable for a place in these instruments. At the beginning they were, as constitutions are supposed to be, statements of the fundamentals of government. They included in the first place a bill of rights, a declaration of personal privileges, which were to be guaranteed to the citizen, and which the government was at no time to abolish or abridge. They included further, a scheme of public management and administration. They put the legislative, the executive and judicial powers in the custody of certain specified agents and prescribed in a general way the methods which should be used by those agents in exercising their respective duties. They provided for the organization of the Legislature, the appointment or election of the Governor and other executive officers, and the establishment and maintenance of the courts, and here the scope of the constitutions was thought to have reached a limit. Now, however, very different constitutional standards obtain,

* Constitution of 1868, Article XV, Section 1. "Any amendment or amendments to this Constitution may be proposed to the Senate or House of Representatives. If the same be agreed to by two-thirds of the members elected to each House, such amendment or amendments shall be entered on the journals, respectively, with the yeas and nays taken thereon; and the same shall be submitted to the qualified electors of the State at the next general election thereafter for representatives, and if a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote in favor of each amendment or amendments, and two-thirds of each branch of the next General Assembly shall, after such an election, and before another, ratify the same amendment or amendments by yeas and nays, the same shall become part of the Constitution: Provided, That such amendment or amendments shall have been read three times, on three several days, in each House."

and, in the States of every section of the country the same tendency is visible, until we have to-day come to a point where our State constitutions are nothing short of codes of laws giving instruction to the Legislature and the other agents of government on nearly every subject of general public concern, and often stating the methods, which shall be used in legislating, if not indeed actually legislating on local questions. In this connection a comparison as to the length of the constitutions of to-day and those of earlier times is instructive.

In the following tables the author has used a book of a uniform standard in paging :—*

	Constitution of	Pages.
Pennsylvania	1776	8
	1790	8
	1838	10
	1873	23
Missouri	1820	12
	1865	21
	1875	33
Texas	1845	16
	1868	21
	1876	32
Virginia	1776	4
	1830	7
	1850	18
	1870	21
Illinois	1818	10
	1848	21
	1870	25

These are only a few of such comparisons which could be given, but are enough to indicate the tendency here referred to. The constitutions of all the new States are of great length, making pamphlets which cover from 50 to 75 pages (the pages containing considerably less matter, however, than

* Poore's *Charters and Constitutions.*

those taken as the standard in the tables above). The Constitution of Mississippi framed in 1890, and that of Kentucky framed in 1891, are of about the same length, dealing with the subjects treated in like fullness and detail.

The constitutions have become the repositories for much of the legislation which before was left to be enacted by the Legislatures. For example we have to-day such provisions in the constitutions as the following :—

Establishing a public school system, and stating, in minuteness, as to how it shall be maintained.

Establishing colleges, universities and other institutions of learning.

Fixing the scheme of revenue and placing limits upon the taxing power.

Exempting certain properties from taxation and detailing the manner of assessment.

Prescribing the subjects for which the appropriation of public money may be made, and limiting the power to create indebtedness.

Organizing the militia forces.

Stating how railroad and other companies may become incorporated, and the rules which they shall observe after incorporation.

Fixing the rate of interest.

Prohibiting the sale and manufacture of liquors.

Prohibiting lotteries.

Fixing the salaries of public officials.

Establishing or prohibiting banks.

Making rules for the management of penal and reformatory institutions.

Prohibiting prize fights and duels.

Defining the relations of husbands and wives, and debtors and creditors.

Establishing a legal day's work.

Stating the methods of administration, which shall be employed in counties, cities, townships and other local districts.

Making legislative and congressional apportionments.

Removing from the State Legislatures the power to make city charters and vesting it in Boards of Freeholders, chosen by the electors within the respective cities.

Indeed, there are now few matters, which are subjects for legislation at all, that, according to the new conception of a constitution may not be dealt with by the conventions. It is only after considering the nature of this new conception that the Referendum as exemplified in America is seen to have its closest likeness to the institution as it exists to-day in Switzerland.

Side by side with this movement to make codes of laws of our constitutions, and to restrict in many ways the powers of the State Legislatures, has grown up a movement tending directly toward the almost entire abolition of these bodies. In nearly all the States by the development of the last few years, the conventions have substituted biennial for annual legislative sessions. These sessions, now being held only half as often, are further limited so that they may not extend over more than a certain number of days. Instead of a representative law-making body, which shall meet once a year, the people are showing a preference for a representative law-making body which shall meet once in ten or twenty years and which submits its work for their approval or disapproval at the polls. There is thus a tendency toward taking our laws in bulk from a convention, instead of in small lots each year from a Legislature; the code to be changed at intervals when it may need it, by the initiation of the Legislature and the ratification of the people.

This tendency seems to have everything to encourage it and give it greater growth. Those States which still retain the system of annual sessions, as, for instance, New York and New Jersey, constantly find cause for dissatisfaction, and the feeling of distrust for these bodies is taking deeper hold of the people every year. The feeling, indeed, has reached a conviction nearly everywhere that the powers of the

Legislatures should be still further curtailed, and in but one State, Georgia, has there been shown any inclination to return to original principles.*

With the change in the character of the constitutions, has, of necessity, come a change in the character of constitutional amendments. Statute legislation of late years has been more and more disguised in these amendments and sent to the Referendum. No better evidence of this is to be found than in the frequency of amendments to prohibit the manufacture and traffic in intoxicating liquors, a subject as far removed as any well could be from the original idea as to a proper matter for treatment in a constitution. Of these elections in nine years, there were nineteen, beginning with Kansas, November, 2, 1880, and closing with Connecticut, October 7, 1889. The following table† is believed to be correct, the submission in three of the States, South Dakota, North Dakota and Washington, being made by conventions instead of legislatures.

Year.	State.	For Prohibition.	Against Prohibition.	Number not voting.
1880	Kansas	91,874	84,037	25,325
1882	Iowa	155,436	125,677	10,935
1883	Ohio	323,189	240,975	157,146
1884	Maine	70,783	23,811	47,819
1885	Dakota Territory	15,570	15,337	55,861
1886	Rhode Island	15,113	9,230	2,532
1887	Michigan	178,636	184,281	17,968
	Texas	129,270	220,627	7,616
	Tennessee	117,504	145,197	41,083
	Oregon	19,973	27,958	7,023
1888	West Virginia	41,668	76,555	41,317

* Georgia, by her Constitution of 1877, made the sessions of her State Legislature biennial. By an amendment, adopted by the people at an election in 1892, she returned to annual sessions.

† *Cyclopædia of Temperance and Prohibition*

Year.	State.	For Prohibition.	Against Prohibition.	Number not voting.
1889...	New Hampshire..	25,786	30,976	34,160
	Massachusetts.....	85,242	131,062	128,213
	Pennsylvania.....	296,617	484,644	216,307
	Rhode Island.....	9,958	28,315	4,840
	South Dakota.....	39,509	33,556	4,862
	North Dakota.....	18,552	17,393	2,153
	Washington.....	19,546	31,489	7,408
	Connecticut.....	22,379	49,974	81,925
	Totals.....	1,676,603	1,960,994	894,193

Another notable instance of this tendency appeared in Louisiana, in 1891, when it was proposed by amendment of the constitution to grant a charter to a great lottery. This is a subject utterly out of harmony with the original spirit of the constitutions, and it was incorporated in an amendment chiefly because it was a question upon which the people held very hostile opinions, it being desired by the Legislature to transfer to other shoulders the responsibility for an enactment of such doubtful expediency. As a further indication of this tendency, we may cite a few of the propositions for constitutional amendment upon which the people voted at the autumnal elections of 1892, as follows:—

In New York an amendment was submitted authorizing the sale of the Onondaga Salt Springs, the property of the State; in California, increasing the salary of the Lieutenant-Governor; in Minnesota, providing for the taxation of sleeping car, express, insurance and other companies doing business within the State; in Nebraska, relating to the investment of the school fund; in Washington, raising the constitutional limit of the State's indebtedness; in Arkansas, requiring the payment of a one dollar poll tax, as a necessary qualification for voting, etc.

In line with this tendency to much amendment is the accompanying tendency to easy amendment. In nearly all the new States and those older ones which have constitutions recently

adopted, the time in which amendment may be effected is reduced by one-half. While the endorsement of two successive Legislatures was formerly required before submitting to the people a proposition for constitutional change, now passage by one Legislature is coming to be regarded as sufficient. This greater facility in amendment is one of the demands of the time. If a constitution is to enter into the details of government and trespass on those fields of action before reserved to the Legislature, it cannot have the character of permanence which it had when it was only an outline to direct the Legislature. It must change as laws change, and laws must change as the needs of the people change. This condition of affairs has a tendency, undoubtedly, to still further degrade the State Legislatures. Certain classes of amendments are submitted to the people without the deliberation which would be given to statutes upon the same subjects. This is notably the case with prohibitory amendments, and those relating to woman suffrage. In the treatment of prohibition, especially in the Eastern States, this tendency of late years has been very marked. It has been usual for few members of the Legislature which passed such an amendment to vote for it affirmatively at the polls.

These amendment elections are held either at the same time as the general elections, or at other times, the practice varying in different States. It is argued in favor of special elections, that the people should meet such an issue as the amending of a constitution at a time when the mind is not confused with other issues, and that the decision of such questions should always be kept separate from campaigns, in which are involved the success or defeat of particular parties and particular men. On the other hand, it is urged against special elections that they cause a much greater expense to the State, necessitating the complete equipment of the polls just as at a regular election. The expense is now more of a consideration than ever before since the general adoption in the States of the new ballot system.

The ballots are usually worded as simply as possible, the electors being supposed to have read the amendments, the law requiring them to be advertised in every part of the State, in the newspapers. Thus in Pennsylvania at the special election in 1889, when an amendment was submitted proposing the prohibition of the liquor traffic, the amendment was described simply as the "Prohibitory Amendment." The ballots were as follows :—

PROHIBITORY AMENDMENT TO THE CONSTITUTION.	PROHIBITORY AMENDMENT TO THE CONSTITUTION.
For the Prohibitory Amendment.	Against the Prohibitory Amendment.

When but a single amendment is submitted at a time, the ballots usually read "For the Amendment" and "Against the Amendment." In some States when more than one amendment is submitted at the same election, as for instance, in New York at the election in 1892, the amendments are numbered. For example, in New York, for the third amendment in the group, the following description was printed on each ballot: "Amendment No. 3, proposing an amendment to Article VII of the Constitution, relating to Onondaga Salt Springs." In Georgia, at the election in 1892, when several amendments were submitted, a sample ballot was worded as follows :—

RATIFICATION.

(Amendment proposed to Constitution, providing for annual sessions of the General Assembly.)

AGAINST RATIFICATION.

(Amendment proposed to Constitution, providing for annual sessions of the General Assembly.)

In California, in 1892, when the people voted on several amendments, the ballots were by the Australian system, the propositions being stated as follows :—

Senate Constitutional Amendment No. 10. (Increasing legislative session to one hundred days.).....	YES.	
	NO.	
Assembly Constitutional Amendment No. 7. (Limiting Debts of counties, cities, towns, townships, Boards of Education, and School Districts, to a year's revenue, except by a two-thirds vote.).....	YES.	
	NO.	

In Maryland, in November, 1891, when six amendments were submitted to the people, the ballots used were as follows:—

1.—Chapter 194, of Acts of 1890. *Entitled "An Act to amend Section 17, of Article II, of the Constitution of this State."* Empowering the Governor to disapprove of any items of any bills passed by the General Assembly making appropriations of money; the part approved to be the law. Described in the Governor's proclamation as Amendment No. 1.	For.	**1.—Chapter 194, of Acts of 1890.** *Entitled "An Act to amend Section 17, of Article II, of the Constitution of this State."* Empowering the Governor to disapprove of any items of any bill passed by the General Assembly making appropriations of money; the part approved to be the law. Described in the Governor's proclamation as Amendment No. 1.	Against.
4.—Chapter 255, of Acts of 1890. *Entitled "An Act to amend Section 1, of Article VII, of the Constitution of this State."* Increasing the term of office of County Commissioners. Described in the Governor's proclamation as Amendment No. 4.	For.	**4.—Chapter 255, of Acts of 1890.** *Entitled "An Act to amend Section 1, of Article VII, of the Constitution of this State."* Increasing the term of office of County Commissioners. Described in the Governor's proclamation as Amendment No. 4.	Against.

CHAPTER III.

The Submission of State and Local Laws.

It is not necessary, however, to search under the disguises of constitutions and constitutional amendments to find instances of law-making by vote of the people in the United States. It has been usual for many years past for the Legislatures to submit statute laws on certain classes of subjects, their going into effect depending upon popular approval. One of the first subjects of this kind to be put to the vote of the people of the entire State was the location of State capitals. This was a question which, at an early date, was looked upon as in some particulars extraordinary, and entitled to treatment unlike that accorded to other regular subjects of legislation. In some of the early cases, capitals were located by commissions, and other agencies outside of the Legislature. The people becoming a more direct force in political affairs, the conventions came to regard this a suitable matter for popular investiture. The people being qualified to decide upon the character and form of their State government, might naturally have the further grant of power to say at what place this government shall be administered, a site to be chosen which shall be most convenient to the largest number of the State's citizens.

This is a Referendum which was first recognized in a constitution in Texas, in 1845. In order permanently to settle the matter, it was provided that an election be held on the first Monday of March, 1850, at which the question of the location of the seat of government should be put to popular vote. The people at the election could vote for any place they chose, and in case none of the places voted for should

receive a majority of the number of votes cast, then another election should be held in the same manner, on the first Monday in October, 1850, to make choice "between the two places having the greatest number of votes at the first election."*

This Referendum was also used shortly afterward in California. The Legislature of that State at its first session in 1850, authorized a vote taken as to whether the seat of government should be removed to Vallejo. It was later used in Kansas, in Colorado, and most of the new States; in more recent times, in South Dakota, Montana and Washington, the rivalry of the various town and cities which sought the honor, often attaining very comical proportions. The location of State capitals has come to be a matter to be left altogether to the people, and it is exceedingly doubtful, if a removal would anywhere be made without first securing for the proposal a ratification by popular vote. A section of Article III of the Constitution of Pennsylvania provides: "No law changing the location of the capital of the State shall be valid until the same shall have been submitted to the qualified electors of the Commonwealth, at a general election, and ratified and approved by them." Provisions of this kind are to be found in the Constitutions of the following States: California, Colorado, Georgia, Mississippi, Minnesota, Montana, Nebraska, Oregon, Pennsylvania, Washington and Wyoming.

The Referendum to determine the location of the State capitol buildings is being extended to embrace other State buildings. The Constitution of Texas, framed in 1876, Art. VII, Sec. 10, says: "The Legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this State, and styled 'The University of Texas.'" Accordingly, the people voted on the question in 1881, and located the University at the

* Constitution of 1845, Art. III, Sec. 35.

city of Austin, and the Medical Department of the University, which the law stated could be located at a separate place if the people chose, at the city of Galveston.

Art. VII, Sec. 14, of the same constitution says: "The Legislature shall also, when deemed practicable, establish and provide for the maintenance of a college, or branch university, for the instruction of the colored youths of the State, to be located by a vote of the people."

A section of the Constitution of Wyoming adopted in 1889, says: "The Legislature shall have no power to change, or to locate the seat of government, the State university, insane asylum, or State penitentiary, but may, after the expiration of ten years after the adoption of this constitution, provide by law, for submitting the question of the permanent locations thereof, respectively, to the qualified electors of the State, at some general election, and a majority of all votes upon said question cast at said election, shall be necessary to determine the location thereof." Until the ten years have elapsed, the locations are fixed by the constitution. It is further provided that "the Legislature shall not locate any other public institutions except under general laws, and by vote of the people."

Another Referendum relates to changes in the State's territorial area and jurisdiction, the division of a State to form a new State, etc. Instances of this kind are not very numerous. Of this class was an election held in town and plantation meetings, in the "District of Maine" in 1816, to decide whether there should be a separation from the State of Massachusetts. The Legislature of Massachusetts, by act of June 19, 1819, authorized an election on the separation question on July 19 of that year, and on that day another vote was taken. If the proposition that the "District of Maine" should become a "separate and independent State," received a majority of 1,500 votes, a convention was to be chosen to frame a constitution. The necessary majority was secured, and thus Maine was admitted to the Union.

Of this class also was a Referendum, for which authority was given by the Congress of the United States, by Act of July 9, 1846. The land ceded by the State of Virginia to the United States for the purpose of a seat of government, in the district afterwards called the District of Columbia, did not prove to be needed for that purpose by the Federal Government. The Legislature of Virginia had earlier enacted a law, signifying the State's willingness to take back the land.

In 1846, therefore, Congress submitted to the people of the county of Alexandria the question of retrocession, and the popular assent being given, the county was reattached to Virginia. This case was later much cited by the courts as tending to show the constitutionality of law-making by vote of the people in the States, inasmuch as the method had been employed by the Federal Government.

The present Constitution of West Virginia provides that "additional territory may be admitted into, and become part of, this State, with the consent of the Legislature, and a majority of the qualified voters of the State voting on the question."* It is unlikely that changes would be made in the boundaries of any State without first submitting the proposition to popular vote. Somewhat similar in nature was a Referendum in Texas in 1845, before that State had been admitted to the Union, when the vote was for or against annexation to the United States.

Another class of questions upon which the people have come to be directly consulted concern the collection and expenditure of the public money, the electors themselves being constituted a check upon the State Legislatures. These are questions, also, in which the people may be said to have an extraordinary interest. Those who provide, by the payment of taxes, for the support of the government might, with propriety, be allowed to say to what uses this money shall be put. The Referendums of this class appear

* Art. VI, Sec. 11.

in several forms. The first to make its appearance in a constitution is to be credited to Rhode Island. This State continued under the charter granted it in 1663, by King Charles, until 1842, when a convention met and framed the present Constitution of the State. Art. IV, Sec. 13, says: "The General Assembly shall have no power hereafter, without the express consent of the people, to incur State debts to an amount exceeding $50,000, except in time of war, or in case of insurrection or invasion."

An amendment to the Constitution of Michigan, ratified at the polls in 1843, provided that "every law authorizing the borrowing of money or the issuing of State stocks," whereby a debt should be created on the credit of the State, should, prior to taking effect, be submitted to popular vote. Exceptions were made for debts incurred in the regular course of State administration, and in suppressing insurrection or defending the State in time of war. New Jersey followed in 1844. Art. IV, Sec. 6, of the Constitution of that State says: "The Legislature shall not, in any manner, create any debt or debts, liability or liabilities of the State which shall, singly or in the aggregate, with any previous debts or liabilities, at any time exceed $100,000, except for the purpose of war or to repel invasion," unless at a general election such law "shall have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election." Iowa and New York followed in 1846, and the provision, with varying debt limits, to-day occurs in the constitutions of thirteen States. The Legislatures are, in all cases, reserved the power to make unlimited debt to repel invasion, suppress insurrection or defend the State in time of war.

The limits, above which all laws contemplating the contraction of debt must be submitted to popular vote in the various States which have constitutional provisions on this subject, are as follows:—

California	$300,000
Illinois, in 1848	50,000
Illinois, in 1870	250,000
Iowa	250,000
Kansas	1,000,000
Kentucky	500,000
Montana	100,000
Missouri	250,000
Nebraska, in 1866	50,000
Nebraska, in 1875	No provision.
New Jersey	100,000
New York	1,000,000
Rhode Island	50,000
Washington	400,000
Idaho, above the sum of 1½ per centum of the assessed value of the taxable property in the State.	
Wyoming, in any year any sum above the revenues of that year.	

An amendment to the Constitution of South Carolina, adopted in 1873, provides that, "To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt or obligation, either by loan of the credit of the State, by guaranty, endorsement or otherwise, except for the ordinary and current business of the State, without first submitting the question . . . to the people of the State at a general State election." . . .

In North Carolina, by the Constitution of 1868, and likewise by the amended Constitution of 1876, it is provided, Art. V, Sec. 5: "The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the

adoption of the constitution, or railroads in which the State has a direct pecuniary interest, unless the subject be submitted to direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

Art. XII, Sec. 185, of the Constitution of North Dakota, adopted in 1889, provides: "Neither the State, nor any county, city, township, town, school district, or any other political subdivision, shall loan, or give its credit, or make donations to, or in aid of any individual, association, or corporation except for necessary support of the poor; nor subscribe to, or become the owner of the capital stock of any association or corporation; nor shall the State engage in any work of internal improvement, unless authorized by a two-thirds vote of the people."

The Wyoming Legislature, in addition to its other constitutional restrictions in the making of debts, is limited as follows: "The State shall not engage in any work of internal improvement unless authorized by a two-thirds vote of the people."

In Illinois, Art. IV, Sec. 33, of the Constitution of 1870, provides: "The General Assembly shall not appropriate out of the State Treasury, or expend on account of the new capitol grounds and the construction, completion and furnishing of the State House, a sum exceeding in the aggregate $3,500,000, inclusive of all appropriations heretofore made, without first submitting the proposition for additional expenditure to the legal voters of the State at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure."

Art. XI, Sec. 5, of the Constitution of Colorado, adopted in 1876, gave the Legislature power to contract a debt, not exceeding in the aggregate three mills on each dollar of valuation of taxable property within the State, to erect public buildings, provided that the law making such debt, before going into effect, should be submitted to the people, and be approved by a majority of the votes cast thereon, at a general State election.

In 1858 the Constitution of Minnesota had been amended to authorize the issue of $5,000,000 of bonds to aid in the construction of certain railroads. The companies had defaulted in performing some of the conditions imposed upon them, and in 1860, the constitution was again amended, so as to provide that no law "levying a tax or making other provision for the payment of interest or principal" of the Minnesota Railroad bonds should take effect until it be submitted to, and adopted by the people.

The Constitution of Illinois, adopted in 1870, provides that the Illinois and Michigan Canal, a State property, "shall never be sold or leased until the specific proposition for the sale or lease thereof, shall first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election."

These Referendums all apply to the State's expenditures. They originated at a time when the public credit was at a low ebb, and when it was felt to be a matter of the utmost concern that check should be placed upon the Legislatures in the use of the public money. There are a few cases in which the people are given direct powers regarding the collection of the State's revenues. Such a Referendum occurs in the Constitution of Colorado, framed in 1876. In that State it takes the following form: "The rate of taxation on property for State purposes shall never exceed six mills on each dollar of valuation, and whenever the taxable property within the State shall amount to $100,000,000, the rate shall not exceed four mills on each dollar of valuation; and whenever the taxable property within the State shall amount to $300,000,000, the rate shall never thereafter exceed two mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed, and the time during which the same shall be levied, be first submitted to a vote of such qualified electors of the State as in the year next preceding such election, shall have paid a property tax assessed

to them within the State, and a majority of those voting thereon shall vote in favor thereof in such manner as may be provided by law." *

Idaho and Montana express this Referendum in much the same words, except that the mill rates and valuation limits differ. The question, in these States, moreover, is submitted to all the qualified voters, instead of property tax-payers only.

There is another question which closely concerns the public credit, and which developed into a subject for the Referendum mainly during the same period when Legislatures were put under a limit in the contraction of debt. This is the granting of charters to banks. The bank excitement was at its height when the following Referendum appeared in the Constitution of Iowa, framed in 1846 :—

"No act of General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto, shall take effect, or in any manner be in force until the same shall have been submitted separately to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election." †

Iowa was followed by Illinois and Wisconsin in 1848, Michigan in 1850, and Ohio in 1851. This Referendum occurs in the present constitutions of seven States—Illinois, Iowa, Kansas, Michigan, Missouri, Ohio and Wisconsin. Wisconsin goes to greater lengths than any of the others to protect the people from "wild-cat" financiering. The constitution after denying all power to the Legislature "to create, authorize, or incorporate by any general or special law, any bank, or banking power, or privilege, to any institution, or corporation having any banking power or privilege whatever," says : "The Legislature may submit to the voters at

* Art. X, Sec. 11.

† Constitution of 1846, Art. VII, Sec. 5.

any general election the question of 'bank or no bank;' and if at any such election a number of votes equal to the majority of the votes cast at such election on that subject shall be in favor of banks, then the Legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions, and under such regulations, as they may deem expedient and proper for the security of the bill holders: *Provided*, That no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election, and been approved by a majority of the votes cast on that subject at such election."* This is in the form of a double Referendum, and is a remarkable instance of existing faith in the wisdom and discernment of the people, and of deep-seated distrust for Legislatures.

A third series of laws, upon which the people of the States have come to have a direct vote, relate to questions of a vexatious character. These are laws either upon which the members of the Legislatures cannot agree, or which are known to be so unpopular with a large class in the electorate that the members decline to assume the responsibility of passing them. Such laws, in recent times, as we have seen in the preceding chapter, are usually submitted in the form of constitutional amendments by the Legislatures, or the conventions. Of this class were many propositions before the war to abolish slavery, or enfranchise the negroes; and of this class to-day are the prohibitory amendments, the amendments to confer suffrage on women, and the proposed amendment in Louisiana, in 1891, to grant a charter to a lottery.

The constitutions of some States specially guarantee to the people a Referendum upon the question of an extension of the suffrage. In Wisconsin, the constitution, after fixing the qualifications for electors, provides: "That the Legislature may, at any time, extend by law the right of suffrage to persons not herein enumerated, but no such law shall be in

* Constitution of 1848, Art. XI, Sec. 5.

force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election."

At an election held in 1848, the suffrage was extended to negroes, and at an election in 1885, school suffrage was conferred upon women.

Art. VII, Sec. 2, of the Constitution of Colorado, says: "The General Assembly shall, at the first session thereof, and may at any subsequent session, enact laws to extend the right of suffrage to women of lawful age, and otherwise qualified according to the provisions of this article. No such enactment shall be of effect until submitted to the vote of the qualified electors at a general election; nor unless the same be approved by a majority of those voting thereon." Such a law was submitted and defeated by a vote of the people in 1877.

Art. V, Sec. 122, of the Constitution of North Dakota says: "The Legislative Assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion, to all citizens of mature age and sound mind, not convicted of crime, without regard to sex; but no law extending or restricting the right of suffrage shall be in force until adopted by a majority of the electors of the State, voting at a general election."

Art. VII, Sec. 2, of the Constitution of South Dakota, adopted in 1889, says: "The Legislature shall, at its first session after the admission of the State into the Union, submit to a vote of the electors of the State, the following question, to be voted on at the next general election held thereafter, namely: Shall the word 'male' be stricken from the article of the constitution relating to elections and the right of suffrage? If a majority of the votes cast upon that question are in favor of striking out said word 'male,' it shall be stricken out, and there shall thereafter be no distinction between males and females in the exercise of the right of suffrage at any election in this State."

This proposition was voted on in 1891 and was defeated. It was formerly usual for the Legislatures to submit statute laws prohibiting the manufacture and sale of intoxicating liquors. A little time after the adoption of the "Maine law" prohibitory laws were submitted to the people in several States. Although the reference of statutes to the people, when such power is not specially conferred upon the Legislature by the terms of the constitution, has been declared irregular by the State courts in a number of cases, the plan is still in use.

On August 1, 1881, the people of North Carolina voted on a prohibition act submitted to them by the Legislature. Several statute propositions were submitted by the California Legislature at the elections in 1892.

Of this class, also, are propositions to determine, by popular vote, questions of legislative representation and the system of apportionment. In Maine, by the constitution adopted in 1820, the membership in the House of Representatives of the State Legislature was fixed at not less than one hundred, nor more than two hundred members; but the constitution provided: "Whenever the number of representatives shall be two hundred at the next annual meetings of elections, which shall thereafter be had, and at every subsequent period of ten years, the people shall give in their votes, whether the number shall be increased or diminished." The section providing for a vote on this subject was annulled by a constitutional amendment, ratified in 1841.

By the Constitution of 1850 of Virginia it was provided, in Art. IV, Sec. 5, that the Legislature, in case it could not agree on a principle of representation, should in 1865, and every tenth year thereafter, submit the question to the people. In the event of failure on the part of the Legislature to do either of these things—that is, to agree or to make the submission, the people were to vote upon the question in the years named anyhow upon proclamation by the Governor. The people were to choose from among four systems:—

1. Whether representation in both Houses should be apportioned on the "suffrage basis"—that is, according to the number of votes in the respective districts of the State.

2. Whether representation in both Houses should be apportioned on a "mixed basis"—that is, partially on a basis of white population and partially on a basis of taxes paid.

3. Whether representation in the Senate should be apportioned according to taxes paid, and in the House of Delegates on the "suffrage basis."

4. Whether representation in the Senate should be on the "mixed basis" and in the House of Delegates on the "suffrage basis."

In case no system should get a majority vote, another election was provided for, when the voters should decide between the two systems which had secured the largest number of votes at the previous election.

Art. VI, Sec. 50, of the Constitution of West Virginia, adopted in 1872, says: "The Legislature may provide for submitting to a vote of the people at the general election to be held in 1876, or at any general election thereafter, a plan or scheme of proportional representation in the Senate of this State; and if a majority of the votes cast at such election be in favor of the plan submitted to them, the Legislature shall, at its session succeeding such election, rearrange the senatorial districts in accordance with the plan so approved by the people."

We may follow the Referendum down to the county, the city, the town or village, the township, the school district and the other local subdivisions of the State, and it is here that the institution has indeed had its greatest development. It is in the local community, if we are right in our assumption, that the Referendum in this country, as in Switzerland, had its origin, and from which it is all the time advancing toward more common use in the State. In those States which employ the system of local mass meetings, where the people of towns, villages and school districts assemble together to

directly enact legislation for their respective communities, the principle of the Referendum appears in its purest form. This principle has prevailed in the local political practice of New England since the first settlement of the country. The meetings are always annual, with occasional special meetings; and the people here gathered together, without the mediation of any representative body, vote upon all general town affairs. They levy the taxes, determine how the money shall be spent, how much shall go to the support of schools, how much to the highway account, etc. They decide upon all questions relating to town property, and in school districts, all questions relating to school property. They vote upon the number of months school shall keep and select the sites for school-houses. They order the laying out of new roads, or the repair of old ones, the construction or alteration of bridges, the fencing up of fields and pastures and the enclosure of cattle and hogs, and the licensing of, or prohibition of the liquor business. They determine as to measures of police regulation, and public health, and in general enact all local by-laws judged to be of sufficient importance for their consideration. Laws are often passed by the State Legislatures extending privileges and grants to such communities as may choose to accept them, and these laws likewise, are voted upon by the people in their town meetings. The voting is usually done *viva voce*, but when the subject is important, and one upon which it is desired to secure an especially conservative judgment, the method is by ballot.

There are selectmen and other town authorities, such as road commissioners, and poor overseers, and in school districts, superintending school committees, representative bodies which have a direction of local affairs in the intervals between meetings, but their duties are rather executive and administrative than legislative. The people determine, as on other questions, as to changes in town boundaries.

In States in which the town-meeting system was not in use the Referendum early made its appearance, and in very

much its present form. Some of the first questions so submitted to the popular consideration in local communities were those contemplating an increase of taxation in aid of public schools and internal improvements. Thus, as early as 1825, a general system of primary schools was established in Maryland. Two sections of the act making the establishment were as follows :—

"Sec. 29. Be it enacted, That at the next election of delegates of the General Assembly, every voter, when he offers to vote, shall be required by the judges of election to state whether he is for or against the establishment of primary schools, and make return thereof to the Legislature during the first week of the session, and if a majority of the said votes in any county shall be in favor of the establishment of primary schools, as herein provided for, then, and in that case, the said act shall be valid for such county or counties, otherwise of no effect whatever.

"Sec. 30. And be it enacted, That if a majority of the votes of any county in this State shall be against the establishment of primary schools, then, and in that case, the said act shall be void as to that county."

In Pennsylvania, by an act of 1836, every borough, ward, and township in the State, outside of Philadelphia, was erected into a school district. An election was to be held in each district at stated periods, when the people should decide whether or not they would establish common schools. If a majority of the ballots cast contained the words "schools," schools should be established. If a majority contained the words "no schools," the system was not to go into operation until one or more subsequent elections were held, and a majority in favor of the proposition had finally been secured. The law was at any time to be suspended by a similar vote of the people.

This is a Referendum which appeared about the same time in other States. It, indeed, marked the beginning of our American public-school system, the first schools being

supported by local taxation, the people of each community taxing themselves for the purpose or not as they wished. That the establishment and maintenance of schools were at first matters for the people directly to determine, is further shown by the law of 1849 in New York State, known as the "free-school law," which was to become operative or not on condition of its ratification or rejection by the people, and the constitutionality of which was denied by the State Court of Appeals in the notable case of *Barto* v. *Himrod*.*

The early development of the Referendum, as a means of reaching an amicable result in settling questions of taxation for the assistance of companies carrying on internal improvements, is also to be remarked upon. These were questions of immense interest to the people at a time when communication was difficult, and though it meant, temporarily, the payment of higher taxes, it promised in the end a great increase in the individual and general wealth. As early as 1784, in Virginia, the Assembly passed an act to improve the navigation of the James River. It was later desired to effect a complete line of transportation by way of the James and Jackson Rivers, and other waterways to the Kanawha River, and thence to the Ohio and the Mississippi. The city of Richmond having been incorporated for municipal purposes, a majority of her citizens, on each of two occasions petitioned the corporate authorities to subscribe stock to this navigation company. Two acts were passed by the Legislature conferring such authority on the city officers, one in 1833 authorizing a subscription of $400,000, the other in 1835, authorizing the subscription of a further sum of $250,000. This made it necessary to levy a tax on the citizens of Richmond, and the case was taken to the courts, where the constitutionality of the method was completely and plainly established. Although the wishes of the people were here ascertained by petition, the principle was the same, the object being to secure the consent of a majority of those who were to pay

* 4 Seld., 483. See p. 112.

the tax. The petition was but an earlier form of the Referendum, and for determining the popular opinion in districts of limited territorial extent and small population had many advantages.

From voting to tax themselves in aid of canal companies, the State Legislatures came to grant local communities the same rights in benefit of turnpike companies and other corporations engaged in improving the means of transportation. Such a law regarding turnpikes was enacted in Pennsylvania in 1842. A little later, the public hand was extended to help the railroad development, and nearly all the States, by special and general laws, gave the right to counties, cities and townships, after obtaining the direct consent of the people, to make subscriptions to the capital stock of railroad companies. This aid, at a more recent time, in many cases has been withdrawn, and even prohibited in a number of States by constitution. Financial collapses often came which involved the municipalities in grave difficulties, and the trend of public policy at the present day, has met with an entire reversal, it seeming to be the care of conventions and Legislatures now, when left to their own natural tendencies, to restrain rather than to encourage railroad construction.

The Referendum, in the local communities, as it occurs to-day, may be divided into classes very nearly corresponding to those found in the States.

1. There are Referendums concerning the nature, form and jurisdiction of the local governments. These are as follows :—

(*a*) Forming new counties, and altering the boundaries of old ones. This is a Referendum usual to-day in the great States of the West, which are still in an incomplete condition of development, new counties being organized as fast as the increase of population makes such a course needful or expedient, and also in the older States, when it is desired for any reason to divide a county or strike off any part of one county and add it to another. The constitutions in the following States, guarantee that the people shall be directly

consulted in regard to this matter: Arkansas, Colorado, Idaho, Illinois, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Texas, West Virginia and Wyoming.

The people also usually vote upon a change of boundaries in municipal corporations. Thus, they vote upon the annexation of adjoining territory, the consolidation of contiguous municipal corporations, and likewise upon propositions to contract the corporate limits. In Mississippi no alteration in the boundaries of judicial districts may be made without the assent of the people. Sometimes the people vote also upon the division of townships, the division of wards in cities, and the alteration of lines and consolidation of election precincts.

(*b*) Organizing counties into townships and disorganizing them again. In seven States, California, Illinois, Missouri, Nebraska, North Dakota, Washington, and Wyoming, this Referendum has reached the constitutions. For example, in Art. IX, Secs. 8 and 9, of the Constitution of 1875 of Missouri, it is stated: "The General Assembly may provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county voting at any general election shall so determine. . . . In any county, which shall have adopted township organization, the question of continuing the same may be submitted to a vote of the electors of such county at a general election in the manner that shall be provided by law; and if a majority of all the votes cast upon that question shall be against township organization it shall cease in said county, and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in such county."

(*c*) Organizing municipal corporations and advancing or reducing their grade. In many States the people are by law vested with a direct vote on this subject. A change to a city government involves new burdens for the tax-payers, and it

is judged to be a suitable question for the people themselves to determine whether these new burdens shall be assumed.

The Constitution of Wyoming says: "No municipal corporation shall be organized without the consent of the majority of the electors residing in the district proposed to be so incorporated." The constitutions of several States, as California and Idaho, provide that the cities and towns of those States shall organize under "general State laws," when the people of the districts desiring organization shall decide in favor thereof. In other States, as in Michigan, cities may vote whether they shall have separate county governments. Municipal corporations are divided into classes by statute in many States. Cities may by popular vote determine, if otherwise eligible for the change, whether they shall move from one class to another. A village or borough may vote whether it shall become a city. Municipal corporations may similarly vote whether they shall reduce their grade or whether they shall vacate incorporation altogether.

Levee districts, drainage districts, irrigation districts, sanitary districts, and other local political corporations, in those States where they are permitted, are established by a vote of the people of the territory which the districts are desired to embrace.

(*d*) Adopting city charters without consulting the State Legislatures and amending them by the same method. This is a Referendum which is permitted by the constitutions of three States, Missouri, California and Washington. In all three States, cities of the requisite size—in Missouri those with a population of 100,000 and over; in California, 3,500 and over; and in Washington, 20,000 and over—may elect Boards of Freeholders and frame charters, which, upon submission to and acceptance by the people, become the fundamental city law. Charter amendments, by initiation of the city legislatures, are likewise voted on and adopted at the polls.*

* This Referendum is made the subject of a separate chapter. See Chapter IV.

(*e*) Adopting laws relative to the methods of local government, submitted by the State Legislatures, and passed conditional upon their acceptance by the people of one community or of all communities of a general class. These laws are most usual as applying to cities, but are also offered to counties, boroughs, townships and other local districts. City charters, framed by the Legislatures, are sometimes submitted to popular vote in the cities intended to be governed thereby. In the sessions of 1884, 1885 and 1886 the Legislature of New Jersey passed not less than twelve conditional laws. For instance, an act of 1885 provided for Boards of Education in the cities of the State, and the act was not to be of any force until accepted by the people in such cities as desired to vote on the question. The ballots were to read: "Board of Education Act accepted" and "Board of Education Act rejected." Another act of the same year provided for the removal of the fire and police departments in cities from political control, placing them in charge of commissions. The ballots in this case were to be: "Fire and Police Commission Act accepted" and "Fire and Police Commission Act rejected." Another such act authorized, upon popular vote, the pensioning of city policemen.

In Pennsylvania, townships may vote for an increase or decrease in the number of road supervisors. In Wisconsin, the people of villages may vote whether certain village officers shall be elective or appointive, or whether they shall be discontinued altogether. A conditional act in Nevada, provides police officers for unincorporated cities, towns and villages, if the people vote in favor thereof.

In Iowa, the people of counties may vote, whether the county Board of Supervisors, which regularly contains three members, shall be increased to five or seven members, and if the increase is made whether the number shall be reduced again. In the same State, in cities of more than 7,000 inhabitants, the people may vote whether there shall be established a "superior court" instead of a "police court."

In Colorado, in cities and towns of not more than 5,000 inhabitants, the people may vote whether or not the mayor and council shall receive pay for their services. In cities in Illinois, the people may vote "for" or "against minority representation in the city council." In West Virginia, the people of the counties may choose any one of three "alternate road laws." In several States, the people of the counties may decide whether the poor shall be cared for in county almshouses or by the township system.

2. As the people in the States have come to have a vote upon the question of the location or relocation of their capitals, so do the people in the counties vote to locate or relocate their county-seats of justice. This Referendum has attained a place in the constitutions of twenty States, as follows: Arkansas, California, Colorado, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Ohio, South Dakota, Tennessee, Texas, Washington and Wisconsin. In probably none of the other States would changes in the county-seats be made without first securing the assent of the people. This Referendum appeared in the practice of State Legislatures a long time ago. It offered an easy method of settling local questions which were made troublesome by the rivalries of different towns, each being anxious for the county buildings in the hope of an advance in property values. These contentions, in many parts of the West, have often led to violence and even the loss of human life.

A Referendum allied to this in character is a vote in cities on the question of the location of public buildings. Such an election was held in Philadelphia in 1870. By act of March 30, 1870,* the Pennsylvania Assembly ordered that at the next regular election the electors of the city should vote by ballot "on the question of the site of the proposed public buildings," the buildings to be erected at the place

* Acts of Pennsylvania Assembly for 1870, p. 677.

receiving a majority of the votes cast. The choice was between Washington Square and Penn Square, and the election occurred on October 11, 1870. The whole number of votes cast was 84,450, divided as follows: Penn Square, 51,625, Washington Square, 32,825.

Similarly other public and semi-public institutions have been located by popular vote, both in cities and lesser municipalities. In New York, the location or relocation of any county building or county office may not be determined without the popular consent; and in Pennsylvania the sites for county almshouses are selected by direct vote of the people. The location and relocation of sites for schoolhouses, town halls and changes in township voting places, in some States, are made subjects for popular decision.

3. Another important class of Referendums, and it is the most common one in the group, relates to questions of public finance. This class will allow of further subdivision as follows:—

(*a.*) Subscribing stock to railroads and public improvement companies. The development of the Referendum on this class of subjects has been traced on an earlier page. It began, as we have noted, with canal companies and turnpike and plank road companies, extending to railroads and other enterprises designed to give public benefit. This Referendum was at one time common in all parts of the country; counties, cities, boroughs, towns and townships voting "Subscription" or "No Subscription," and, the people consenting, a tax was levied to meet the obligation which the vote imposed. Such subscriptions are now prohibited by the constitutions of many States. It has an interesting form to-day in some parts of the West where local governments may, upon popular vote, give aid to local industrial companies. In Kansas, for instance, cities and townships may subscribe stock to sugar mills.

(*b.*) Borrowing or expending money, and issuing bonds for general and special purposes. There are limits prescribed

above which the representative authorities of counties, cities, towns, boroughs, townships, school districts and other political corporations may not contract indebtedness without first securing the popular consent. This is a Referendum which is provided for in one form or another in the constitutions of the following States: California, Colorado, Georgia, Idaho, Illinois, Kentucky, Michigan, Missouri, Montana, North Carolina, North Dakota, Pennsylvania, Tennessee, Washington, and West Virginia. It occurs in most of the remaining States by force of special or general law. The limits above which debt may not be contracted without a vote of the people, are variously fixed in the various States. The vote required to give consent also varies. While a majority vote is often sufficient, two-thirds and three-fifths votes are frequently necessary; and in at least one State, Tennessee, a three-fourths vote is requisite. It will be worth while to give this municipal debt provision as it appears in some of the more recently-framed State constitutions.

Art. IX, Sec. 8, of the Constitution of 1873 of Pennsylvania, says: "The debt of any county, city, borough, township, school district or other municipality or incorporated district, except as herein provided, shall never exceed 7 per centum upon the assessed value of the taxable property therein; nor shall any such municipality or district incur any new debt, or increase its indebtedness to an amount exceeding 2 per centum upon such assessed valuation of property without the assent of the electors thereof at a public election in such manner as shall be provided by law."

Art. XI, Sec. 18, of the Constitution of California, adopted in 1879, provides: "No county, city, town, township, board of education, or school district shall incur any indebtedness or liability in any manner or for any purpose, exceeding in any year the income and revenue provided for it for such year without the assent of two-thirds of the qualified electors voting at an election to be held for that purpose."

Art. VII, Sec. 7, of the Constitution of Georgia, framed in 1877, says: "The debt hereafter incurred by any county, municipal corporation or political division of the State, except as in this constitution provided for, shall not exceed 7 per centum of the assessed value of all the taxable property therein; and no such county, municipality or division shall incur any new debt, except for a temporary loan or loans to supply casual deficiencies of revenue not to exceed one-fifth of one per centum of the assessed value of taxable property therein, without the assent of two-thirds of the qualified voters thereof at an election for that purpose to be held as may be prescribed by law."

Art. XIII, Sec. 5, of the Constitution of Montana, framed in 1889, says: "No county shall incur any indebtedness or liability for any single purpose to an amount exceeding $10,000, without the approval of a majority of the electors thereof voting at an election to be provided by law."

The Constitution of Washington, framed in 1889, says: "No county, city, town, school district or other municipal corporation, shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the taxable property in such county, city, town, school district or other municipal corporation without the assent of three-fifths of the voters therein, voting at an election to be held for that purpose; nor, in cases requiring such assent, shall the total indebtedness at any time exceed 5 per centum on the value of the taxable property therein."

Sec. 164 of the Constitution of Kentucky, adopted in 1891, says: "No county, city, town, taxing district or other municipality, shall be authorized or permitted to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose."

In other States the issue of bonds is altogether prohibited without the popular assent, as in North Dakota. The

Constitution of that State, frame din 1889, provides, in Sec. 185: "Neither the State, nor any county, city, township, town, school district or any other political subdivision, shall loan or give credit, or make donations to or in aid of any individual, association or corporation, except for the necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, unless authorized by a two-thirds vote of the people."

The tendency in most of the later constitutions is to limit the power to create indebtedness in any year to the income and revenue for that year, and then make all propositions for the expenditure of money beyond this limit subject to approval by a two-thirds vote of the people.

The laws of the different States provide for a vote of the people when the expenditure is for various special purposes. The following are very common subjects for a popular vote in counties:—

Erection of a court-house, jail or other county buildings;
Erection of an almshouse;
Erection of bridges;
Purchase of real estate for county purposes;
Construction and repair of county roads;
Purchase of toll roads;
Establishment of a county high school.

In Michigan the supervisors of counties cannot borrow or raise by tax more than $1,000 "for constructing or repairing public buildings, highways or bridges," without securing the consent of the people of the county. Similar consent must be had if it is desired to make repairs to the court-house, jail or public offices involving a cost of more than $500 per year. In Nebraska the county money may not be appropriated for the erection of county buildings to an amount exceeding $1,500 without an affirmative vote of the people. In the counties of Iowa the question of erecting a court-house, a jail, a poor-house or other buildings when the cost exceeds $5,000, and the purchase of real estate for

county uses when the price exceeds $2,000, must be submitted to the people.

Other less common subjects for a vote of the people in counties are :—

Establishment of a normal school, as in Illinois ;

Erection of monuments to soldiers or eminent men, as in Iowa, Ohio and New York ;

Payment of bounties for the destruction of wolves, wildcats, coyotes or mountain lions, as in Nebraska (the law being revocable also on popular vote) ;

Boring and prospecting for coal, as in Kansas and Nebraska ;

Drilling artesian wells, as in Kansas ;

Boring for natural gas, as in Kansas ;

Establishment of children's homes, as in Ohio ;

Bond issue to an amount not exceeding $20,000 by law of 1891 in Nebraska to secure money "to purchase grain to be planted and sown for the purpose of raising crops for the year 1891, and for feeding teams used in raising said crops;"

Issue of relief bonds in Kansas to raise money to buy and distribute grain and potatoes to the destitute (law afterward declared unconstitutional on the ground that this was not a "public purpose") ;

Construction of levees, as in Tennessee and other States bordering on the Mississippi River ;

Construction of "steam traction roads" in Minnesota ;

Construction of sea walls and breakwaters in the counties and cities of Texas bordering on the Gulf of Mexico. (This provision is made by the constitution, Art. XI, Sec. 7.)

In cities and incorporated towns the expenditure of money for many purposes must be referred to the people. Some usual cases are the following :—

Purchase of ground for parks ;

Erection or purchase of water-works ;

Establishment and maintenance of gas-works and electric-light plants ;

Construction of sewers and pavements ;

Establishment of hospitals ;

Donation of sites for depots and machine shops to railroad companies, as in Iowa;

Establishment of a free public library.

In Colorado, Michigan and Nebraska city authorities must group the expenditures of the year in an annual budget. All additional appropriation bills must be submitted to the people.*

In townships the following questions are very commonly left to the direct popular decision :—

Construction and repair of roads ;

Purchase or repair of the town hall ;

Establishment of a cemetery ;

Purchase of fire engines, hose and extinguishing apparatus;

Purchase of stone crushers, as in New York ;

Purchase of a hearse and erection of a funeral vault, as in Ohio ;

Erection of bridges ;

Establishment of township high schools ;

Erection of soldiers' monuments.

* Samples of ballots used in several recent elections in Pennsylvania on the subject of an increase in the municipal indebtedness are here given. An election was held in Allegheny City in November, 1891, on the question of an additional bond issue to the amount of $950,000. There were four separate propositions. The ballots were printed in the following eight different forms, each one containing on the reverse side the words " Increase the Debt :"

DEBT MAY BE INCREASED.	NO INCREASE OF DEBT.
Street Improvements.	Street Improvements.
$500,000.	$500,000.
DEBT MAY BE INCREASED.	NO INCREASE OF DEBT.
Water Extension.	Water Extension.
$200,000.	$200,000.
DEBT MAY BE INCREASED.	NO INCREASE OF DEBT.
Opening a Street in " Flooded District."	Opening a Street in " Flooded District."
$150,000.	$150,000.

In school districts the following questions are often left to a vote of the people:—

Purchase of school sites;

Erection and repair of buildings;

Extension of the number of months in the year school shall be kept;

Purchase of free school books and school-house furniture;

Establishment of a graded school system.

DEBT MAY BE INCREASED.

Public Lighting.

$100,000.

NO INCREASE OF DEBT.

Public Lighting.

$100,000.

In December, 1891, Pittsburgh voted on a bonding proposition. The ballots used at that time were as follows:—

INCREASE THE DEBT.

DEBT MAY BE INCREASED.

The debt to be increased to pay claims of contractors and other creditors for work and labor done and material furnished in grading, paving and curbing various streets and alleys, and constructing sewers in the City of Pittsburgh, under the Acts of 1887 and 1889, in relation to Streets and Sewers declared unconstitutional by the Supreme Court, to an amount not exceeding $2,000,000.

INCREASE THE DEBT.

NO INCREASE OF DEBT.

In December, 1891, at Lebanon, an election was held on the question of increasing the bonded debt of the city to the extent of $50,000 for the purpose of building a city hall and for other purposes. The ballots were worded as follows:—

$50,000 Loan Ticket.

INCREASE OF DEBT.

Debt may be Increased.

$50,000 Loan Ticket.

INCREASE OF DEBT.

No Increase of Debt.

In January, 1892, the people of Pottsville voted on the proposition to increase the city's bonded indebtedness. The ballots used were printed as follows:—

INCREASE OF DEBT.

Debt may be Increased.

Amount of Increase, $120,000.00.

PURPOSES—To improve Sewers and Streets and to establish an Electric Lighting Plant.

INCREASE OF DEBT.

No Increase of Debt.

(*c*) Levying taxes for general and specific purposes. This group, though closely related to the one preceding, admits of a separate classification. Though every proposition for expenditure, and every proposition to construct, establish or repair, which involves an expenditure, if it be a large expenditure, will include the proposition for a higher tax rate, there are cases in which the exercise of the two powers are separable. Several State constitutions contain provisions on this subject.

Art. IX, Sec. 5, of the Constitution of Nebraska says: "County authorities shall never assess taxes, the aggregate of which shall exceed one and a-half dollars per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of the constitution, unless authorized by a vote of the people of the county."

Art. XI, Sec. 7, of the Constitution of West Virginia, provides that the county authorities may not assess taxes in any one year, "the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation," except in certain specified cases, "unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it."

In Illinois the constitution provides that the county authorities shall not assess taxes, the aggregate of which exceed seventy-five cents per one hundred dollars valuation, unless they are authorized to do so by popular vote.

The Constitution of Arkansas, Art. XIV, Sec. 4, says: "The General Assembly may, by general law, authorize school districts to levy by a vote of the qualified electors of such district, a tax not to exceed five mills on the dollar in any one year for such purpose."

Similar provisions are found in the constitutions and laws of other States. It is very usual for the question of "tax" or "no tax" to be submitted in school districts. In Illinois, on petition of fifty legal voters any incorporated town, village,

or township, may vote "for" or "against" a —— mill tax for a free public library." In Kansas a "fire tax" not exceeding two mills on the dollar of valuation, may be assessed, if the people consent, to protect property from prairie conflagrations. Propositions to levy taxes for other special purposes are not unusual.

(*d*) Sale or lease of public property. The Constitution of Kansas provides that the school lands shall not be sold unless the proposition be first approved by vote of the people. This Referendum is provided for by act of Legislature, in other States, as Alabama and Indiana, the vote to be taken by townships. In the townships of Indiana the question of the lease of these lands must also be submitted to popular vote. A vote of the people of the local political divisions of the States is sometimes needed previous to the sale of general public realty and other property, as poor-farms, asylums, county buildings, town halls, and school houses.

4. As in the States, there are in the counties and the local districts Referendums on questions in regard to which the people are likely to violently disagree. While a policy may be viewed with favor in one community, it may be regarded with great disfavor in another. On this account the State Legislatures have fallen into the custom of passing laws which have no force anywhere until they are adopted by the people in their separate communities. Thus, what is law in one county or one township may not be law in another county or township, though both be within the same State. The law, too, if adopted one year, may, if the people wish, be repealed the next year, or at the expiration of whatever interval the law specifies shall elapse between elections on the subject; and the contrary is true, that, if defeated at one election, it may be approved at the next. These elections are sometimes provided for at regular periods. It is often specified that the same question shall not be submitted within the same district more frequently than once a year, once in three years, or once in five years, as the case may be. Again, there may be no limits,

the elections being held whenever the requisite percentage of citizens may petition for a vote on the question.

These laws have come to be known as "local option" laws, and, as they most frequently appear, apply to the control of the liquor traffic. They were devised as a means of satisfying the demand for some legislative restriction of the evils growing out of intemperance, at a time in the first half of the present century when the total abstinence movement was occupying much public attention. A law of 1846, in Pennsylvania, gave the people of boroughs, wards and townships in certain counties the right to vote at annual elections "for the sale of liquors" or "against the sale of liquors." By a law of 1847, in Delaware, the counties, on petition of one-fourth of the legal voters thereof, were to choose between "license" and "no license." Similar laws were passed in other States, and are to be found to-day on the statute books of about half the States in the Union. Local option laws on the liquor question are authorized by constitution in two States, Florida and Texas.

The Constitution of Florida provides, Art. XIX, as follows: "The Board of County Commissioners of each county in the State not oftener than once in every two years, upon the application of one-fourth of the registered voters of the county, shall call and provide for an election in the county in which application is made to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein; the question to be determined by a majority vote of those voting at the election called under this section, which election shall be conducted in the manner prescribed by law for holding general elections."

The Constitution of Texas, Art. XVI, Sec. 20, says: "The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, justices' precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits."

By two laws which we have found the question of the sum to be paid for license is left to a vote of the people. In the towns, cities and villages of Wisconsin, where the amount of license was, by an earlier law, fixed at $100, the people may vote whether it shall be increased to either $250 or $400; where the amount before was $200 the people may choose whether it shall be increased to $350 or $500. The ballots must be worded, "To be paid for license, $——."

By the High License Act of 1889, in New Jersey, one-fifth of the voters of a township, borough or city applying by petition to the county judge, the question was to be submitted to the people: "For $—— license fee" or "against $—— license fee."

These laws appear in another common form. There are in several States local option fence laws, and local option stock laws. The Constitution of Texas provides that, "The Legislature may pass laws for the regulation of live stock . . . provided that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby, and approved by them before it shall go into effect." There are local option laws on this subject in several Western and Southern States. In Illinois, on petition of a hundred voters, an election may be ordered in any county to restrain from running at large domestic animals of any one or all of the following species: horses, mules, asses, cattle, sheep, goats and swine. On petition of twenty voters, a similar vote may be taken in villages, townships and precincts. In Iowa the people of the counties may vote to restrain stock altogether, to restrain it from sunset to sunrise, or to restrain it within certain months of the year.

In West Virginia, in addition to a general stock law, the people of the counties may vote to prohibit bulls, buck sheep and boars from running at large. In Kansas there is a special township "hog law." In other States the question is voted on in a little different form, that is, whether the individual

owners of property shall build fences. Thus, in Georgia, the people of the counties vote "fence" or "no fence."

A law of 1868, in Kansas, declaring osage orange hedges to be lawful fence, the plants forming them being not less than one year old, was made conditional upon a vote of the people of the counties. The people voted, "for the hedge law" or "against the hedge law."

The question of Sunday closing is sometimes submitted to popular vote. A law passed by the Legislature of Missouri gave the voters of St. Louis the right to determine whether beer should be sold on Sunday. An election was held on this question in April, 1858. A similar law, referring to the people the question of closing the saloons of New York city on Sunday, was before the New York Legislature at the session of 1893.

In Nebraska, the constitution provides that street railway franchises shall not be granted in cities, towns and villages without the proposal be submitted to and approved by the people of those districts in which the companies apply to operate. In several States, as Alabama and Iowa, the names of towns cannot be changed without the question be submitted to popular vote, and sometimes, in towns and small cities, streets and alleys may not be closed unless the people consent. In townships in Illinois and some other States, the people may determine whether tax-payers shall be allowed to work out their road tax, or whether it shall in all cases be paid in money. In West Virginia, the people in forty-six counties of the State may vote whether or not there shall be levied a tax on dogs.

The local Referendum has developed in this country until at this time there is not a State in the Union in which local questions of certain given classes are not submitted to popular vote. In Iowa, indeed, the advance has been almost to that point which the Referendum has attained in Switzerland. It is provided by law in that State as follows:—*

* Sec. 309, State Code.

"The Board of Supervisors may submit to the people of the county, at any regular election or any special one called for that purpose, the question whether money may be borrowed to aid in the erection of any public buildings, whether any species of stock not prohibited by law shall be permitted to run at large and at what time it shall be prohibited, *and the question of any other local or police regulation* not inconsistent with the laws of the State; and when the warrants of a county are at a depreciated value, they may in like manner submit the question whether a tax of higher rate than that provided by law shall be levied."

The method of submitting such propositions is fixed as follows: "The whole question including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum and the whole regulation, including the time of its taking effect or having operation, if it be of a nature to be set forth, and the penalty for its violation, if there be one, shall be published at least four weeks in some newspaper printed in the county. If there be no such newspaper the publication shall be by being posted up in at least one of the most public places in each township in the county, and in addition in at least five among the most public places in the county, one of them being the door of the court-house, for at least thirty days prior to the time of taking the vote. All such notices shall name the time when such question shall be voted upon and the form in which the question shall be taken and a copy of the question submitted shall be posted up at each place of voting during the day of election. . . . The Board of Supervisors, on being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast are in favor of the proposition submitted, shall cause the proposition and the result of the vote to be entered at large in the minute-book, and a notice of its adoption to be published for the same time and in the same manner as above provided for publishing the preliminary notice, and from the time of

entering the result of the vote in relation to borrowing or expending money, and from the completion of the notice of its adoption in the case of a local or police regulation, the vote and entry thereof on the county records shall be in full force and effect."

It is stated further that "the Board shall submit the question of the adoption or rescission of such a measure when petitioned therefor by one-fourth of the voters of the county unless a different number be prescribed by law in any special case."

It is to be noted here that the initiation rests with either the people or the representative body of the county, the Board of Supervisors; one-fourth of the voters being qualified to demand the Referendum on almost any ordinance or regulation. This is a general Referendum in the identical form in which it appears to-day in the cantonal and Federal governments of Switzerland.

CHAPTER IV.*

The People and their City Charters.

In the preceding chapter brief attention was directed to the Referendum as applied to city charters. In three States of the West, Missouri, California and Washington, the people have come to have a direct voice in the adoption of these instruments, and, as this marks the first appearance of a movement to invest our American cities with the rights of self-government, the origin and development of this particular form of the Referendum in this country may be made the topic for a separate chapter.

The cities were in the original scheme of our government, and are still, with the exceptions to be spoken of in this chapter, the creations of the States. They are granted charters by the Legislatures of the States, which in many cases have unlimited powers, both in making the grant and in withdrawing it again, or enacting amendments. It was the uniform plan earlier, and it still prevails in several States, notably and probably with the most evil consequences in New York, to confer city charters by special laws. Such a charter, though imposing obligations on the people who are to live under it, imposes none on the Legislature which grants it. It is liable to change at the pleasure of the granting power and the interferences in many cases are frequent and utterly contrary to the needs or wishes of the city. In every State which grants charters by special act the proceedings of each legislative session are burdened with bills affecting city affairs, these bills not infrequently being schemes to enrich cliques

* This chapter is largely taken from a paper which the author submitted to the American Academy of Political and Social Science, and which was published in the "Annals" of that body for May, 1893, entitled "Home Rule for our American Cities."

or individuals by obliging the city to buy private property, to create additional lucrative offices or to grant valuable franchises or business privileges. This may have been a suitable enough a plan, and satisfactory in its results, in earlier times when the cities were little more than village communities and could be treated as the counties and other local divisions of the State. But when a city comes to be a great metropolis, containing perhaps a population as large or half as large as all the rest of the State, and much larger than that of many of the less populous States, containing wealth and taxable property greater in value than all the agricultural counties combined, with widely diverging interests and requirements, the absurdity of such a system must appear plain to every one.

There has been, latterly, a very clearly-defined tendency to place restrictions on the Legislatures in this matter of granting and amending city charters. The constitutional conventions have taken the subject in hand and nearly all the State constitutions which have been framed since the war prohibit charter granting by special law; and provide further that these laws shall be general, specifying sometimes, as in Missouri, Kentucky and Wyoming, the number of classes into which the cities of the State shall be divided and making other specifications, as in California, that the city legislatures within the State shall be bi-cameral.* Although this is an

* The constitutions of the following States require charters to be granted by general law:—

Ohio, Illinois, Michigan, Wisconsin, Kansas, Nebraska, Virginia, Missouri, Arkansas, California, New Jersey, Indiana, Iowa, West Virginia, Tennessee, Florida, Pennsylvania, Kentucky, Idaho, Wyoming, South Dakota, Mississippi and Washington.

In Texas cities with a population below 10,000 must be organized under general laws. In Louisiana special legislation affecting cities is forbidden, exception being made for New Orleans.

The granting of charters by special law is still permitted by the constitutions of the following States:—

New York, Maine, Michigan, Minnesota, Maryland, North Carolina, Oregon, Nevada, Colorado and Alabama.

undoubted move for the better, the improvement is not so marked in reality as it might appear. These general acts divide the cities of the State into several classes. Some of them by the very terms of their enactment abolish all special charters previously granted and make incorporation by the new system obligatory. In other cases incorporation under the new law is optional, dependent upon the vote of the people. Unless it is so specified in the constitution there is no limit to the number of classes into which a Legislature may divide the cities of the State. It may construct a classification so as to include but a single city in a class, and it has been decided by the courts that such legislation is not necessarily special and therefore not unconstitutional.

Along with the other restrictions which it has been found expedient to place upon the State Legislatures in the matter of city charters, has appeared the very important movement to entirely deprive these bodies of the powers which they previously exercised, and to place them in the custody of the people themselves; and this is what has been done in Missouri in cities containing a population of more than 100,000; in California, in cities with a population of more than 3,500, and in Washington, in cities with a population of more than 20,000. The city which was to originate this interesting reform in our American municipal system was St. Louis. When the convention to frame a new constitution for Missouri met at Jefferson City, May 5, 1875, the government of St. Louis was notoriously bad. It had been so for a long time. The State Legislature had become very meddlesome and there was a general feeling in favor of some radical change. The St. Louis delegation went into the convention determined to secure from the country members some satisfactory concessions on this subject. About a week after the convention met, Mr. Joseph Pulitzer, of St. Louis, introduced a resolution that municipalities, having a population of 100,000 and over, should be regulated by a "fundamental constitutional charter," which should not be subject to yearly

change by the Legislature unless such change be proposed by the concurrent action of two-thirds of the members of the city council and the Mayor, and be endorsed likewise by a two-thirds vote of the people at a special election. On May 13th the St. Louis delegation was appointed a "Committee on St. Louis Affairs" to consider and report on all matters having special reference to that city, and to this committee Mr. Pulitzer's resolution was referred. It was also felt that the city should be separated from St. Louis county and that the two governments should be operated singly. The proposition to separate the city and the county was one which the tax-payers had been urging for many years. The city naturally contained the most taxable wealth, and for a long time had been paying to make public improvements beyond the city limits which could be of no direct benefit to the people of the city and in which they could not be expected to have any interest.

In June the scheme for solving these difficulties began to take the form which it later assumed—that the city should elect thirteen of its citizens a Board of Freeholders to propose a "scheme" for separating the city and county governments and to frame a city charter, both the "scheme" and the charter to be submitted to direct popular vote. Amendments to this charter were to be made not oftener than once in two years by proposals submitted by the city authorities and ratified by a three-fifths vote of the people. On July 29th, the chairman of the St. Louis delegation reported the plan his committee had agreed to, which was in substantially its present form. There was, as it was expected there would be, much opposition from the country members of the convention. The scheme was spoken of as "unwise and vicious." One member was willing to vote for it but wanted this amendment: "Provided that this section shall not be so construed as to prohibit the General Assembly from amending, altering or repealing said charter so adopted whenever it may be necessary for the public

interest." The burden of the opposition, judging by the speeches which ensued, sprang from a fear that the city, being released thus from the control of the Legislature, might set up on its own account some kind of an independent government. It was contended on the other side that the plan would benefit the State at large, as well as St. Louis, in that it would relieve the Legislature of the consideration of purely local matters which at each session consumed a great deal of time, and interfered with the discharge of other business.

A substitute amendment was finally adopted, that "notwithstanding the provision of this article, the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties in this State," and on July 30th, the scheme as a whole was adopted by a vote of 53 ayes to 4 noes.

A subsequent section of the constitution contains a general provision extending the privilege of charter-making, independent of legislative interference, to any city in the State "having a population of more than 100,000."*

*Art. IX, Sec. 16, Constitution of Missouri.

Any city having a population of more than 100,000 inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this State, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election; which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board, or a majority of them. Within thirty days thereafter, such proposed charter shall be submitted to the qualified voters of such city at a general or special election, and if four-sevenths of such qualified voters voting thereat shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city, and supersede any existing charter and amendments thereof. A duplicate certificate shall be made, setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other, after been recorded in the office of the Recorder of Deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such

St. Louis elected thirteen freeholders, in accordance with the privilege granted it, soon after the constitution went into effect. These freeholders had the duty not only of framing a charter, but of preparing a "scheme" for separating the governments of St. Louis city and St. Louis county, for the ascertainment of their respective boundaries and the adjustment of their relations. The "scheme" and charter were submitted to the people August 22, 1876, with the following announced result:—

New Charter, . . .	Yes, 11,858	No, 11,300
Separation Scheme, . .	Yes, 11,725	No, 14,142

These returns defeated the "scheme," but charges of fraud were made and the case was taken into the courts. After judicial investigation the correct figures were decided to be :—

For Charter, .	11,309	For Scheme, .	12,181
Against Charter,	8,088	Against Scheme,	10,928

This charter has been recognized generally by authorities on city government as the best American model for charter-makers. The city, however, as will appear after a consideration of the wording of the constitution, is still bound in some measure by the State Legislature. It is not very definitely settled just what powers the Legislature would have in the case. It has not chosen to exercise them arbitrarily and the question has not assumed as important a phase as in California. It was decided in *Ewing* v. *Hoblitzelle*,* a case which reached the State Supreme Court at the October term, 1884, that a law passed by the Legislature governing elections in

charter, so adopted, may be amended by a proposal therefor, made by the law-making authorities of such city, published for at least thirty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the constitution and laws of the State.

* 85 Mo., p. 64.

cities of more than 100,000 inhabitants applied to St. Louis. It was contended that the city, by the adoption of its own charter, had been freed from State control on this subject, but the court held otherwise and said that, by this provision in the constitution, St. Louis had not been created an *imperium in imperio.* The opinion was offered, however, that there could be no constitutional objection in permitting voters of a city to frame and adopt a charter for its government if this was done in subordination to the constitution and the laws of the State.

The only other city in the State with a population of more than 100,000, and therefore privileged to frame its own charter, is Kansas City. By the census of 1890 this city contained 132,716 inhabitants, 13,048 of whom, however, the State Supreme Court has since decided reside outside the municipal limits. A "Freeholder's Charter" was adopted at a special election held on April 8, 1889, by a vote of 3,439 for and 771 against. The charter went into effect on May 9, 1889, and, the Mayor writes, "has proved very satisfactory."

The experience of St. Louis was reported to be so fortunate that, when a convention met in 1879 to frame a new constitution for California, an effort was made to secure the same self-governing privileges for San Francisco. The scheme appeared in the convention on January 16, 1879, when Mr. Hager, the Chairman of the Committee on City, County and Township Organization, reported twenty-six articles, one of them very similar to the provision in the Constitution of Missouri, allowing cities of over 100,000 population to elect freeholders and frame their own charters. When the proposition came up for debate there was immediate opposition, as is shown on the records of the convention, by a motion to "strike out." The regulation applying only to cities containing a population of 100,000, and San Francisco being the only city in the State with so large a population, the discussion assumed a rather sectional character. The San Francisco delegates, for the most part, approved of the new idea

as likely to be the means of reforming the city government. The charter of San Francisco at this time was a volume of 319 pages of fine print. Originally it had covered only thirty-one pages, but there were over a hundred supplemental acts which led to many evils and much confusion. Many of these acts, it was charged, had been passed in the interests of single individuals and corporations. The city was said to be very corruptly governed. It was under the management and administration of twelve men, composing a Board of Supervisors, seven of whom could send any measure to the Mayor, and nine of whom could do business over his veto. It was not unusual for nine men in the Board to form a combination, and this clique, called the "solid nine," ruled the city. The laws which were responsible for this condition of things, it was further charged, had been framed by about a half dozen men, who took them up to Sacramento and had them adopted by the Legislature without the wish, knowledge or consent of the people.

Chairman Hager, in defence of the new charter scheme, said that, personally, he was willing to extend the privilege to cities containing 10,000 or 20,000 people if the convention would agree. As he had originally drawn up this section, it was made to include all cities, but in committee the limit was placed at 100,000. It was admitted that the idea was copied almost exactly from the Constitution of Missouri, and the successful experience of the city of St. Louis was pointed to in the debates. On the other hand the opposition professed great fear that San Francisco would break loose from the rest of the State and set up a free government. "This is the boldest kind of an attempt at secession," said one speaker, and another offered an amendment that the city should receive from the State "all the privileges and consideration accorded to the most favored nations," and that the Legislature should provide "a duly accredited minister as representative of the State in the said city." The opposition was so great, in truth, the friends of the scheme were

compelled to accept an amendment that, after being voted on by the people, the charters should be submitted to the State Legislature—to be approved or rejected, as a whole, however, without power of alteration or amendment.*

The friends of good government in San Francisco early took advantage of the opportunity offered them by the new constitution to secure a new charter. The Board of Election

* This section, as adopted, was as follows:—

Art. XI, Sec. 8, Constitution of California.

Any city containing a population of more than 100,000 inhabitants may frame a charter for its own government, consistent with, and subject to, the constitution and laws of this State by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor or other chief executive officer of such city, and the other to the Recorder of Deeds of the county. Such proposed charter shall then be published in two daily papers of general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same it shall thereafter be submitted to the Legislature for its approval or rejection, as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each house it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of Deeds of the county, among the archives of the city; all courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three-fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

Commissioners of the city, on March 4, 1880, called a special election for March 30, 1880, to choose fifteen freeholders, who should "prepare and propose" a charter. The charter which they framed makes a book of 192 pages, and the scheme of government proposed was modeled after the national system. The city legislature was to consist of two boards, called the Board of Aldermen and the Board of Assistant Aldermen, one elected by general ticket, the other by ward tickets, both, however, of the same size, each containing but twelve members. The charter, like the Federal and State constitutions, divided the government into three departments, "Legislative," "Executive" and "Legal." The Mayor was to hold office for four years and have increased powers of appointment. The city departments were to be in charge of boards, the members of which were to be chosen by the Mayor, subject to the confirmation of the upper chamber of the city legislature. The Mayor could suspend any officer of the city and county upon allegations of malfeasance and failure in the discharge of duty, the Board of Aldermen to sit later as an impeaching court. This charter was submitted to popular vote at a special election held on September 8, 1880, but was rejected.

Another Board of Freeholders was chosen in 1882, and another charter submitted to the people. This government was in the main like the one proposed in 1880, except, that the powers of the Mayor were diminished, and offices, before to be filled by appointment, were made elective by the people. An election was held on March 3, 1883, and this charter was likewise defeated. A third Board of Freeholders was elected and a third charter submitted to the people of the city on April 12, 1887. The general form of the government proposed in that year, did not differ radically from that of 1880 and 1883, though it more closely resembled that of 1880, as it put greater trust in the Mayor in the matter of appointments. This charter the people also rejected. The vote at these three elections was as follows:—

	September 8, 1880.	March 3, 1883.	April 12, 1887.
Against, ...	19,143	9,368	14,905
For, ...	4,144	9,336	10,896
Majority against,	14,999	32	4,009

The heavy adverse majority in 1880 was thought to have been attributable to a provision in the charter for removing the cemeteries, which met with the opposition of influential church bodies and several secret societies. The second charter, against which there was such a slight majority, was generally believed to have been counted out. All three met with the active opposition of the "City Hall Gang," which has been such a potent factor for corruption in San Francisco for many years.*

Thus San Francisco, after three attempts to remove herself from under the influence of the State Legislature, has in each instance failed. There has been a recent movement to elect another Board of Freeholders, who should frame a fourth charter, and it is not unlikely that the effort may soon succeed.

In spite of San Francisco's experience, so well satisfied were the people of the State that this was the correct principle in city charter-making, that the Legislature at the session of 1886, proposed an amendment to the constitution, extending the same privilege to all cities containing more than 10,000 inhabitants. This amendment was submitted to the people of the State and adopted at a special election held on April 27, 1887.

Los Angeles was the first of the smaller cities to take advantage of the new privilege. Soon after the amendment was passed steps were taken in the city to elect a Board of Freeholders. The result was a charter which provided for a very concentrated government, and which, upon being submitted to the people, was defeated by a large majority.

* "The freeholders tried to give us too good a government in each charter. More moderate reforms would have been accepted."—MR. HORACE DAVIS, in a letter from San Francisco.

On May 31, 1888, another Board of Freeholders was elected, which framed a second charter, and it was approved at the polls on October 20, 1888, by the following vote: For, 2,642; against, 1,890. This is the present charter of the city. Upon being submitted to the Legislature the latter gave its approval on January 31, 1889. A letter from the Mayor's office says, that there exists in the city "a decided feeling in favor of this mode of framing a charter."

On December 10, 1887, the people of the city of Oakland elected fifteen freeholders, who framed a charter which was approved by the people at an election held on November 6, 1888. It was confirmed by the Legislature on February 14, 1889.

Stockton chose freeholders on May 29, 1888, who reported a charter on August 27th, which was published according to the constitutional requirement, and approved by the people at a special election on November 20, 1888. It was adopted by the Legislature on March 2, 1889.

San Diego elected freeholders December 5, 1888. On January 10, 1889, the charter was completed and was signed by all the members of the board. The people approved it on March 2d, and on March 16th it was ratified by the Legislature, only a little more than three months after the election of the freeholders. This charter is still in force, though plans are on foot to radically amend it.

All the cities which had the requisite population framed new charters, as permitted by the constitution, except San Jose and Sacramento. The latter city recently took steps in this direction, and a "Freeholders' Charter" was adopted at an election held on May 17, 1892. The vote was, for the charter, 1,598, and against it, 741, an exceptionally light vote, as the total registration in the city exceeds 7,000.

The four charters adopted by the Legislature at the session of 1889 were all passed by joint resolution. It was argued in the case of Los Angeles that this kind of passage was not sufficient, but, as with laws, the Governor should have the

power of veto. In *Brooks* v. *Fisher*,* the Supreme Court denied the contention that the law-making power and the Legislature were one and the same thing. The constitution stated that the charters should be "submitted to the Legislature" and it was held that the Governor, though a part of the law-making authority of the State, was no part of the Legislature.

The Legislature at the session of 1889 proposed by another constitutional amendment to still further extend the privilege of municipal self-government, giving the right to frame its own charter to any city in the State containing more than 3,500 inhabitants. This amendment was adopted by the people of the State on November 4, 1890, by a large majority, thus extending the right to fourteen new cities.

Very soon a question arose as to what powers over a city were possessed by the Legislature after the city had framed and adopted its own charter. By what looks to have been an oversight on the part of the convention it is stated in the constitution, Section 6 of Article XI, relating to cities, counties and towns, that "cities and towns heretofore or hereafter organized and all charters thereof framed or adopted by authority of this constitution shall be subject to and controlled by general laws." This is directly in conflict with the spirit of Section 8 of the same Article, which confers the privilege of making their own charters upon cities of the requisite population. This question reached a decision in the Supreme Court in September, 1890, in the case of *Davies* v. *City of Los Angeles*.† The Legislature had passed a general State law with regard to the opening and widening of city streets. It was held that Los Angeles, having separate provisions concerning this subject in its charter, was exempted from the operations of the law. The court failed to take this view of the case, and in the course of its opinion said: "A charter like the one under which the city of Los

* 79 Cal., p. 173.

† 86 Cal., p. 37.

Angeles exists is subject to general laws, and a statute like the one now attacked, is a general law within the meaning of the constitution. It is useless to discuss the propriety of allowing the Legislature to interfere by general laws with the local affairs of a city. The constitution so provides in plain terms, and so far as the courts of the State are concerned this must settle the controversy. If the power given the Legislature to enact laws of this kind is an evil affecting the rights of the city government, the remedy is by amendment of the constitution."

This remedy, acting upon the advice of the court, the people of the cities affected immediately sought. Los Angeles and San Diego have felt this "general law" restriction very keenly. In San Diego, all street work must be done under State law, the city police court has been shorn of its jurisdiction and the board of education must operate under State authority. All the cities, in fact, found that the restriction in large part nullified the advantages of the new system, and united in a demand to the Legislature for a constitutional amendment. This amendment was adopted by the Legislature on March 19, 1891. The language of the amendment is, that the charter of the city "shall become the organic law thereof and supersede any existing charter, and all amendments thereof, and all laws inconsistent with such charter." The constitution heretofore had read: "and shall . . . supersede any existing charter and all amendments thereof and all *special* laws inconsistent with such charter." It is thought this omission of the word "special" will satisfy the needs of the case. The amendment was adopted by the people at the election on November 8, 1892, by a vote of 114,617 for and 42,076 against, and the cities now hope for an era of fuller emancipation.*

* The section as amended now reads :—

Art. XI, Sec. 8, Constitution of California.

Any city containing a population of more than three thousand five hundred inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this State, by causing a board of fifteen

The convention to frame a constitution for the State of Washington which met at Olympia on July 4, 1889, drew largely from the Constitution of California, and among the features which it borrowed was the section giving cities permission to frame their own charters. The experience of St. Louis was also known and one member in the debates spoke

freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed, in duplicate, by the members of such board, or a majority of them, and returned, one copy to the Mayor thereof, or other chief executive officer of such city, and the other to the Recorder of the county. Such proposed charter shall then be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; *provided*, that in cities containing a population of not more than ten thousand inhabitants such proposed charter shall be published in one such daily newspaper; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city or county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city setting forth the submission of such charter to the electors, and its ratification by them shall, after the approval of such charter by the Legislature, be made, in duplicate, and deposited, one in the office of Secretary of State, and the other, after being recorded in the Recorder's office, shall be deposited in the archives of the city, and thereafter all courts shall take judicial notice of said charter. The charter, so ratified, may be amended at intervals of not less than two years by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election, held at least forty days after the publication of such proposals for twenty days in a daily newspaper of general circulation in such city, and ratified by at least three-fifths of the qualified electors voting thereat and approved by the Legislature, as herein provided for the approval of the charter. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

in high terms of this provision of the Constitution of Missouri. On July 22 the Committee on County, City and Township Organization reported the scheme to the convention. In the first report it was to apply to cities containing over 25,000 population. The Board of Freeholders was to consist of fifteen persons, as in California, but differing from the system in that State, the charter if accepted by the people, was to go into force at once without ratification by the Legislature. The section met with much discussion in the convention. There was a motion to "strike out" and to leave charter-making to the Legislature. The maker of this motion gave as his reasons that abuses would arise should the people be granted so democratic a privilege. Another speaker doubted if there was a city in the Territory with a population of 25,000, and wanted the figures reduced to 15,000. Others wanted the limit placed as low as 5,000. A motion was heard in favor of allowing any city in the new State, no matter what its population, to frame its own charter. The debate was very heated, and the contending elements finally compromised on 20,000. On final passage there were 38 votes in favor of the section and 24 against.*

* This provision as it occurs in Art. XI, Sec. 10, of the Constitution of the State of Washington is as follows:—

Any city containing a population of twenty thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the constitution and laws of this State, and for such purpose the legislative authority of such city may cause an election to be had, at which election there shall be chosen by the qualified electors of said city fifteen freeholders thereof who shall have been residents of said city for a period for at least two years preceding their election, and qualified electors, whose duty it shall be to convene within ten days after their election, and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in two daily newspapers published in said city for at least thirty days prior to the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice,

By the census of 1890 only two cities in the State had reached the requisite population, Seattle and Tacoma. Spokane, however, lacked but little of the prescribed limit. Seattle adopted a "Freeholder's Charter" on October 1, 1890, by a vote of 2,507 for and 502 against. The new government not being suitable for a city of such small size the charter was materially amended on March 7, 1892. In spite of these difficulties, however, the City Comptroller writes that the "plan is acknowledged to be better than depending upon the Legislature." Tacoma adopted a "Freeholder's Charter" on October 19, 1890, by a vote of 2,723 for the charter and 726 against. The Mayor writes that the new "is felt to be superior to the old method."

In these three States, Missouri, California and Washington, we thus find the beginning of a movement to make our cities self-controlling and self-reliant governments. In two, Missouri and Washington, the cities make their own charters, without in the least consulting the State Legislatures. In the third, California, the Legislature, though passing finally upon the charters, must either approve or disapprove as a whole. Approval by the Legislature up to this time has been given without question and it is looked upon as not much more than a formality. In all three States, however, there is uncertainty as to the exact relation which such a city bears to the State, and doubt as to what extent a Legislature can legislate for a city after the latter has adopted its own charter. This question has assumed important proportions

which notice shall specify the object of calling such election, and shall be given at least ten days before the day of election in all election districts of said city. Said elections may be general or special elections, and except as herein provided shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor, submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for their choice of the voters, and may be voted on separately without prejudice to others.

in California, and though an effort was made to harmonize the contending interests by constitutional amendment at the election in November last, it is not clear that such a result has yet been reached. The difficulty would seem to be an inherent one, and it will not be likely to disappear until the divorce of State and city is complete.

This movement to separate our city and State governments which has reached the stage of practical experiment in the three States mentioned is, in truth, only the development of all the best of the later tendencies in thought regarding this subject. Such a solution of the problem has been looked upon by all recent competent students of municipal government as the only true plan of reform. The subject was given careful attention by commissions in two States, New York and Pennsylvania, now almost twenty years ago. Governor Tilden, of New York, in a special message to the Legislature of that State, in 1875, remarked upon the evils of the municipal system. A commission, which was authorized by law to "devise a plan for the government of cities in the State of New York," after thorough investigation, reported in favor of a curtailment of the powers of the State Legislature. Certain constitutional amendments were proposed, in accord with the recommendations made by the commission, which passed the Legislature of 1877, and were to have been submitted to the people in November, 1878, if they had passed the Legislature of 1878. In this second passage, however, they failed, despite the efforts of people representing the best interests in New York, Brooklyn and the other cities of the State. About the same time a commission, appointed by Governor Hartranft, of Pennsylvania, made a report, in which the conclusions arrived at showed a similar tendency.

The plan in use in Missouri, California and Washington is but a step in the direction of full emancipation for our large American cities, when they must stand in the same relation to the Federal government that the States do. There can no

good come of a system which, for instance, constitutes New York and Brooklyn a part of New York State, and which makes them dependent upon the country members of the Legislature and other non-residents for their charters and local laws. There are only fifteen out of the forty-four States of the Union with a population greater than that of New York city. The city has more inhabitants than the entire neighboring State of New Jersey. If Brooklyn, Jersey City and the other cities and towns contiguous to New York, whose interests are all common and allied, were consolidated in a single government, the resultant would be a city containing over three millions of people, a greater population than is now possessed by any State except four, New York, Pennsylvania, Illinois and Ohio. New York State, deprived of New York city and Brooklyn, would take a much lower place in the list, and the consolidated city, at the present rate of growth of city populations, in a short time would contain more inhabitants than any State in the Union. The interests of all our large cities are totally diverse from the interests of the remaining sections of the States in which they are placed by our artificial arrangement of boundaries. We have massed different peoples together who have no mutual sympathies, who are opposites in political and social standards and antipodal in wants and governmental requirements. For the good of the cities themselves, and likewise for the good of the States, it is necessary that our large cities should be free cities.

CHAPTER V.

Opinions by the State Courts. Is Law-making by Popular Vote Constitutional?

The submission of laws to the people for their ratification or rejection, has at various times received much attention from the different State courts; and there have been many decisions on the subject. Some of these decisions have been vigorous expressions against the method; but more, and indeed, nearly all, within late years have approved of it in so far as it is employed within the lines fixed upon by the courts. The question has appeared in several forms:—

1. Whether a State Legislature could make laws, applying to local districts of the State, which depend for their effect upon the assent of the people inhabiting those districts?

2. If it could, then whether it could pass a law to be conditioned upon popular consent on any subject, such as the licensing or prohibition of the liquor traffic, or other police regulation, or only upon subjects affecting the local tax levies, change in county seats, and county boundaries, etc.?

3. Even if it could submit laws relating to the local districts, whether it could submit laws to the people of the entire State?

These questions did not reach the courts in any quantity until after 1850. Such legislation before that time had been comparatively rare, and of a kind not to involve any very important contending interests. However, as soon as the Legislature began passing laws allowing counties, townships, and municipalities to subscribe stock to railroads, which necessitated increased tax levies, and laws prohibiting the liquor traffic, which deprived certain men of their means of livelihood, and interfered with the established habits of life of others, the issue was very shortly taken into the courts.

One of the first cases of this kind appeared in the Supreme Court of Massachusetts in 1826, *Wales* v. *Belcher*, 3 Pick. (Mass.) 508. The question was upon the constitutionality of a law determining the jurisdiction of courts in Boston, which was made to depend upon the contingency of the acceptance by the inhabitants of the town of Boston of the act which constituted that town a city. In speaking of this point of constitutionality, the court said: "This objection, for aught we see, stands unsupported by any authority, or sound judgment. Why may not the Legislature make the existence of any act depend upon the happening of any future event? Constitutions themselves are so made; the representative body in convention or other form of assembly fabricates the provisions, but they are nugatory unless at some future time they are accepted by the people. Statutes incorporating companies are made to derive their force from the previous or subsequent assent of the bodies incorporated. A tribunal peculiar to some section of the Commonwealth may be thought by the Legislature to be required for the public good, and yet may not be acceptable to the community over which it is established. We see no impropriety, certainly no unconstitutionality, in giving the people the opportunity to accept or reject its provisions."

Another early case appeared in the Court of Appeals of Virginia, in 1837, *Goddin* v. *Crump*, 8 Leigh (Va.) 120. A State law had been passed, authorizing the city of Richmond, after securing the assent of the people of the city, to subscribe stock to a canal company. The question was whether the Legislature could delegate such power to a local community, and the court said it could. Justice Tucker said, in delivering his opinion in this case: "The principles of good sense, not less than those of our institutions, inculcate the general propriety of leaving to individuals and to communities the right to judge for themselves what their interest demands, instead of fettering and controlling them under the false notion that we, the

governors, know what is good for them better than they themselves."

A law of Maryland for establishing primary schools within such counties of the State as should, by popular vote, determine to accept its provisions, came before the Court of Appeals in 1844, through the seizure of a pair of "pied oxen" for school tax. The case, *Burgess* v. *Pue*, is reported in 2 Gill (Md.) 11. The law was assailed on the ground that the Legislature, instead of exercising the power with which the constitution had vested it, had delegated it to the people. The court said, "We think there was no validity in the constitutional question which was raised by the appellee's counsel in the course of his argument relative to the competency of the Legislature to delegate the power of taxation to the taxable inhabitants for the purpose of raising a fund for the diffusion of knowledge and the support of primary schools. The object was a laudable one, and there is nothing in the constitution prohibitory of the delegation of the power of taxation in the mode adopted to effect the attainment of it. We may say that grants of similar powers to other bodies for political purposes have been coeval with the constitution itself, and that no serious doubts have ever been entertained of their validity."

The first important discussion of this question, however, was not reached until June, 1847, in Delaware. The question of the people's right in a representative government to take part in the making of their laws was argued here in a notable manner, in *Rice* v. *Foster*, 4 Harr. (Del.) 479. The Legislature of the State had passed an act February 19, 1847, "authorizing the people to decide by ballot whether licenses to retail intoxicating liquors shall be permitted among them." The counties were to vote "license" or "no license" on the first Tuesday in April, 1847. The Court of Errors and Appeals decided the law unconstitutional, and said: "The people of the State of Delaware have vested the legislative power in a General Assembly, consisting of a Senate

and House of Representatives; the supreme executive power of the State in a Governor, and the judicial power in the several courts. The sovereign power, therefore, of this State, resides with the legislative, executive, and judicial departments. Having thus transfered the sovereign power, the people cannot resume or exercise any portion of it. To do so would be an infraction of the constitution and a dissolution of the government. . . . Although the people have the power in conformity with its provisions to alter the constitution, under no circumstance can they, so long as the Constitution of the United States remains the paramount law of the land, establish a democracy or any other than a republican form of government. It is equally clear that neither the legislative, executive or judicial departments, separately, or all combined, can devolve on the people the exercise of any part of the sovereign power with which each is invested. The assumption of a power to do so would be usurpation. The department arrogating it would elevate itself above the constitution, overturn the foundation upon which its own authority rests, demolish the whole frame and texture of our representative form of government, and prostrate everything to the worst species of tyranny and despotism, the ever-varying will of an irresponsible multitude. . . . If the Legislature can refer one subject, it can refer another to popular legislation. There is scarcely a case where much diversity of sentiment exists, and the people are excited and agitated by the acts and influence of demagogues, that will not be referred to a popular vote. The frequent and unnecessary recurrence of popular elections, always demoralizing in their effects, are among the worst evils than can befall a republican government, and the legislation depending upon them must be as variable as the passions of the multitude. Each county will have a code of laws different from the others; murder may be punished with death in one, by imprisonment in another, and by fine in a third. Slavery may exist in one and be abolished in another. The law of to-day will be repealed or altered

to-morrow, and everything be involved in chaos and confusion. The General Assembly will become a body merely to digest and prepare legislative propositions, and their journals a register of bills to be submitted to the people for their enactment.

"Finally, the people themselves will be overwhelmed by the very evils and dangers against which the founders of our government so anxiously intended to protect them; all the barriers so carefully erected by the constitution around civil liberty, to guard it against legislative encroachment, and against the assaults of vindictive, arbitrary and excited majorities, will be thrown down, and a pure democracy, the worst of all evils, will hold its sway under the hollow and lifeless form of a republican government."

In November of the same year, 1847, the question came up for decision in the Supreme Court of Pennsylvania. This is the case of *Parker* v. *Commonwealth*, reported in 6 Barr, 507. It arose, as in Delaware, from a local option liquor law, which the court declared to be unconstitutional. In the course of its argument the court said: "To exercise the power of making laws, delegated to the General Assembly is not so much the privilege of that body, as it is its duty, whenever the good of the community calls for legislative action. . . . It is a duty which cannot be transferred by the representative; no, not even to the people themselves, for they have forbidden it by the solemn expression of their will that the legislative power shall be vested in the General Assembly; much less can it be relinquished to a portion of the people, who cannot even claim to be the exclusive depositories of that part of the sovereignty retained by the whole community. An attempt to do so would be not only to disregard the constitutional inhibition, but tend directly to impress upon the body of the State those social diseases that have always resulted in the death of republics, and to avoid which the scheme of a representative democracy was devised and is to be fostered."

A different view was reached by the Supreme Court of Illinois, at its December term, 1848, in *The People ex rel.* v. *Reynolds*, 5 Gilm. (Ill.) 1. By act of Legislature, the question had been submitted to the vote of a county whether the district should be divided, and organized into two counties. The court said: "A law may depend upon a future event or contingency for its taking effect, and that contingency may arise from the voluntary act of others. Of this class are all laws creating corporations, and a very large proportion of the laws creating public or municipal corporations. The former must necessarily be submitted to the corporators for acceptance before they take effect, and this has been very usually done with the latter, especially in the incorporation of towns and cities, and not infrequently of counties; and we have never heard it questioned before that the Legislature might properly submit a law creating either a private or public corporation to the acceptance of the corporators. . . . Had this authority been given to the court, instead of the voters, we are compelled to think that no complaint of its constitutionality would have been entertained; and yet there would have been as much a delegation of power in one case as in the other. To prove this needs no argument. If, by leaving this question to the people, the republican form of government is to be overturned, and its principles subverted by a miniature democracy, may not the same awful calamities be apprehended from a miniature monarchy?"

A decision arising out of a local option liquor law, similar to those laws which had recently been declared unconstitutional in Delaware and Pennsylvania, was delivered by the Supreme Court of Vermont, in 1849, *Bancroft* v. *Dumas*, 21 Vt., 456. The court said: "Is a law to be adjudged invalid because it is comformable to the public will? It is in accordance with the theory of our government that *all our laws* should be made in conformity to the wishes of the people. Surely then it can be no objection to a law that it is approved by the people. We believe that it has never been

doubted that it is competent for the Legislature to constitute some tribunal, or body of men, to designate proper persons for innkeepers, and retailers of ardent spirits. . . . If the Legislature could legally and constitutionally submit the question of whether licenses should be granted to the determination of a portion of the people, could they not with equal, if not greater, propriety submit it to the decision of the whole people ?"

The Vermont court fortified itself in this opinion in 1854, *State* v. *John Parker*, 26 Vt., 35. The "Maine Liquor Law" was passed by the Vermont Legislature in 1852, and was submitted to the people. The court here said: "It is admitted on all hands that the Legislature may enact laws, the operation or suspension of which shall be made to depend upon a contingency. This could not be questioned with any show of reason or sound logic. It has been practiced in all free States for hundreds of years, and no one has been lynx-eyed enough to discover, or certainly bold enough to declare, that such legislation was, on that account, void or irregular; and it is, in my judgment, a singular fact that this remarkable discovery should first be made in the free representative democracies of America."

In Kentucky, in 1849, *Talbot* v. *Dent*, 9 B. Mon. (Ky.) 526, the Court of Appeals declared constitutional an act of the Legislature authorizing a vote of the people of Louisville upon a proposition to subscribe stock to a railroad company. The subject was more fully reviewed in 1852, in *Slack* v. *Maysville and Lexington Railroad Co.*, 13 B. Mon. 1. This case likewise arose out of a law authorizing the people to vote subscriptions to the capital stock of railroad companies. The Court said: "It is no objection to the constitutional validity of such statutes that they depend for their final effect upon the discretionary acts of individuals or others. The legislative power is not exercised in doing the act, but in authorizing it, and in prescribing its effect and consequences. . . . We do not perceive that there is any greater

abandonment of the legislative will and discretion, necessarily to be implied, in referring this question as to the execution of the authority and the final imposition of the tax to the majority of those who are to bear it, than in referring it to the county court or the trustees or council of a town or city."

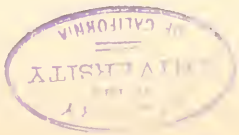
The Court of Appeals of New York, in 1853, gave an important opinion in the case of *Barto* v. *Himrod*, 4 Seld., 483, sustaining the position earlier taken by the highest courts of Delaware and Pennsylvania, in *Rice* v. *Foster*, and *Parker* v. *Commonwealth*, respectively. The case turned upon the constitutionality of an act which the Legislature had passed March 26, 1849, known as the "Free School Law." The law contained a provision for its own submission to the people, its remaining provisions to be operative on January 1, 1850, if the majority of all the votes cast at an election to be held throughout the State, be in favor of the law, and to be null and of no effect in case it should not receive such a majority. The constitutionality of the law was three times passed upon by the Supreme Court in three different judicial districts before it reached the Court of Appeals: in the seventh district, *Johnson* v. *Rich*, 9 Barb., 680; in the seventh district, *Thorne* v. *Cramer*, 15 Barb., 112; in the fifth district, *Bradley* v. *Baxter*, 15 Barb., 122. The weight of opinion in the lower courts seemed to be against the law. The *Johnson* v. *Rich* opinion was in favor of the law, but there were only three judges sitting on the case, and one of them dissented. In the other two cases the law was declared unconstitutional, all the judges concurring.

In *Barto* v. *Himrod*, the case which reached the Court of Appeals, a wagon had been seized for school tax under the law. Chief Justice Ruggles in his opinion said: "It is not denied that a valid statute may be passed to take effect upon the happening of some future event certain or uncertain. But such a statute when it comes from the hand of the Legislature must be law *in presenti* to take effect *in futuro*. . .

The event or change of circumstances on which a law may be made to take effect must be such as in the judgment of the Legislature affects the question of the expediency of the law; an event on which the expediency of the law, in the judgment of the law-makers, depends. On this question of expediency the Legislature must exercise its own judgment definitively and finally. . . . But in the present case no such event or change of circumstances affecting the expediency of the law was expected to happen. The wisdom or expediency of the free school act abstractly considered did not depend on a vote of the people. If it was unwise or inexpedient before that vote was taken it was equally so afterwards. The event on which the act was made to take effect was nothing else than the vote of the people on the identical question which the constitution makes it the duty of the Legislature itself to decide. . . . The government of this State is democratic but it is a representative democracy, and in passing general laws the people act only through their representatives in the Legislature."

Justice Willard in his opinion on the same case said: "If this mode of legislation is permitted and becomes general it will soon bring to a close the whole system of representative government which has been so justly our pride. The Legislature will become an irresponsible cabal, too timid to assume the responsibility of law-givers, and with just wisdom enough to devise subtile schemes of imposture to mislead the people. All the checks against improvident legislation will be swept away, and the character of the constitution will be radically changed."

A case arising out of a law authorizing a vote of stock in aid of a railroad company reached a decision in the Supreme Court of Ohio in 1852, *C. W. & Z. R. R. Co.* v. *Clinton County*, 1. O. S., 77. The Court here said: "That the General Assembly cannot surrender any portion of the legislative authority with which it is invested, or authorize its exercise by any other person or body, is a proposition too clear



for argument, and is denied by no one. . . . The people in whom it resided have voluntarily relinquished its exercise, and have positively ordained that it shall be vested in the General Assembly. It can only be reclaimed by them by an amendment or abolition of the constitution for which they alone are competent. . . . But while this is plain the court thinks it impossible that laws may not be passed requiring the intervening assent of other persons, or containing provisions preventing their taking effect only upon the performance of conditions expressed in the law. . . . The discretion given [in such a law] only relates to its execution. It may be employed or not employed—if employed, it rules throughout; if not employed, it still remains the law ready to be applied whenever the preliminary condition is performed."

From this time on there were many judicial opinions given in the State tribunals in regard to the constitutionality of this method in law-making; and nearly all the States in the Union by this time have come to have an established policy on the subject. By far the larger number of decisions have been in favor of the method; but the courts have followed different lines of argument, some reaching their conclusions in one manner, and some in another. We will endeavor, in the following summary to give the positions which have been taken by the various State courts of last resort on this subject.

Those States which may be recorded as in favor of the system are: Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont and Wisconsin.

In Alabama, Colorado, and Nebraska, the constitutionality of the method has been recognized in some not very important cases. The policy in these States, however, has been

made plain enough to warrant their appearing in the above classification.

In Arkansas, in 1879, *Boyd* v. *Bryant* 35 Ark., 69, the Supreme Court of the State gave its opinion firmly in favor of local option laws. The case arose out of a liquor law. In *Trammel* v. *Bradley* 37 Ark., 374, the court more fully explained its position on the question, sustaining its earlier opinion. While the Legislature could not delegate the power to legislate, it could make a law to depend upon a contingency, which contingency might be a favorable vote of the people. "It must be confessed," the court continued, "that the question was not originally without very grave difficulties; but now, upon a review of them all, and weighing the dangers and inconveniences of each side, the court adheres to the views there taken [*i. e. Boyd* v. *Bryant, supra*], and this, we think, is sustained by the weight of authority as well as of reason."

In Connecticut, in 1875, *State* v. *Wilcox*, 42 Conn., 364, the Supreme Court, while agreeing with courts in other States that legislative power could not be delegated, declared the local option liquor law of 1874 constitutional.

In Florida a case reached the Supreme Court as early as 1856, *Cotten* v. *County Commissioners of Leon County*, 6 Fla., 610. The question here was as to the constitutionality of an "Internal Improvement Law," allowing counties, cities and towns to subscribe stock to railroads, after securing the popular assent. The court said this was not a delegation of legislative power, but only a legitimate mode of obtaining an expression of the will of the constituent as a guide for the action of the representative. The opinion has been sustained in several later cases.

In Georgia, in 1875, *Mayor and Council of the City of Brunswick* v. *Finney*, 54 Ga., 317, which arose concerning a law submitting to the people of the city of Brunswick a change in the charter, the court said: "If conditional legislation is important for the public good, it seems difficult to sustain a

position that legislation conditioned to take effect, provided the people interested in the law shall by a formal vote declare such a law to be desirable, is a delegation of legislative power." The court thought that while the submission of laws to the people was constitutional in the local districts of the State, it might not be if the submission was to the people of the whole State. Later, concerning an act submitting the question of the granting of liquor licenses to the voters of a county, in *Caldwell* v. *Barrett*, 73 Ga., 604, the court said: "Under our form of government, where the people rule, and where the representatives in the Legislature are but the agents of the people and act alone for them, it would seem that when the wishes of the people as to whether a proposed act should become a law can be clearly ascertained by an election, this mode would be consonant with the genius and form of our government."

In Illinois the policy of the State court was established in *The People ex rel.* v. *Reynolds*, *supra*, in which case the principle was stated that a law might depend upon a future event or contingency, and that contingency might be an approving vote of the people. This principle has been restated by the court several times, notably in *The People ex rel.* v. *Salomon*, 51 Ill., 37, and *Home Insurance Co.* v. *Swigert*, 104 Ill., 653.

In Kansas, in *Noffzigger* v. *McAllister* 12 Kan., 250, sustaining the "Nightherd Law" of 1868 and *State ex rel.* v. *Hunter*, 30 Kan., 578, the Supreme Court has given decisions in favor of the submission of laws to the people. In the latter case the court said: "The validity of laws, the operation of which is made to depend upon the occurrence of some future event or contingency, certain or uncertain, cannot well be doubted. The contingency may be the vote or petition by a certain number of people to be affected by the law."

In Kentucky the State Court of Appeals declared in favor of this method of making laws in 1849 in *Talbot* v. *Dent*, *supra*; and in 1852 in *Slack* v. *Maysville and Lexington*

Railroad Company, supra. In 1877 in *Anderson* v. *Commonwealth*, 13 Bush. (Ky.), 485, the court upheld a local option liquor law. The court said that the regulation of the liquor traffic, being one properly of local police to be exercised by the lawfully created local agencies, such as the county courts, etc., the Legislature might create other agencies; and further it would be no constitutional objection to the agencies created that they be composed of the entire body of the qualified voters of such local districts. In another opinion in the case of *Commonwealth* v. *Weller*, 14 Bush., 218, the court said of a local option law: "The Legislature, by the passage of the act we are considering, had already determined its expediency, and we perceive no reason why . . . its going into operation, should not be made to depend upon a vote in favor of the measure. That a statute may be conditional, and in taking effect be made to depend upon some subsequent event, is now well settled."

In Louisiana, in 1853, *Police Jury* v. *McDonogh*, 8 La. An., 341, the Supreme Court said, in a decision upon an internal improvement law: "If the Legislature could constitutionally confer on the police jury authority to pass a taxing ordinance, it would seem rather a safeguard against oppression, than the reverse, to qualify the power of requiring it to be exercised with the approbation of a majority of those who are to bear the burden. . . . We find nothing in the statute of 1852 repugnant to the constitution, or the spirit of representative government, and it seems to us a matter of surprise that the caution of the Legislature in its grant of the taxing power should be made a subject of reproach."

In Maryland the Court of Appeals gave a decision favorable to this method of making laws in *Burgess* v. *Pue*, *supra*. The position was fully affirmed in 1874, *Fell* v. *State*, 42 Md., 71, when the question at issue was the constitutionality of a local option liquor law. The court said that the Legislature had the undoubted power to pass a law whose going into effect should depend upon some particular event, and there

was no reason why this contingency might not be the assent of a majority of the legal voters of the district within which the law was designed to operate.

In Massachusetts the policy of the Supreme Court in such cases was established in 1826, in *Wales* v. *Belcher, supra.* The court said in 1871, *Commonwealth* v. *Bennett*, 108 Mass., 27, a case involving the constitutionality of a local option liquor law, that statutes authorizing the authorities of towns and counties to grant licenses had never been thought unconstitutional, and therefore, neither could statutes which conferred this power upon the whole body of voters.

In Minnesota, *Roos* v. *State*, 6 Minn., 291, the State Supreme Court declared constitutional a law submitting to popular vote a proposition to remove a county-seat. The court here said that the law "was as much a law prior to the vote of the people as subsequent to that event, its operative force being suspended, merely, its vitality being dormant. It is precisely the same case as the passage of a law by the Legislature, made to take effect upon the happening of any other event, such as a future day, which is the most usual case."

In Mississippi, in 1859, in *Alcorn* v. *Hamer*, and *Same* v. *Hill*, 38 Miss., 652, the question reached a decision in the Supreme Court of that State. The cases arose out of "an act to aid in repairing and perfecting the levee of the Mississippi river," which provided for a vote of the people of certain counties, on the proposition for a special tax levy. The court here said: "The legislative power, to whatever subjects it may be applied, and whatever may be its extent, is vested exclusively in the Senate and House of Representatives by the people in whom it resides. They have by the highest and most solemn of compacts, the constitution, voluntarily relinquished their right to exercise it. . . . To allow the Legislature to associate with them in the exercise of the legislative function another tribunal, or to cast back upon the people their delegated powers, would be tantamount to

a subversion of the constitution, by changing the distribution of the powers of the government without the consent of the authority by which it was ordained." The court came to the conclusion, however, that the power to enact laws includes the power to determine and to prescribe the conditions upon which a law may come into operation; and this contingency may as well be a vote of the people as anything else. In 1886, in a decision on a local option liquor law, *Schulherr* v. *Bordeaux*, the court said: "On the question of the right to make an act of the Legislature to depend for its operation on a future contingency, argument was exhausted long ago, and the principle established by oft-repeated examples, and by adjudication in this State and elsewhere in great numbers, that this may be done without violating the constitution."

In Missouri, the Supreme Court in several cases had recognized that the Legislature could pass a law to take effect on the happening of a future event prior to a decision made in 1876, *Lammert* v. *Lidwell*, 62 Mo., 188, relating to a local option stock law. This law the court held to be unconstitutional, because it was not a "complete and valid" law when it left the hands of the Legislature. The principle of "the happening of a contingency" was still recognized, but the court found some defect in the drafting of this particular law, and the decision was said not to constitute a reversal of the principle. In 1887, in the *State ex rel. Maggard* v. *Pond*, 93 Mo., 606, the court found a local option liquor law to be constitutional, and said: "While the rule that the Legislature is alone invested with the power to make laws, and that it cannot delegate to the people the power to pass a law, does not admit of question or doubt, there is another rule just as firmly and indisputably established, which is that the Legislature may pass a law to take effect or go into operation on the happening of a future event or contingency, and that such contingency may be a vote of the people."

In New Hampshire, in 1855, *State* v. *Noyes*, 10 Foster (N. H.), 279, a case arising out of a law "to suppress bowling

alleys" in towns which might vote to do so at a legally-called town meeting, the Supreme Court said: "Many laws have been so presented to the people and acted upon by them, and it is not at once apparent that there can be any sound objection to the enactment of laws to take effect upon the occurrence of future events, such as the Legislature may prescribe. Laws framed to take effect upon conditions dependent upon the pleasure of parties affected by them are common everywhere." This policy remains the established rule in regard to local enactments. A State law which had been submitted to popular vote in 1880, was declared unconstitutional in *State* v. *Hayes*, 61 N. H., 264.

In New Jersey, in 1854, *City of Paterson* v. *Society for Establishing Useful Manufactures*, 4 Zab., 385, a case arising out of an act of Legislature, submitting to the people of the town of Paterson whether they would be incorporated as a city or not, the State court said: "Before imposing the burdens of a city charter upon a people, the Legislature not only may, but ought to, require the assent of the corporators. It is designed as a benefit, but it brings heavy burdens which ought not to be imposed upon a people without their assent." In 1872, in *State* v. *Court of Common Pleas of Morris County*, 36 N. J., 72, and in 1888 *Paul* v. *Gloucester County*, 50 N. J., 585, cases arising from local option liquor laws, the court took the unusual position that townships and counties are municipal corporations. "The true basis of the legislative right to delegate these powers," the court said in the latter case, "is the fact that it has always been recognized as a legitimate part of the legislative function, as well as a duty in harmony with the spirit of our institutions to enable the people, in whom all power ultimately resides, to control the police powers in communities for themselves."

In New York, following the case of *Barto* v. *Himrod*, *supra*, in which a decision was rendered against the submission of laws to the people, the State court was soon compelled to modify its opinion. In 1858, *Bank of Rome* v. *Village of*

Rome, 18 N. Y., 38, a law authorizing municipal corporations to submit to electors, who were tax-payers, the question of subscribing money to aid in the construction of railroads, was declared to be constitutional. The court held that this was not a delegation of legislative power, within the scope of *Barto* v. *Himrod*, and a distinction was drawn between acts relating to the whole State, and those relating to local communities. The court further explained this distinction in *Bank of Chenango* v. *Brown*, 26 N. Y., 467, as follows: "It is a material distinction between the cases [this case and *Barto* v. *Himrod*] that the people of a particular municipality or local body are not the constituents of the Legislature. They are not the people of the State of New York who have irrevocably committed their power of legislation to the Legislature, by a delegation, which does not permit that Legislature to remand any legislative question to their constituency."

In North Carolina, in 1859, the Supreme Court, in *Manly* v. *City of Raleigh*, 4 Jones' Eq., 370, held that the Legislature could pass laws which depend for their going into effect upon a popular vote. The court reviewed *Barto* v. *Himrod* (N. Y.), and said: "This decision, and the reasoning offered in support of it, fail to satisfy us that the Legislature has not the power to pass a law dependent upon a vote of the people or the acceptance of a corporation. . . . There is no prohibition in the constitution against this mode of legislation." In the case of a local option fence law in 1882, *Cain* v. *Commissioners*, 86 N. C., 8, the court found that there was no delegation of legislative power, it being simply a law to take effect upon "the happening of a contingent event."

In Ohio the policy was fixed in 1852, in the case of *C. W. & Z. R. R. Co.* v. *Clinton County*, *supra*, when the Supreme Court sustained a law authorizing local political bodies, upon popular vote, to subscribe stock to railroad companies. In 1889, in the case of *Gordon* v. *The State*, 46 O. S., 607, involving the constitutionality of a local option liquor law for townships, the court said: "The doctrine

is generally accepted that it is within the scope of the legislative power to enact laws which shall not take effect until the happening of some particular event, or in some contingency thereafter to arise, or upon the performance of some specified condition. May not the execution of a law depend upon the condition of some popular vote as well as upon any other fair and reasonable contingency?"

In Pennsylvania the opinion given in *Parker* v. *Commonwealth*, decided in 1847, stating the unconstitutionality of a local option liquor law, was gradually modified, and afterward directly reversed. Only one year later the same court decided in favor of a law submitting a question of township division. The court found a distinction between this question and the liquor question which was under review in *Parker* v. *Commonwealth*, and said: "If the Legislature can authorize the courts to decide questions of this character, they can also authorize the people primarily to do so. If the power can be given to a selected few, it can also be delegated to all the inhabitants of a district, unless positively prohibited." This view was also taken in *Commonwealth* v. *Painter*, 10 Barr, 214, and *Moers* v. *City of Reading*, 21 Penn., 188. In 1873, in *Locke's Appeal*, 72 Penn., 491, *Parker* v. *Commonwealth* was directly reversed, the law under review in each case, involving the right of the people in their local districts to prohibit the sale of liquor. In *Locke's Appeal* the court said: "Instead of being contrary to, it is consistent with, the genius of our free institutions to take the public sense, that the legislators may faithfully represent the people, and promote their welfare. So long, therefore, as the Legislature only calls to its aid the means of ascertaining the utility, or expediency of a measure, and does not delegate the power to make the law itself, it is acting within the sphere of its own powers."

In Tennessee, in 1854, in *Railroad Company* v. *Davidson County*, 1 Sneed, 640, a case arising out of the Internal Improvement Act of 1852, the Supreme Court found the

submission of laws to the people to be constitutional. "It would seem," said the court, "that in a popular government, if any condition should be tolerated under the constitution, it would be this [*i. e.*, a vote of the people]; and that in making any great changes in the policy of a State, it would not be incompatible with our institutions to suspend the same until the sanction of those upon whom it was to operate was obtained to the distinct measure proposed, as well after it has been matured by the Legislature, by a vote of the people, as before by instructions."

In Vermont, the policy of the Supreme Court in favor of the submission of laws to the people was early established in *Bancroft* v. *Dumas*, *supra*, and *State* v. *John Parker*, *supra*. The court has taken a foremost place as a firm adherent of the entire constitutionality and the expediency of this method in law-making.

In Virginia, in 1838, in *Goddin* v. *Crump*, *supra*, a case which arose from a law allowing a municipal corporation, with the assent of the people, to subscribe stock in aid of a canal company, a decision was made in favor of this principle in the government of local communities. In 1855 this position was affirmed in *Bull* v. *Read*, 13 Gratt., 78. The court here said: "If the Legislature may make the operation of its act depend on some contingency thereafter to happen, or may prescribe conditions, it must be for them to judge in what contingency, or upon what condition the act shall take effect. They must have the power to prescribe any they may think proper, and if the condition be that a vote of approval shall first be given by the people affected by the proposed measure, it is difficult to see why it may not be as good and valid as any other condition whatever."

This position was further affirmed in *Savage* v. *Commonwealth*, 84 Va., 619. The point at issue was the constitutionality of the local option liquor law of 1885–6. The court said that the Legislature was as competent to confer upon the people the power of granting liquor licenses as to

confer it upon the county and corporation courts or other local agency.

In Wisconsin, in *State* v. *O'Neill*, 24 Wis., 149, relative to an act passed by the Legislature establishing a Board of Public Works in Milwaukee, which had been referred to a vote of the people of that city, the court found this method of submitting laws to be constitutional. The court said the law was a "conditional one." "It is a complete enactment in itself; contains an entire and perfect declaration of the legislative will; requires nothing to perfect it as a law; while it is only left to the people to be affected by it whether they will avail themselves of its provisions."

Those States which have given decisions against the system of submitting laws to popular vote are as follows: California, Delaware, Indiana, Iowa, Nevada, New Hampshire, New York, Pennsylvania and Texas. The decisions, in Delaware, *Rice* v. *Foster;* in New York, *Barto* v. *Himrod*, and in Pennsylvania, *Parker* v. *Commonwealth*, have been sufficiently treated on previous pages of this chapter.

California made a notable contribution to the opinions on the reverse side of the discussion in 1874, in the case of *Ex parte Wall*, 48 Cal., 279. The California court in 1857, *Upham* v. *Supervisors of Sutter County*, 8 Cal., 379, had decided that a law submitting to the people of a county the question of the location of their county-seat was constitutional. In *Blanding* v. *Burr*, 13 Cal., 343, and *Hobart* v. *Supervisors of Butte County*, 17 Cal., 24, the submission to popular vote of laws relating to local districts, were similarly declared to be constitutional. In the reverse opinion given in the *Ex parte Wall* case, the court said: "Our government is a representative republic, not a simple democracy. Whenever it shall be transformed into the latter—as we are taught by the examples of history—the tyranny of a changeable majority will soon drive honest men to seek refuge beneath the despotism of a single ruler. . . . On the question of the expediency of the law, the Legislature must exercise its own

judgment, definitely and finally. If it can be made to take effect upon the occurrence of an event, the Legislature must declare the law expedient if the event shall happen, but inexpedient if it shall not happen. They can appeal to no other man or men to judge for them in relation to its present or future propriety or necessity; they must exercise that power themselves, and thus perform the duty imposed upon them by the constitution. But, in case of a law to take effect if it shall be approved by a popular vote, no event affecting the expediency of the law is expected to happen. The expediency or wisdom of the law, abstractly considered, does not depend on a vote of the people. If it is unwise before the vote is ordered, it is equally unwise afterwards. The Legislature has no more right to refer such a question to the whole people than to a single individual."

Since delivering this decision, the court, in *People* v. *Nally*, 49 Cal., 478, and *People* v. *McFadden*, 81 Cal., 489, has declared constitutional two laws submitting to popular vote propositions for change in county boundaries.

In Indiana, at the November term 1853, *Maize* v. *The State*, 4 Ind., 342, the Supreme Court declared a local option liquor law unconstitutional. The court said: "It is not easy to see how, on principle, a public measure can be submitted in the abstract to a popular vote consistently with the representative system. In effect it is changing the government to what publicists call a pure democracy, such as Athens was. If one enactment may be submitted to such vote, so may another, so might all; thus would the representative system be wholly subverted." The court later, consistently with its first decision, in *Greencastle Township, etc.*, v. *Black*, 5 Ind., 557, found to be unconstitutional a law authorizing the people of townships to vote to tax themselves for school purposes. The court here said: "On the subject of popular voting on laws—in this instance voting a tax—we have nothing to add to what was said in the Maize case. We believe the theory of such voting unsound and untenable. . . . If the voters of a township

have such a right, so have the voters of the State; and if on one species of tax, so on every other; and if on tax questions, then on all questions." The court, however, admitted the constitutionality of a law of 1869, authorizing counties and townships, with the popular consent, to subscribe stock to railroads, in the case of *The Lafayette, Muncie and Bloomington R. R. Co.* v. *Geiger*, 34 Ind., 185, and was led still further away from the doctrine laid down in the Maize case in *Groesch* v. *The State*, 42 Ind., 547.

In Iowa the Supreme Court in 1855, *Santo* v. *State*, 2 Iowa, 165, declared to be unconstitutional the submission to a vote of the people of the entire State, of a prohibitory liquor law. The court said: "The General Assembly cannot legally submit to the people the proposition whether an act should become a law or not." There was felt to be no doubt of the right of the Legislature to pass an act to take effect upon a contingency, but a vote of the people could not be regarded as a contingency. This made the people the "legislative authority," which, by the constitution, was vested in the Senate and House of Representatives. In *Geebrick* v. *State*, 5 Iowa, 491, a local option liquor law was declared to be unconstitutional. In *Dalby* v. *Wolf & Palmer*, 14 Iowa, 228, a local option stock law, by an intricate process of reasoning, was found to be unlike a local option liquor law, and was therefore said to be valid. Another county local option liquor law was declared to be unconstitutional, in 1871, in *The State* v. *Weir*, 33 Iowa, 134. In *Weir* v. *Cram*, 37 Iowa, 649, a local option stock law was declared unconstitutional.

In Nevada, in 1869, *Gibson* v. *Mason*, 5 Nev., 283, the Supreme Court said: "The people possess no power of legislation whatever. An act of the Legislature made dependent upon their votes or approval would be utterly void, and so it has frequently been held."

In New Hampshire, though laws which are submitted to the people of local districts have been above question, the Court, in 1881, *State* v. *Hayes*, 61 N. H., 264, declared

unconstitutional a law which had been submitted to the people of the whole State, providing for minority representation in corporations. The court said that the power of general State legislation could not be delegated by the Senate and House of Representatives in which it is vested by the constitution, and that this law was plainly an avoidance of the legislative duty and a delegation of it to the people.

In Texas, in 1856, in *State* v. *Swisher*, 17 Texas, 441, a local option liquor law was declared unconstitutional. The Court said: "Under our constitution, the principle of law-making is that laws are made by the people not directly, but by and through their chosen representatives. By the act under consideration this principle is subverted, and the law is proposed to be made at last by the popular vote of the people, leading inevitably to what was intended to be avoided —confusion and great popular excitement in the enactment of laws." This opinion has been several times modified, and in 14 Texas Court of Appeals, 505, another case arising from a local option liquor law, was directly overruled on the ground that while the Legislature could not delegate the legislative power, it could enact a law to delegate the power to determine some fact or state of things upon which the validity of the law may depend, which fact or state of things may be a vote of the people.

Michigan does not allow of classification. In that State a prohibitory liquor law was passed by the Legislature and referred to the people of the whole State in 1853. The Court, in 1834, *People* v. *Collins*, 3 Mich., 343, was equally divided on the question of its constitutionality.

The weight of opinion is thus seen to be decidedly on the side of the method of submitting laws to popular vote; and though there have been several adverse decisions, they were, most of them delivered many years ago when thought on the subject had yet made but little progress. The validity of the Referendum system in local districts was recognized in New England, where the town meeting was in use, from a

very early time, and it was not possible that the other States should remain far behind in learning the utility and convenience of this plan of local government. Leaving aside *Rice* v. *Foster*, and *Parker* v. *Commonwealth*, which were both decided before 1850—the latter case being reversed by the Pennsylvania court in *Locke's Appeal*, in 1874—and *State* v. *Swisher* in Texas, and *Maize* v. *State* and *Greencastle Township, etc.*, v. *Black* in Indiana, all decided before 1860, and which have later been very much modified, the tendency in the courts has been steadily in favor of this system in law-making, as applied to local districts. The method has been declared unconstitutional, it is true, in the later cases of *Ex parte Wall* in California, *Geebrick* v. *State*, and *The State* v. *Weir* in Iowa, and *Lammert* v. *Lidwell* in Missouri, but such opinions have been very exceptional, and stand unsupported by the best judicial authority.

It is to be noted of nearly all the opinions which have been given against the method, that the points at issue involved the constitutionality of local option liquor laws. The direct question has been embarrassed by extra-judicial influences, which have not contributed to give unbiassed expression of the court's views. The liquor question, touches the daily living customs of the people, and men, even those presiding over courts, are seldom able to rid themselves of prejudices, and discuss this subject as they would others. This opinion is induced after a reading of the deliverances of many State courts on liquor cases. Personal feeling has been brought plainly into evidence in a number of cases, but never more plainly than in the dissenting opinion in *Locke's Appeal*, by the Chief Justice of the Supreme Court of Pennsylvania. Here the Judge stated his own habits regarding the use of liquors, and introduced other extraneous argument, in no wise bearing upon the legal side of the case.

The objection to the practice of submitting laws to popular vote has generally been made that it is inconsistent with the representative principle; and that the theory of our

government is subverted in transferring the power and duty of making the law directly to the people, or to a portion of them, thus relieving the representative body of its proper duty and just responsibility.

In finding the method constitutional, the courts have, in the main, made use of two lines of argument. Nearly all have recognized that the constitutions, having delegated the legislative authority to the Legislatures, those bodies can have no power to delegate it to any other agent. The people having vested this authority in the Legislatures, by their constitutions, cannot resume the exercise of it without altering those constitutions. In this the courts both *pro* and *contra* have agreed. It has further been argued, however, by those courts maintaining the constitutionality of the method, that although it may be granted that the Legislatures may not redelegate their power to legislate, those bodies can make laws which depend for their going into effect upon some contingency, the happening of some future event, or the fulfilment of a prescribed condition. In support of this, the State courts have cited the opinion of the Supreme Court of the United States in the case of the *Cargo of the Brig Aurora* v. *United States*, 7 Cranch, 382. This case grew out of a violation of a Non-Intercourse Act, passed by Congress during the period preceding the War of 1812. This was a law which was to be in force against Great Britain and France until those countries should modify their policy toward the United States, when the President was authorized to raise the embargo by proclamation. It depended for its repeal upon a contingency. Many other laws of Congress have been cited as being of this class, such as "Enabling Acts" for the admission of States into the Union, and laws which are to go into effect on a future day. It is, then, argued that, enactments of this kind being customary and in good use, this contingency may as well be a vote of the people residing within the district in which the law is designed to operate, as anything else.

This view of such laws was taken in 1826, in Massachusetts, in the case of *Wales* v. *Belcher*, and it has been stated over and over again and enlarged upon in the later decisions.

The other line of argument has been based upon the powers of the Legislatures over counties, townships, municipal corporations, and the other minor political districts of the State. It was early established that the Legislature of a State had extensive rights concerning these local districts ; and not being able to exercise its powers directly, could delegate them to various local authorities, such as commissioners of counties, trustees of towns, the officers of townships, mayors and councils of municipal corporations, and judges of the local courts.

If such powers can be delegated to these already created authorities, it is argued, why cannot new authorities be created and why cannot one of these newly-created authorities be the whole body of voters? If the power can be conferred upon a few of the voters of the district to levy taxes, make loans, accept the provisions of State laws, sell public property, etc., why may not this power be conferred as well upon all the voters? Thus it is also argued in regard to local option liquor laws. The granting of licenses being vested in the county courts, and other local authorities, why may it not in a similar manner be left to some other local agency, such as the voters themselves?

In regard to laws submitted to the voters of the entire State there have not been so many decisions. The case of *Barto* v. *Himrod*, arose out of a free school law, referred to all the voters of New York, and this proceeding was declared to be unconstitutional. A prohibitory law, submitted in Iowa, was reviewed by the court of that State, in *Santo* v. *State*, and the method was disapproved of. In Vermont, in *State* v. *John Parker*, the submission of a prohibitory liquor law to the voters of Vermont was declared to be valid. The court of Michigan, in *People* v. *Collins*, was equally divided as to the constitutionality of a prohibitory liquor law

submitted to the people of that State. A recent case is found in New Hampshire, the submission in 1880 of a law providing for minority representation in corporations. The court, in *State* v. *Hayes*, said the method was unconstitutional.

It must be a matter largely at the discretion of the courts to determine to what point they shall make use of their "contingency" theory. It is not easy to see why a vote of the people should not as well be regarded as a "contingency" when the law applies to the whole State, as when it applies to counties and other local districts. Such a distinction has been attempted by some courts, notably, New York and Georgia. Without seeking for a reason, it is perhaps enough to say that the distinction is recognized, and the rule announced. In New York the explanation has been attempted that the people of a municipality are not the constituents of the Legislature, and not the people of the State who have committed by the terms of the constitution their power of legislation to the Legislature. Other explanations have been offered, though none seem to create any other impression than that, in the opinion of the court, there is a supposed necessity for putting a restriction upon a practice which may in the end, lead us a perilous distance away from the principles of representative government.

APPENDIX.

THE REFERENDUM IN THE VARIOUS STATES.

In the following pages will be found a summary showing the development of the Referendum in the different American States, each one being placed in its alphabetical order. This summary embraces the Constitutions, and includes all the instances in which the right of the people to a direct consultation in the making of their laws has been recognized in these instruments. A statement is also given of the examples of the Referendum at present occurring among the general statutes of each State in so far as this task is possible—and perhaps desirable—within the limits of such a volume as the present one. Opinions of the highest State Courts as to the constitutionality of the Referendum, in cases in which the submission of laws to popular vote has not been expressly authorized by the Constitutions, are likewise given, each in its appropriate place.

ALABAMA.

The **Constitution of 1819** was not submitted to the people. It contained no example of the Referendum except as to constitutional amendments, the Legislature having final authority even over the adoption of these. The method was a two-thirds passage by one Legislature, majority vote of the people and a two-thirds vote of the next following Legislature.

Constitutions of 1865 and 1867. Neither of these Constitutions was submitted to the people. Each contained a provision for its own amendment similar to the one given in the Constitution of 1819. Each required a popular vote on propositions for calling a constitutional convention.

The **Constitution of 1875** was submitted to the people. It contained no recognition of the people as a direct law-making agency, except as to constitutional amendments. The method is: Two-thirds passage by one Legislature and majority vote of the people. Convention propositions must also be submitted to popular vote.

Statutes. In townships the electors may vote "sale" or "no sale" of school lands. In towns and cities they may vote for incorporation, change of town name and alteration in municipal boundaries. Other local questions are submitted sometimes by special acts of the Legislature. There was a general act to allow counties, towns or cities, upon vote of the people, to subscribe stock to railroad companies, prior to the adoption of the present Constitution, which contains a provision prohibitory of such subscriptions.

Opinions by the Courts. The Supreme Court has not passed directly upon the constitutionality of this method in legislation. It declared, in 67 Ala. 217, against the general theory of the delegation of legislative power by the Legislature stating that "the framers of the Constitution have vested the law-making power of this State exclusively in the General Assembly." However, in *Clark* v. *Daviney and Jack*, 60 Ala., 271, the Court held to be constitutional a law submitting to the people of Franklin county the question of a removal of the county-seat.

ARKANSAS.

Constitution of 1836. This Constitution was not submitted to the people, and it contained no instances of the Referendum.

The **Constitution of 1864** was submitted to the people, together with several ordinances declaring the action of the Secession Convention null and void, and restoring the State to its former position in the Union. It contained no examples of the Referendum.

The **Constitution of 1868** was submitted to the people. It was stated in Art. X, Sec. 6: "The credit of the State or counties shall never be loaned for any purpose without the consent of the people thereof expressed through the ballot-box." The method of amendment was, majority passage through two successive Legislatures and majority approval of the people.

Constitution of 1874. This instrument provides for a vote of the people in cases of a division of old counties to form new ones and a relocation of county-seats. Art. XIV, Sec. 4, says: "The General Assembly may by general law authorize school districts to levy by vote of the qualified electors of such district a tax not to exceed five mills on the dollar in any one year for school purposes." Method of amendment: Majority vote of one Legislature and majority vote of the people.

Statutes. In counties the people may vote at each general election whether or not licenses shall be granted to sell liquors. There is liquor local option also in townships, towns and city wards. In cities and towns subjects for the Referendum are, the annexation of territory and the remission of it back to the county again, the surrender of

the municipal charter, etc. A special act to govern the management of public schools within towns and cities depends for its vitality, within any town or city, upon an affirmative popular vote. In school districts there are annual school meetings at which the people themselves select school sites, determine the length of the school term, etc. In levee districts land owners in mass assembly determine several questions of local concern. Stock is impounded in local districts on majority petition; school lands are sold upon popular petition, and there are other instances in which the electors are in one manner or another consulted in the direction of their local affairs.

Opinions by the Courts. The Supreme Court, in *Boyd* v. *Bryant*, 35 Ark., 69, gave an opinion in favor of local option laws. The Court said that, although the Legislature cannot delegate the power to make laws, it can make a law to delegate the power to determine some fact or state of things upon which the law makes or intends to make its own action depend. In *Trammel* v. *Bradley* 37 Ark., 374, the Court more fully explained its position on this question, and sustained its earlier opinion. Here the Court said: "Local option laws are not delegations in any true sense of legislative power. . . . They are made operative or not in particular localities upon certain contingencies or under certain circumstances, which are referred to the people for determination, but when set in operation they derive their vigor from the original legislative life infused into them as general laws of the land. It must be confessed that the question was not originally without very grave difficulties; but now, upon a review of them all, and weighing the dangers and inconveniences of each side, this Court adheres to the views there taken (*i. e.*, *Boyd* v. *Bryant*, *supra*). And this we think is sustained by the weight of authority as well as of reason. What is good for one locality, under certain circumstances, may not always be good for another under different circumstances. General laws, of an adjustable nature, become a necessity. The purposes of good government cannot be fully subserved without them, and their certainty is not impaired by their adjustable nature."

CALIFORNIA.

The **Constitution of 1849** was submitted to the people. Propositions for the contraction of debt exceeding $300,000, except in time of war "to repel invasion or suppress insurrection," were to be submitted to popular vote by the Legislature before there could be a valid appropriation of public money. The method of amendment was: Majority vote of two successive Legislatures and a majority vote of the people. Propositions for calling a constitutional convention were likewise to be submitted to the people.

The **Constitution of 1879,** the present Constitution of the State, was submitted to the people. As, by the preceding Constitution, the Legislature is denied authority to contract an indebtedness on the credit of the State above the sum of $300,000, unless the proposition be first submitted to and approved by the people. The city of Sacramento is made the capital of the State, and any law proposing a removal must be submitted for popular ratification. Constitutional amendments and convention propositions must be submitted to popular vote. The method of amendment is: Two-thirds vote of one Legislature and a majority vote of the people. The Constitution requires that the people be consulted on the following local questions: Change of county-seats, a two-thirds vote being necessary to effect a change, and such an election not to be held in the same county oftener than once in four years; adoption of township organization in counties; incurring of indebtedness by any county, city, town, township, board of education or school district exceeding in amount in any year the income of such year, a two-thirds vote being required to constitute assent; organization of cities and towns under general State laws; adoption of city charters, the people to vote for or against them in all cities containing a population of more than 100,000, the limit being reduced to 10,000 by an amendment ratified in 1887, and still further reduced to 3,500 by another amendment ratified in 1890.

Statutes. The Referendum is in use in the following additional cases by statute: In towns and cities in regard to questions of incorporation, reduction or enlargement of the municipal area, consolidation of contiguous municipal corporations; organization of irrigation districts, the change of boundaries thereof and the issue of bonds therein; the levy of a tax in road districts for road purposes and, in counties, changes in county boundaries.

Opinions by the Courts. The Supreme Court, in 1857, *Upham* v. *Supervisors of Sutter County*, 8 Cal., 379, found to be constitutional a law submitting the question of a change of county-seat. The Court said that, although the Legislature could not delegate its general legislative powers, it could authorize others to do those things which it cannot understandingly or advantageously do itself. Thus the Legislature could delegate the power to the voters of a county to select a county-seat. In *Blanding* v. *Burr*, 13 Cal., 343, the Court said: "Laws may be absolute, dependent upon no contingency, or they may be subject to such conditions as the Legislature, in its wisdom, may impose. They may take effect only upon the happening of events which are future and uncertain; and, among others, the voluntary act of the parties upon whom they are designed to operate. They are not the less perfect and complete when

passed by the Legislature, though future and contingent events may determine whether or not they shall ever take effect."

This view was further affirmed in *Hobart* v. *Supervisors of Butte County*, 17 Cal., 24 and *Robinson* v. *Bidwell*, 22 Cal., 379. There was a notable reversal in 1874, *Ex parte Wall*, 48 Cal., 279. The law in question was a county local option liquor law. The Court, in deciding it unconstitutional, said: "Our government is a representative republic, not a simple democracy, Whenever it shall be transformed into the latter, as we are taught by the examples of history, the tyranny of a changeable majority will soon drive honest men to seek refuge beneath the despotism of a single ruler. To become a law an act must be passed through both Houses of the Legislature, be signed by the President of the Senate and Speaker of the Assembly and be approved by the Governor; or if vetoed by the Executive, must again be passed by the constitutional majority. Thus, and thus only, can a general statute be enacted. . . . A statute to take effect upon a subsequent event when it comes from the hands of the Legislature must be a law *in presenti* to take effect *in futuro*. On the question of the expediency of the law the Legislature must exercise its own judgment definitely and finally. If it can be made to take effect on the occurrence of an event the Legislature must declare the law expedient if it shall not happen. They can appeal to no other man or men to judge for them in relation to its present or future propriety or necessity; they must exercise that power themselves and thus perform the duty imposed upon them by the constitution. But in case of a law to take effect if it shall be approved by a popular vote, no event affecting the expediency of the law is expected to happen. The expediency or wisdom of the law abstractly considered, does not depend on a vote of the people. If it is unwise before the vote is taken it is equally unwise afterward. The Legislature has no more right to refer such a question to the whole people than to a single individual."

Subsequent to this decision, in *People* v. *Nally*, 49 Cal., 478, a law submitting a change of county boundaries was declared to be constitutional, and in *People* v. *McFadden*, 81 Cal., 489, a similar decision was offered in the case of a law to divide a county and form a new county out of an old one.

COLORADO.

Constitution of 1876. An enabling act for the admission of Colorado to the Union, was passed by Congress in 1864. The people the same year voted on a Constitution which had been framed by a territorial convention but it was defeated. A second Constitution was accepted when submitted in 1865, but the scheme for statehood failed

owing to the opposition of President Johnson. The present Constitution of the State was ratified by the people July 1, 1876.

Art. VII. Sec. 2, of this Constitution says: "The General Assembly shall at the first session thereof and may at any subsequent session, enact laws to extend the right of suffrage to women of lawful age and otherwise qualified according to the provisions of this article. No such enactment shall be of effect until submitted to the vote of the qualified electors at a general election, nor unless the same be approved by a majority of those voting thereon."

At the first session subsequent to the year 1880, the Legislature was directed by the Constitution to submit the question of a permanent location of the seat of State government to a vote of the people at the general election next ensuing. In case no place should secure a majority vote then the question of choice between the two places highest on the list was to be referred to the people at the next following general election. The Legislature further is forbidden to relocate the capital without the assent of two-thirds of those electors voting on the question at a general election.

Art. X, Sec 11, says: "The rate of taxation on property for State purposes shall never exceed six mills on each dollar of valuation; and whenever the taxable property within the State shall amount to $100,000,000, the rate shall not exceed four mills on each dollar of valuation; and whenever the taxable property within the State shall amount to $300,000,000 the rate shall never thereafter exceed two mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, be first submitted to a vote of such of the qualified electors of the State as in the year next preceding such election shall have paid a property tax assessed to them within the State, and a majority of those voting thereon shall vote in favor thereof in such manner as may be provided by law."

The Constitution permits the Legislature to contract a debt not exceeding in the aggregate three mills on each dollar of State valuation to erect public buildings, provided that the law making such debt, before going into effect, be approved by a majority of the votes cast thereon at a general election.*

Counties are prohibited by the Constitution from contracting debt by loan beyond certain limits, unless the question be approved by the people thereof. School districts may not become indebted for the

* A law approved February 11, 1883, was submitted to the people at the election in the November ensuing. It was proposed bonding the State to the extent of $300,000, and the ballots read: "For" and "Against the creation of a bonded indebtedness of $300,000 to aid in the erection of a State capitol building."

purpose of erecting and furnishing school buildings or purchasing grounds, unless the proposition be ratified by such of the voters as have paid a school tax within a year previous to the election. Cities and towns must secure the assent of the property tax-payers thereof, at a regular election for city or town officers, before making a debt for any purpose, except to acquire a water supply. In any case the indebtedness contracted may not exceed three per cent. of the whole taxable valuation. County-seats may not be removed unless with the consent of a majority of the electors of the county.* The area of a county may not be reduced unless by a vote of the people.

Amendments are adopted as follows: Two-thirds vote of one Legislature and a majority vote of the people. The Legislature, at any time, may call for an election on the question of a constitutional convention.

Statutes. By statute cities and towns are incorporated when the people thereof vote "For municipal organization under the general law." The corporation may be discontinued again by popular vote. Appropriations from the municipal treasury to establish and maintain public libraries must be submitted to the people. A tax may not be levied in aid of certain highway improvements until after the proposition is approved at the polls. The appropriations for the year, for all purposes, must be included in a general budget, and other appropriation bills must be ratified by the people. An act, amending the general law for municipal organization, provides that in cities and towns of not more than 5,000 inhabitants the Mayor and Council shall serve without pay, unless the people decide in favor of compensation. The people of incorporated cities or towns may also vote to purchase or lease any canal or ditch for irrigation or other purposes.

CONNECTICUT.

Constitution of 1818. The charter granted Connecticut in 1662 by King Charles II was continued in force in that State until 1818. The Constitution framed in the latter year, with amendments, is still in force. It was adopted by the people, and provides for its own amendment as follows: The proposal for constitutional alteration must originate in the House of Representatives of the State Legislature. Receiving majority approval in this one chamber it must have two-thirds approval in each

* The Legislature, by subsequent enactment, made a vote of two-thirds necessary to effect a change in a county-seat, and the Court upheld the law in *Alexander et al.* v. *People ex rel.*, 7 Colo., 155. The Court took the position that the word "majority," in the constitution, fixed the minimum vote by which a removal could be effected, but that the Legislature was competent to prescribe a vote as much larger than a majority as it should, in its own judgment, deem desirable.

House of the next Legislature, and, subsequently, majority ratification by the electors in their town meetings.

Statutes. The people govern themselves locally by direct vote in mass meetings in their towns, boroughs, school districts and other communities. It is usual for the Legislature to pass laws which are dependent for their effect upon a vote of the people in their local communities.

Opinions by the Courts. In 1875 the Supreme Court said, in *State* v. *Wilcox*, 42 Conn., 364, a case arising out of the State law of 1874 allowing the people of the towns to vote upon the question of the grant of liquor licenses: "While all Courts have agreed that legislative power cannot be delegated, there is often great diversity of opinion as to what constitutes such delegation of power. . . . We see no good cause for pronouncing this law unconstitutional. No power is delegated which the Constitution requires the Legislature to exercise. Indeed, the power delegated is not legislative in its character, and so may properly be exercised by the municipalities and local functionaries to whom it is committed. They have the means of exercising it more intelligently than the Legislature itself."

DELAWARE.

The **Constitution of 1776** contained no instance of the Referendum, and provided no means for its own amendment.

By the **Constitution of 1792** separate amendments could be made after being passed by a two-thirds vote of one Legislature and three-fourths of the next. The people were given no direct voice in the proceeding. A convention could be called whenever the people wished, if, at an election to determine this wish, "a majority of all the citizens in the State having a right to vote for representatives" should decide in favor thereof.

The **Constitution of 1831,** which is still in force within the State, copied its amending provisions from the Constitution of 1792. The people have no direct hand in the ratification of single amendments, but a majority of all the citizens in the State, having a right to vote for representatives, as determined by reference to the highest number of votes cast in the State at any one of the three general elections next preceding, can authorize the calling of a convention. Attempts have been made at several times to secure the necessary vote. At the last election on this subject, on May 19, 1891, the vote lacked only a few hundred of the requisite majority.

Statutes. On February 20, 1839,* the Legislature ordered an election in Newcastle county, on the third Tuesday of May next succeeding on the question of removing the seat of justice from Newcastle to Wilmington. The people voted on their ballots "For Removal" or "Against Removal," the approval of a majority of all those having the right to vote for representatives being necessary to effect the change. A law passed February 22, 1843,† gave greater powers in raising money to School District, No. 18, in Kent county, subject to the approval or rejection of the people at the polls. The Statutes contain few instances of the Referendum. School voters may vote by ballot "for a tax" or "against a tax" and, also on some other matters, such as the consolidation of school districts.

Opinions by the Courts. A case came to the Court of Errors and Appeals in 1841, 3 Harr. (Del.), 335, *Steward* v. *Jefferson*, arising from the sale of a farmer's cow because of his failure to pay school tax. A law which authorized the people to tax themselves for school purposes by a vote in their school meetings was declared to be constitutional, though the Court did not go into any minute review of the case. The question of the people's right in a representative government to take part in the making of their laws was discussed in a notable manner in 1847, *Rice* v. *Foster*, 4 Harr. 479 (see p. 107). There was no similarity, the Court said, between this law and the school tax law, *Steward* v. *Jefferson*, *supra*.

FLORIDA.

Constitution of 1838. Though Florida was not admitted to the Union until 1845, its first Constitution was framed in 1838. This instrument was submitted to the people, the vote being taken *viva voce*. It contained no example of the Referendum, amendments being adopted after a two-thirds vote of two successive Legislatures without any consultation with the people.

The **Constitution of 1865** was not submitted to popular vote. It likewise contained no instance of the Referendum.

The **Constitution of 1868** was ratified by direct popular vote. Art. III of this Constitution provided: "The seat of government shall be and remain permanent at the city of Tallahassee, in the county of Leon, until otherwise located by a majority vote of the Legislature and by a majority vote of the people." Amendments were adopted after two-thirds passage through two successive sessions of the Legislature

* Delaware Laws, Vol, 9, p. 284.

† *Id.* p. 527.

and majority ratification by the people. A convention could be called after the proposition had been approved by a majority vote of two successive Legislatures and a majority vote of the people.

The **Constitution of 1885**, the present Constitution of the State, was ratified by vote of the people, together with a separate article, under the title of "Local Option," called Article XIX. This provides as follows: "The Board of County Commissioners of each county in the State, not oftener than once in every two years, upon the application of one-fourth of the registered voters of any county, shall call and provide for an election in the county in which application is made, to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein, the question to be determined by a majority vote of those voting at the election called under this section, which election shall be conducted in the manner prescribed by law for holding general elections."

Art. XII, Sec. 10, says: "The Legislature may provide . . . for the levying and collection of a district school tax for the exclusive use of public free schools within the district whenever a majority of the qualified electors thereof that pay a tax on real or personal property shall vote in favor of such levy; provided, that any tax authorized by this section shall not exceed three mills on the dollar in any one year on the taxable property of the district."

The Constitution can be amended by three-fifths approval of one Legislature and majority vote of the electors, and the Legislature at any time, by a two-thirds vote, may order an election on the question of calling a constitutional convention.

Statutes. The statutes provide in addition for a vote of the people in counties in the following cases: Removal of county sites; issue of bonds for the purpose of erecting a court-house or jail, or funding the outstanding indebtedness. Cities and towns may vote—to borrow money and issue bonds; to contract corporate limits; to annex contiguous territory; to surrender corporate franchises; to levy tax beyond a fixed limit. Counties, cities and towns all may, with the consent of the people, vote to subscribe stock to railroad companies.

Opinions by the Courts. This referring of laws to the people was dealt with by the Supreme Court as early as 1856 in *Cotten* v. *County Commissioners of Leon County*, 6 Fla., 610. The question was as to the constitutionality of an Internal Improvement Law authorizing counties, cities and towns to subscribe stock to railroads upon a vote of the people. The Court decided, after citing several like cases in other States, that the provision of the law which made the subscription dependent upon a popular vote was not a delegation of legislative power, but only a legitimate mode of obtaining an expression of the

will of the constituent as a guide for the action of the representative. This opinion has been sustained by later decisions of the Court, as in *State* v. *Brown*, 19 Fla., 593, and *Commissioners of Lake County* v. *State*, 24 Fla., 263.

GEORGIA.

The **Constitution of 1777,** the first Constitution of the State, though not itself submitted to the people, contained this provision under Art. LXIII: "No alteration shall be made in this Constitution without petitions from a majority of the counties, and the petitions from each county to be signed by a majority of voters in each county within this State; at which time the Assembly shall order a convention to be called for that purpose, specifying the alterations to be made according to the petitions preferred to the Assembly by the majority of the counties as aforesaid."

The **Constitution of 1789** was ratified by a convention chosen for the purpose of ratifying or rejecting it. This Constitution made provision for its own amendment without direct consultation of the people.

The **Constitution of 1798** went into effect without a popular vote. It contained no instance of the Referendum. Amendments could be adopted by two-thirds passage through two successive Legislatures. The secession constitution of 1861 was submitted to and ratified by the people.

The **Constitutions of 1865 and 1868** were likewise submitted to the people. This latter instrument specified that no county should be abolished by the Legislature until after the proposition be approved by the qualified voters thereof. No law authorizing the corporate authorities of towns or cities to take stock in, or make contribution toward, "any railroad or work of public improvement" was to be valid until voted on and accepted by the people of such town or city. This Constitution could be amended by a two-thirds vote of two successive Legislatures, followed by a ratification of the people.

Constitution of 1877. A new Constitution, the present Constitution of the State, was submitted to a vote of the people at an election held in December, 1877, together with two separate propositions, one locating the State capital, the people to choose between Atlanta and Milledgeville, the other settling a question as to homesteads.

Art. VII, Sec. 7, says: "The debt hereafter incurred by any county, municipal corporation or political division of this State, except as in this Constitution provided for, shall not exceed seven per centum of the assessed value of all the taxable property therein, and no such county,

municipality or division shall incur any new debt, except for a temporary loan or loans to supply casual deficiencies of revenue, not to exceed one-fifth of one per centum of the assessed value of taxable property therein, without the assent of two-thirds of the qualified voters thereof at an election for that purpose to be held as may be prescribed by law."

Art. VIII, Sec. 4, says: "Authority may be granted to counties, upon the recommendation of two grand juries, and to municipal corporations, upon the recommendation of the corporate authority, to establish and maintain public schools in their respective limits by local taxation, but no such local laws shall take effect until the same shall have been submitted to a vote of the qualified voters in each county or municipal corporation and approved by a two-thirds vote of persons qualified to vote at such election; and the General Assembly may prescribe who shall vote on such question."

County sites can be moved only after securing "a two-thirds vote of the qualified voters of the county." It is also provided that "any county may be dissolved and merged with contiguous counties" by a similar vote. Art. XI, Sec. 4, says: "The city of Atlanta shall be the capital of the State until changed by the same authority and in the same way that is provided for the alteration of this Constitution." Amendments may be adopted after two-thirds passage by one Legislature and majority passage by the people.

Statutes. Besides these cases of popular vote on laws, provided for in the constitution, the electors are by legislative statute directly consulted in towns and villages as to incorporation and extensions of corporate limits. The people have rights of local option as to liquor license in their local political divisions, and six sections of the Code, relating to the fencing up of stock, are to become operative in any county, or, if defeated in the county, in any "militia district," a subdivision of the county, only after the submission of the question to the people.

Opinions by the Courts. The matter of constitutionality was passed upon judicially in *Mayor and Council of the City of Brunswick* v. *Finney*, 54 Ga., 317. This case was decided in 1875, and arose concerning a law changing the charter of the city of Brunswick, which the Legislature prescribed should not go into force until assented to by a vote of the people of the city. The Court said: "If conditional legislation is important for the public good, it seems difficult to sustain a position that legislation conditioned to take effect, provided the people interested in the law shall, by a formal vote, declare such a law to be desirable, is a delegation of legislative power. Take, for instance, our Act of November, 1861, suspending the Statute of Limitations, to take

effect if the banks suspended. Was that a delegation of legislative power to the banks? And is it any more a delegation of legislative power to enact a law to express the legislative will as to a rule of action, but to add that this will shall not take effect as law until a certain vote of assent is had by the people?"

The Court pointed out the distinction between general and local laws, as made by the courts in New York State, and said that while the latter might be constitutional the former might not, quoting from Blackstone, that "local or private laws are not strictly laws, but exceptions to laws. The Court added: "Without committing ourselves upon the general principle, we think this distinction [that is, the distinction as made in New York State] a sound one." The Court held the law under review, regarding the city of Brunswick, to be constitutional.

In 1883 the Legislature passed an act to prohibit the sale of liquor in Pike county, submitting the question of the law's acceptance or rejection to the voters of the county, the ballots containing the words, "For the sale of liquor" and "Against the sale of liquor." This law was decided to be constitutional in *Caldwell* v. *Barrett* 73 Ga., 604. The Court here clearly said: "Under our form of government, where the people rule and where the representatives in the Legislature are but the agents of the people, and act alone for them, it would seem that when the wishes of the people as to whether a proposed act should become a law can be clearly ascertained by an election, this mode would be consonant with the genius and form of our government. The fundamental law of the State, and even particular sections thereof, is, and has been, left to be determined by a vote of the people. If the Constitution, the organic law of the State, has been made to depend upon the vote of the people, it is not easy to perceive why a local law, an act affecting a particular community, should not be determined by a vote of the people of that locality. It has been the practice in this State, for more than half a century, to leave local questions, such as the location of county sites, the building of public houses, municipal charters and amendments thereof to a vote of the people to be affected thereby. Such laws have never been thought to be unconstitutional."

This opinion was sustained in the cases reported in 78 Ga., declaring to be constitutional the county local option liquor law, passed by the Legislature in 1885.

IDAHO.

Constitution of 1889. The Constitution of Idaho, adopted in 1889, was submitted to the people. Art. VII, Sec. 9, says: "The rate of taxation of real and personal property for State purposes shall never

exceed ten mills on each dollar of assessed valuation, and if the taxable property of the State shall amount to $50,000,000, the rate shall not exceed five mills on each dollar of valuation; and whenever the taxable property in the State amounts to $100,000,000, the rate shall not exceed three mills on each dollar of valuation; and whenever the taxable property in the State shall amount to $300,000,000, the rate shall never thereafter exceed one and one-half mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election."

Art. VIII, Sec. 1, says: "The Legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the debt of the Territory at the date of its admission as a State, exceed the sum of one and one-half per centum upon the assessed value of the taxable property in the State, except in case of war, to repel an invasion, or suppress insurrection . . . until at a general election it [the law] shall have received a majority of all the votes cast for and against it at such election." Section 3 of the same article says: "No county, city, town, township, board of education, or school district, or other subdivision of the State, shall incur any indebtedness or liability in any manner or for any purpose, exceeding in that year the income and revenue provided for it for such year, without the consent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose."

Art. X., Sec. 2, says: "The seat of government of the State of Idaho shall be located at Boise City for twenty years from the admission of the State, at which time the Legislature may provide for its relocation by submitting the question to a vote of the electors of the State at some general election." The next section of the same article provides the method by which this can be done.

A section of Art. XII provides for general laws "for the incorporation, organization and classification of cities and towns," and says further: "Cities and towns heretofore incorporated may become organized under such general laws whenever a majority of the electors at a general election shall so determine. It is provided in Art. XVIII that no county-seat shall be removed except by a two-thirds vote of the qualified electors of the county; such a proposition not to be submitted in the same county more than once in six years. "No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division."

Mode of amendment: Two-thirds vote of one Legislature and majority ratification by the people. Whenever two-thirds of the members of both branches of any Legislature may deem it necessary the people shall vote upon the question of calling a convention, any Constitution adopted by such convention, before having validity, to be submitted to the people.

ILLINOIS.

Constitution of 1818. This Constitution was not submitted to the people, and it contained no examples of the Referendum except in a provision relating to the calling of constitutional conventions. The Legislature, by a two-thirds vote, could authorize an election to be held on this question.

The **Constitution of 1848** was submitted to popular vote, together with two separate articles, prohibiting the immigration into the State of negroes, and relating to the public debt. A provision of the Constitution authorized that all laws for the contraction of debt to an amount exceeding $50,000, except to repel invasion or suppress insurrection, should be submitted to the people. Whenever any such proposition was submitted, there should at the same time be submitted a law levying a tax to pay the interest on the proposed debt.

Art. X, Sec. 5, declared: "No act of the General Assembly authorizing corporations or associations with banking powers shall go into effect or in any manner be in force unless the same shall be submitted to the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for and against such law."

The people were also to be directly consulted in counties on questions involving change of county boundaries, the removal of seats of justice, and township organization. Single amendments to the Constitution were submitted to the people after two-thirds passage by one Legislature and majority passage by the next, and the Legislature at any time, by a two-thirds vote, could submit the question of calling a convention.

The **Constitution of 1870,** the present Constitution of the State, was submitted to the people. Seven sections relating to railroads, the article entitled "counties," the article entitled "warehouses," the section requiring a three-fifths vote to remove a county-seat, the section relating to the Illinois Central Railroad, the section in relation to minority representation, the section authorizing municipal subscriptions to railroads or private corporations, and the section relating to the canal were submitted as separate propositions. This Constitution raised the

limit, beyond which the Legislature could not contract debt without the approval of the people, to $250,000.

Art. IV, Sec. 33, provides: "The General Assembly shall not appropriate out of the State treasury or expend on account of the new capitol grounds and construction, completion and furnishing of the State House, a sum exceeding in the aggregate $3,500,000, inclusive of all appropriation heretofore made, without first submitting the proposition for an additional expenditure to the legal voters of the State at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure."*

Art. XI, Sec. 5, says: "No act of the General Assembly authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendments thereto, shall go into effect, or in any manner be in force unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law."†

The Constitution provided that the Illinois and Michigan Canal should never be "sold or leased, until the specific proposition for the sale or lease thereof should first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election."‡

County authorities may not assess taxes, the aggregates of which exceed seventy-five cents per hundred dollars valuation unless authorized to do so by popular vote. County boundaries may not be changed but upon a majority vote. A county-seat may only be removed to such place as the people of the county by a three-fifths vote may determine. When an attempt is made to remove a county-seat to a point nearer to the centre of the county, then only a majority vote is necessary. In any event the question may not be submitted more frequently than once in ten years. Township organization may be established or discontinued in any county by a majority vote of the people. No county, city, township, school district or other municipal corporation may become indebted to an amount, inclusive of existing indebtedness, exceeding five per centum on the value of the taxable property therein as determined by the last assessment.

* The people voted on this subject several times prior to the completion of the State Capitol buildings at Springfield.

† In accordance with this provision of the Constitution, an act of Legislature approved June 16, 1887, was submitted to vote at the next ensuing general election and adopted. The ballots were written "For" and "Against the General Banking Law." In 1889 the Legislature amended the act, which amendments were later submitted, and the people voted "For" and "Against the amendments to the act concerning corporations with banking powers."

‡ On November 5, 1882, the people voted in favor of a law which had been approved by the Legislature April 28, 1882, and by which the canal was ceded to the United States.

Constitutional amendments are submitted to the people after two-thirds passage by one Legislature, and the Legislature by a two-thirds vote may at any time submit the convention question.

Statutes. The people in their various local communities are, by statute, authorized to vote on a great variety of subjects. On petition of one hundred voters an election must be held in any county to prohibit from running at large domestic animals of any or all the following species: horse, mule, ass, cattle, sheep, goat or swine, as the petition may specify. Cities, villages, townships and precincts may vote on the same subject upon the petition of twenty legal voters.

The Legislature in 1885 passed "An act regulating the holding of elections and declaring the result thereof in cities, villages and incorporated towns in this State." This law, commonly called the "Election Law," was intended to apply to Chicago and the outlying towns of Cook county, and was not to go into effect until it was approved by the people.*

Upon petition, any county board may submit the question whether the several townships in the county shall or shall not support their own paupers. Counties not under township organization may vote for or against a county normal school. There is a general statute law for the government of cities. If an area of contiguous territory not exceeding, four square miles, contain one thousand inhabitants, an election must be held, after petition by a certain number of persons, at which a vote can be taken on the question of city organization. Whenever this question is submitted, the people shall, at the same time, vote "For minority representaion in the city council" or "Against, etc." At any subsequent time, on petition of one-eighth of the legal voters of the city, this question of minority representation may be submitted, though not oftener than once in two years. Three hundred people, living within lawfully-limited and contiguous territory, may vote "For village organization under the general law" or "Against, etc." People of cities, villages and towns may vote for or against annexation, and for or against disconnection. Drainage and sewer districts, and sanitary districts may be established upon vote of the people. When fifty legal voters of any incorporated town, village or township ask it, the people thereof may vote "For" or "Against a ——— mill tax for a free public library." On petition of twenty-five legal voters the people of any township may vote on the question as to whether they may be allowed to work out their road tax. If it is decided affirmatively, then an act of the Legislature governing such a labor system comes into effect. Elections may be held in townships to decide whether a certain

* Chicago voted to accept the law November 3, 1885. There were 31,984 votes "for," and 14,557 votes "against."

bridge shall be built and whether a tax shall be laid, to construct and maintain gravel, rock macadam or other hard roads. In townships much local business is transacted in town meetings.

The people have direct powers almost as extensive in school matters. School districts are organized when the people vote "for organization under the free school law." The people of these districts may determine their boundaries by ballot, and may vote "for" or "against a township high school." It is not lawful for school boards to purchase or locate a school-house site or to purchase, build or move a school-house or to levy a tax to extend schools beyond nine months in the year without a vote of the people.

Opinions by the Courts. The principle that the people had a right to a direct share in the making of their laws was early established in the State courts. The case came up for extended review in the Supreme Court at the December term, in 1848, in *The People ex rel.* v. *Reynolds*, 5 Gilm. (Ill.) 1 (see p. 110.) This position has several times been firmly upheld, as in *The People ex rel.* v. *Salomon*, 51 Ill., 37; *Erlinger* v. *Boneau*, 51 Ill., 94; *Home Insurance Co.* v. *Swigert*, 104 Ill., 653, and *The People ex rel.* v. *Hoffman*, 116 Ill., 587. In the opinion on this last case, which was decided in 1886, the Court said: "Laws which depend for their operation upon the votes of the people have sometimes been held to be unconstitutional, as involving a delegation of legislative authority. In this State, however, they have been held to be valid."

INDIANA.

Constitution of 1816. The first Constitution of the State, adopted in convention in 1816, was not submitted to popular vote. It provided that the people should vote every twelfth year whether they were in favor of calling a convention to amend the Constitution.

The **Constitution of 1851** was submitted to the people. The article numbered thirteen, prohibiting the immigration of negroes or mulattoes, afterward declared by the courts of Indiana repugnant to the Constitution of the United States, was voted upon and adopted as a separate proposition. The people of Perry and Spencer counties, after affirmative vote at the polls, were authorized, whenever they wished, to form certain contiguous territory into a new county. The method of amendment is: Majority passage by two successive Legislatures and a majority vote of the people. When two or more amendments are submitted at the same time the electors must vote for each one separately.

Statutes. In 1848 the Legislature passed an act incorporating the Ohio and Mississippi Railroad Company, and authorizing counties to subscribe stock to that corporation after securing the popular assent.

Under this act many of the counties voted to issue railroad bonds. A school law, approved in 1849, left each county free, by popular vote, to take advantage of its provisions. One section of the law provided as follows: "The several counties of this State are hereby exempted from the provisions of this act until said counties respectively assent thereto, and for the purpose of securing such assent at the annual August elections held in the several townships in said counties, the inspectors shall propound to each person when he presents his ballot the following question, to wit: 'Are you in favor of the Act of 1848–9, to increase and extend the benefits of common schools?' the answer to each of which interrogatories shall be noted down by the clerks of such elections, and the number voting in the affirmative and negative certified by the inspectors of said elections to the county auditors of their respective counties at the same time required by law to make returns of such elections; and whenever a majority of those voting at such township August elections in any of said counties are in favor of this act then the same shall take effect and be in force in such county; and until such assent is given in each of said counties, the vote for and against this act, at each succeeding August election, shall be taken as above in this section provided in each of said counties so refusing its assent thereto."

In the same year the people of the townships of certain counties were authorized to vote on the question of granting liquor licenses. The Referendum had gained considerable progress in State practice prior to 1853, when it was much discouraged by a decision in the courts.

The people in counties to-day may vote to change the county boundaries, to relocate a county-seat and to purchase toll roads. In towns and cities they may decide as to incorporation, annexation, the creation of new wards and the erection of water-works. Township trustees may lease school lands, if the people give their consent by a majority vote at the polls. When five voters of a congressional township petition the trustee to sell all or any part of the school lands within his jurisdiction the people must vote "sale" or "no sale." The township trustee, in special cases, may levy a tax for school purposes after securing the popular assent.

Opinions by the Courts. An act of March 4, 1853, empowered the people of the townships to vote annually at the April election, on the question of licensing the liquor business, and unless at such an election the people gave a majority vote in favor of license none were to be issued. In *Maize* v. *The State*, 4 Ind., 342, this law was declared to be unconstitutional. The Court said: "It is not easy to see how, on principle, a public measure can be submitted in the abstract to a popular vote consistently with the representative system. In effect

it is changing the government to what publicists call a pure democracy, such as Athens was. If one enactment may be submitted to such vote so may another, so might all; thus would the representative system be wholly subverted. If the people desire to resume directly the law-making power which they have delegated to the General Assembly they have only to change the constitution accordingly."

A law of 1852, authorized the voters of any township to vote to tax themselves for the construction or repair of school-houses, the purchase of sites for such houses, and the purchase of fuel, furniture, etc. The Court in its decision concerning this law in *Greencastle Township, etc.*, v. *Black*, 5 Ind., 557, affirmed its opinion as expressed in *Maize* v. *The State, supra*, and said, "On the subject of popular voting on laws—in this instance voting a tax—we have nothing to add to what was said in the Maize case; we believe the theory of such voting unsound and untenable. . . . If the voters of a township have such a right so have the voters of the county, so have the voters of the State, and if on one species of tax, so on every other; and if on tax questions then on all questions. The theory of our constitution is representative. The people of the townships act by trustees or other local officers; the people of the county by their county board; the people of the State by the legislative, judicial and executive departments." A law approved May 12, 1869, authorized county and township officers to submit to the people the question of giving aid to railroads. The Court upheld this law in the case of *The Lafayette, Muncie and Bloomington R. R. Co.* v. *Geiger*, 34 Ind., 185. An effort was made to show that the principle at stake was unlike that in the Maize case. "The mode of ascertaining the wishes of the voters upon the subject," the Court said, "is for the sake of convenience, and more especially for certainty, similar to an election for public officers, and was adopted to afford a public opportunity to each county or township to determine, not whether the law shall be in force, but whether the people desire to avail themselves of its privileges." The Court said, the fact that a vote of the people was necessary to carry the provisions of the law into execution did not constitute a delegation of legislative power.

At the May term in 1873, in *Groesch* v. *The State*, 42 Ind., 547, the Court got still farther away from its opinion in the Maize case, and, without committing itself directly as to the right or wrong of that decision, threw discredit upon it by citing cases in several other States where an opposite view had been taken.

IOWA.

Constitution of 1846. Congress passed an enabling act for both Florida and Iowa in 1845. In the case of Iowa assent was to be given

by the people in their "township elections" to a section relating to the boundaries of the State as a condition precedent to admission to the Union. This assent the people refused. The first Constitution of the State was framed in 1846. It was submitted to popular vote. A proposition to strike out the word "white" from the article on the right of suffrage was submitted separately. By this Constitution county boundary lines could not be changed without direct approval of the people. The State could not contract debts beyond an aggregate amount of $250,000, except to "repel invasion, suppress insurrection or defend the State in time of war," unless the law authorizing such obligation be first submitted to and approved by the people.

Art. VIII, Sec. 5, said: "No act of the General Assembly authorizing or creating corporations or associations with banking powers nor amendments thereto shall take effect or in any manner be in force until the same shall have been submitted separately to the people at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election."

The Constitution could be amended by majority passage by two successive Legislatures and majority approval by the people. The question of calling a constitutional convention was to be submitted in 1870, and each tenth year thereafter.

The **Constitution of 1857,** the present Constitution of the State, was submitted to the people. A separate proposition conferring on negroes the right of suffrage was submitted as a separate proposition. This Constitution contained the same examples of the Referendum as the preceding Constitution, and they, therefore, need no repetition.

Statutes. The statutes provide for a vote of the people in the counties in the following cases: Relocation of county-seats; erection of a court-house, jail, poor-house or other building or bridge when the cost exceeds $5,000, and purchase of real estate for county purposes when the price involved exceeds $2,000; increase of the tax rate to a figure beyond the legal limit; establishment of a poor-house; restraining of stock, altogether; restraining of stock, from sunset to sunrise; restraining of stock, in certain months of each year; establishment of a county high school; erection of soldiers' monuments and memorial halls. The people may also decide whether the Board of Supervisors of the county which regularly contains three members shall be increased to five or seven members, and whether the same shall be reduced again.

Counties further, in Sec. 309 of the Code, are given general powers in submitting local laws and ordinances to popular vote (see pp. 83–5).

The people in the townships vote on several questions, and in addition may govern many of their local affairs by petition. Township clerks, at each general election, must post up at the polling places a detailed statement of township receipts and expenditures. Cities and incorporated towns are organized on direct popular vote, and all questions affecting change in the form of government and the corporate limits must be submitted to the people. They may vote also on—establishing a free public library; erecting water-works; establishing and maintaining gas and electric-light plants; certain questions of taxation; changing of city or town names; procuring of and donation of sites for depots, machine shops and other buildings to railway companies, etc. In cities of more than 7,000 inhabitants, the people may vote whether there shall be established a "Superior Court" instead of a "Police Court." Cities, incorporated towns or townships may vote aid to railroads to an amount not exceeding 5 per cent. of their assessed valuation.

In school districts the people assemble in annual mass meetings, transact much business and give instructions to their boards of directors. Independent school districts may be organized with the popular approval, and after such districts are established the people therein enact many regulations by direct vote.

Opinions by the Courts. The first important case of this kind to reach a decision in the Supreme Court was decided in 1855, *Santo* v. *State*, 2 Iowa, 165. This was a case arising out of a law which had been submitted to the people the same year, for the prohibition of the liquor traffic, called "An Act for the Suppression of Intemperance." The Court said: "The General Assembly cannot legally submit to the people the proposition whether an act should become a law or not; and the people have no power in their primary or individual capacity to make laws. They do this by representatives. There is no doubt of the authority of the Legislature to pass an act to take effect upon a contingency. But what is a contingency in this sense and connection? It is some event independent of the will of the law-making power as exercised in making the law, or some event over which the Legislature has no control. . . . The will of the law-maker is not a contingency in relation to himself. . . . If the people are to say whether or not an act shall become a law, they become or are put in the place of the law-maker. And here is the constitutional objection. Their will is not a contingency upon which certain things are or are not to be done under the law, but it becomes the determining power whether such shall be the law or not. This makes them the 'legislative authority,' which, by the Constitution, is vested in the Senate and House of Representatives and not in the people. . . . After a bill has passed the

two Houses and received the approval of the Governor and thus become a law by the Constitution, how can a vote of the people affect it? As well might this Court submit the decision of these causes to a vote of the people of the State or of a judicial district; or the Governor his pardoning power." The Court, however, concluded that the whole act was not invalid, but only that part of it which provided for a submission of it to popular vote.

The Legislature, in 1857, passed a local option act, allowing any county, upon vote of the people, to repeal the provision of the prohibitory act of 1855 as affecting that county. The Court, in *Geebrick* v. *State*, 5 Iowa, 491, arising from this law of 1857, reaffirmed the position taken two years earlier. As the legislative power of the State was, by the Constitution, vested in the General Assembly, the law was held to be unconstitutional and void.

In *Dalby* v. *Wolf and Palmer*, 14 Iowa, 228, in 1862, a case came up for decision affecting the validity of a law permitting counties to vote on the question of allowing stock to run at large. The Court found a distinction here. In this case the Court said, "the popular will is expressed under, and by virtue of, a law that is in force and effect, and the people neither make nor repeal it; they only determine whether a certain thing shall be done under the law, and not whether said law shall take effect." This law, by a laborious course of reasoning, was found to be unlike those passed upon earlier, and was declared to be constitutional. The Court has upheld this distinction in a number of later cases.

Another county local option liquor law was enacted by the Legislature in 1870. The Court, in *The State* v. *Weir*, 33 Iowa, 134, in 1871, sustained its earlier decisions in regard to legislation of this class. It found that the law was to be "vitalized only by the vote of the people," and therefore was unconstitutional.

In *Weir* v. *Cram*, 37 Iowa, 649, the feature of a stock law of 1868, requiring a vote of the people in the counties to put it into effect, was declared to be unconstitutional, the grounds in this case not existing for the distinction made in *Dalby* v. *Wolf and Palmer*, *supra*. The Court, on account of its vacillating position on this subject, has been led into many conflicting opinions.

KANSAS.

Early Constitutions. The three Constitutions of Kansas adopted by slavery and anti-slavery conventions during the conflict previous to statehood, were all alleged to have been voted on by the people. At the time of submitting the Topeka Constitution of 1855, two propositions were submitted separately, one relating to those sections of the

Constitution respecting a general banking law, the other, to the "black law." By the Lecompton Constitution of 1857, the people voted "Constitution with Slavery," or "Constitution with no Slavery," the result determining the adoption or rejection of an article authorizing the ownership and traffic in slaves. The Leavenworth Constitution of 1858 provided that the capital question and the question of universal suffrage be submitted to a vote of the people by the Legislature at the first general election.

The **Constitution of 1859**, the present Constitution of Kansas, was framed at Wyandotte, and was submitted to the people, together with a separate section exempting homesteads from forced sale except in certain cases. Art. VI, Sec. 5, of this Constitution says: "The school lands shall not be sold unless such sale shall be authorized by a vote of the people at a general election; but, subject to revaluation every five years, they may be leased for any numbers of years, not exceeding twenty-five, at a rate established by law."

The Legislature may contract debt to the aggregate amount of $1,000,000 to defray extraordinary expenses and make public improvements. No debt above this amount may be contracted but by a majority vote of the people expressed at a general election, except to repel invasion and suppress insurrection.

Art. XIII, Sec. 8, says: "No banking law shall be in force until the same shall have been submitted to a vote of the electors of the State at some general election, and approved by a majority of all the votes cast at such election."

The question of a permanent location for the State capital was to be submitted to the people by the Legislature at its first session. No county-seat can be removed except by a popular vote. The method of amendment is: A two-thirds vote of both Houses of one Legislature and a majority vote of the people. The convention question may be submitted at any time whenever the Legislature by a two-thirds vote may so determine.

Statutes. By a law of February 10, 1865, the county commissioners and authorities of cities could subscribe stock to railroads, and issue bonds for the purpose, to any amount exceeding $300,000, after first securing the popular assent. All bonding questions in counties, cities and townships are submitted to the people. Thus, they vote for and against bridge bonds, poor-farm bonds, bonds to erect buildings for the poor, and to make other public improvements. By a law, afterward declared unconstitutional on the ground that it was not a public purpose, counties earlier were to issue relief bonds on a vote of the people to raise money to buy and distribute grain and potatoes to the destitute. To encourage coal-mining, artesian-well drilling and the

search for natural gas, the question of subscribing stock to companies organized for such purposes may be submitted to the people of counties and cities.

County authorities may not levy taxes beyond a certain limit without they first get the consent of the people. County commissioners may assess a "fire-tax," not exceeding two mills on the dollar of property valuation, to protect the county from prairie conflagrations, if the proposition be first approved at the polls. County high schools may be established by vote of the people. Townships and the smaller cities may, after securing popular assent, subscribe stock to sugar mills to encourage the sugar industry. The people in the townships may also vote to establish free public libraries and public parks or cemeteries. Other questions upon which the people vote are a change in the name of any city, town, village or township, and the sale of poor-farms and asylums; in cities, the purchase of water-works and, in general, propositions which in an important manner affect the subjects of revenue and expenditure.

A law which took effect March 12, 1868, declared osage orange hedges, the plants forming which were not less than one year old, legal fence. This law, however, was not to go into effect in any county until it had been approved by the people. A petition being presented to the county commissioners, signed by a majority of the legal voters of the county, as shown by the records of the last election, the question must be submitted, "For the Hedge Law" or "Against the Hedge Law." If the law was defeated, the commissioners might resubmit it annually until the people decided to accept it. An act approved March 2, 1871, provided for an election in any county on petition of one-third of the voters thereof on the question of accepting or rejecting county benefits for the successful growth of osage orange or hawthorn fence. The people of any county may vote "For the Herd Law" or "Against the Herd Law," giving the county commissioners power to restrain domestic animals from running at large, and when any ten voters of any township petition the township trustee an election must be held in such township for and against the "Hog Law," which provides for the enclosure of swine.

Opinions by the Courts. Legislation of this kind has been sustained in the courts. The law approved in 1865 authorizing counties and cities on vote of the people to subscribe stock to railroad corporations was upheld in *Leavenworth County* v. *Miller*, 7 Kan., 298, and cases following decided at the January term 1871. In *Noffzigger* v. *McAllister*, decided in 1873, 12 Kan., 250, the "Night Herd Law" of 1868, authorizing county commissioners to order stock shut up at nighttime upon petition of a majority of the electors of the county, was

sustained. The Court said: "The act resembles many other acts which depend for their practical operation upon the discretion of the county board, or the people, or the happening of certain contingencies." In *State ex rel.* v. *Hunter*, decided in 1888, 38 Kan., 578, the Court said: "The validity of laws, the operation of which is made to depend upon the occurrence of some future event or contingency, certain or uncertain, cannot well be doubted. That contingency may be the vote or petition by a certain number of people to be affected by the law."

KENTUCKY.

Constitution of 1792. The first Constitution of Kentucky, framed in 1792, was not submitted to the people. It provided that an election on the question of calling a constitutional convention should be held in 1797. Before such convention could be called, however, it was necessary that the proposition should also be approved at a second election in 1798, each time by a vote of "a majority of all the citizens in the State voting for representatives."

Constitution of 1799. In consequence of these elections another convention met in 1799. The Constitution framed by this convention went into force without submission to the people. It provided for its own amendment only by a convention which could be called after two elections had been held in successive years; the proposal at each election receiving the affirmative vote of a majority of all the citizens of the State "entitled to vote for representatives."

Constitution of 1850. Another Constitution was framed in 1850, and it was ratified by popular vote. Art. II., Secs. 35 and 36, of this Constitution provided that the General Assembly of the State should not contract debts exceeding $500,000 except "to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense," unless the proposition should be submitted at a general election, and should have received "a majority of all the votes cast for or against it." The same method of calling a convention prescribed by the old Constitution was retained in the new. By this difficult system another convention was finally authorized, which framed a Constitution, submitted to and adopted by the people in 1891.

Constitution of 1891. In Sections 51 and 52 of this Constitution there is a provision similar to that contained in the Constitution of 1850, that propositions to incur debt exceeding $500,000 be submitted to the people. It is further provided that no county shall be divided, or have any part stricken therefrom, without first securing the majority assent of the people of the county, nor shall any county-seat be changed unless by a two-thirds vote of the people.

Section 164 says: "No county, city, town, taxing district or other municipality shall be authorized or permitted to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose."

Section 191 says: "No sum shall be raised or collected for education, other than in common schools, until the question of taxation is submitted to the legal voters, and the majority of votes cast at said election shall be in favor of such taxation."

Amendments may be proposed by the Legislature, and if approved by a three-fifths vote of both Houses at one session, and ratified by a majority vote of the people, they become a part of the Constitution. The Legislature, at any time, by a majority vote at two successive sessions, may order an election on the question of calling a constitutional convention.

Statutes. Such questions as the formation of new counties, the relocation of county-seats, the creation of cities, the subscription of stock to railroads and other public improvement corporations by municipalities, and the levy of taxes in school districts have been submitted to the people in their local communities for many years.

Opinions by the Courts. Laws authorizing a vote of the people on propositions to subscribe stock to railroad companies were declared constitutional by the Court of Appeals, in 1849, in the case of *Talbot* v. *Dent*, 9 B. Mon. (Ky.), 526, and in 1852, in *Slack* v. *Maysville and Lexington Railroad Company*, 13 B. Mon. 1. (See p. 111.)

In 1877, in *Anderson* v. *Commonwealth*, 13 Bush. (Ky.), 485, the Court upheld a local option liquor law, passed by the Legislature in 1874. The Court was unanimous in the opinion, "after mature deliberation, and a most thorough and careful examination of all the authorities bearing on this subject," that the question of license or no license is one properly of local police, to be exercised by the lawfully created agencies representing and acting for the local public, such as the county courts, and the municipal authorities of towns and cities. Further, that the Legislature may create other agencies to determine this local question, and that "it is no constitutional objection to the agencies created by the act under consideration that they are composed of the body of the qualified voters of the city, town or civil district," in which the law is intended to operate. In another case arising out of the local option law, *Commonwealth* v. *Weller*, 14 Bush., 218, the Court said: "While the law-making power cannot delegate to the people the right to assemble and frame such laws as may be deemed best for their own interests, and to adopt them by a popular vote, it is not inconsistent

with our representative system of government to consult the popular will as to the propriety of a law already enacted. . . . The Legislature, by the passage of the act we are considering, had already determined its expediency, and we perceive no reason why . . . its going into operation should not be made to depend upon a vote in favor of the measure. That a statute may be conditional, and its taking effect made to depend upon some subsequent event, is now well settled. . . . The people are not called upon to decide at the polls whether the act authorizing the vote is a law, but whether or not they will accept its provisions, the Legislature having determined that its going into operation shall depend upon the result of a popular vote." This view was again affirmed in 1887, *Burnside* v. *Lincoln County Court*, 86 Ky., 423.

LOUISIANA.

Constitution of 1812. The first Constitution of Louisiana was framed by a convention which finished its labors in 1812. It was not submitted to the people. It provided for its own amendment by convention and by no other means. The Legislature by a majority vote at any time could submit the question of calling a convention. The question, however, must be approved at two successive elections by "a majority of all the citizens of the State entitled to vote for representatives."

The **Constitution of 1845** was submitted to the people. It provided for its own amendment by initiation of the Legislature, such propositions to have three-fifths approval of one Legislature, majority approval of the next and majority ratification by the people.

The **Constitution of 1852** was likewise submitted to the people. The mode of amendment was: Two-thirds passage by one Legislature and majority approval of the people.

The **Constitution of 1864** was submitted to the people. The mode of amendment was: Majority passage by one Legislature and majority approval of the people.

The **Constitution of 1868** was submitted to the people. The mode of amendment was: Two-thirds vote of one Legislature and majority vote of the people.

Constitution of 1879. A new Constitution was framed in 1879, which is the present Constitution of the State. It was submitted to popular vote, together with an ordinance separately submitted, relative to the State debt and the State tax levy. This Constitution provides for a vote of the people in parishes and municipalities on the question of an increase of taxation "for the purpose of erecting and constructing public buildings, bridges and works of public improvement." Art. 250, says: "All laws changing parish lines or removing parish-seats shall,

before taking effect, be submitted to the electors of the parish or parishes to be affected thereby, at a special election held for that purpose, and be adopted by a majority of the votes of each parish cast at such election." Art. 251 says: "Any parish may be dissolved and merged by the General Assembly into a contiguous parish, or parishes, two-thirds of the qualified electors of the parish proposed to be dissolved voting in favor thereof at an election held for that purpose; provided, that each of the parishes into which the dissolved parish proposes to become incorporated consents thereto by a majority of its qualified electors voting therefor." The mode of amendment is: Two-thirds vote of one Legislature and majority vote of the people.

Statutes. The people in their local communities for many years have voted upon questions of certain classes which have been submitted by statute; as, for example, the change of parish-seats and the sale of township and school lands. Liquor licenses are granted or not, as may be determined at periodic popular elections. The people also vote to create new parishes, to levy taxes in local communities in aid of railways and other improvements, to issue bonds in cities, to organize levee districts and to levy taxes therein, etc.

Opinions by the Courts. In *Police Jury* v. *McDonogh*, 8 La., An. 341, the Supreme Court gave a decision upon a law of 1852, permitting parishes and municipal corporations on vote of the people to subscribe to the stock of "corporations undertaking works of internal improvement." In its opinion asserting the constitutionality of this law, after stating it to be unquestioned that the Legislature could delegate powers of local legislation to local communities, the Court said: "If the Legislature could constitutionally confer on the Police Jury authority to pass a taxing ordinance, it would seem rather a safeguard against oppression than the reverse to qualify the power of requiring it to be exercised with the approbation of a majority of those who are to bear the burden. Certainly, one would be inclined, with much show of reason, to suppose that a system sanctioned by the legislative will, and tested by long experience in one of the oldest States in this Union—a State which was amongst the foremost in the struggle for constitutional liberty—could not well be inconsistent with the principles of representative government. If we look to Massachusetts, how do we find municipal matters managed there? If any change is to be introduced into the existing state of things, or, if they wish to undertake any new enterprise, the selectmen are obliged to refer to the source of their power. If, for instance, a school is to be established, the selectmen convoke the whole body of the electors on a certain day, at an appointed place; they explain the urgency of the case; they give their opinion on the means of satisfying it, on the probable expense and the site

which seems most favorable. The meeting is consulted on these several points; it adopts the principle, marks out the site, votes the rate and confides the execution of its resolution to the selectmen. . . . We find nothing in the statute of 1852 repugnant to the constitution, or the spirit of representative government, and it seems to us a matter of surprise that the caution of the Legislature, in its grant of the taxing power, should be made a subject of reproach. We think, on the contrary, there was a praiseworthy discretion in thus allowing the voice of the people of the respective parishes to be expressed, instead of authorizing the local authorities to conclude definitively the imposition of a burden for a novel and untried purpose."

This opinion was affirmed in *New Orleans* v. *Graihle*, 9 La. An., 561, a case arising out of the same law of 1852, relating to subscriptions of stock to railroad companies. The view was expressed, however, that the test of a popular election to determine the will of the majority on such questions as these was "uncertain in its nature and liable to great corruption and abuse."

MAINE.

Constitution of 1820. The "District of Maine," as it was called, was, until 1819, included under the government of Massachusetts. A sentiment arose in favor of separation from Massachusetts, which resulted, in 1816, in a vote of the people in their town and plantation meetings on this question. The Legislature of Massachusetts, by an act passed June 19, 1819, authorized an election to be held on July 19th following, when the question should be asked of the voters, "Is it expedient that the District of Maine shall become a separate and independent State?" If the proposition received a majority of 1,500 votes, a convention was to be chosen to frame a Constitution. The necessary majority was secured, and in 1820 the first Constitution of the State, which had been submitted to the people at a special election, was ratified in the town meetings. This submission was provided for by the Legislature of Massachusetts in the same act of June 19, 1819, which had authorized the election on the question of separation. This Constitution is still in force within the State. Art. IV, Sec. 2, provided for a vote of the people on the question of legislative representation, a provision which was annulled in 1841 (see p. 62). Amendments may be adopted whenever two-thirds of both Houses of the Legislature propose them, and they are approved by a majority vote of the people in the annual meetings in the towns and plantations.

Statutes. The town-meeting system prevails throughout the State, and the people vote directly upon all town affairs. They determine here as on other questions as to changes in town, ward or city

boundaries, and by a two-thirds vote may aid by tax or loan in the construction of railroads to an amount not exceeding five per cent. on the assessed property valuation. In counties the commissioners must submit proposals for the removal of county-seats and for the contraction of loans in amounts exceeding $10,000.

MARYLAND.

The **Constitution of 1776** went into force without a popular vote, and provided for its own amendment without a submission of the proposition to the people.

The **Constitution of 1851** was submitted to the people. It provided for the formation of a certain new county when the assent of the electors within the district had been secured. In case amendments to the Constitution were needed the Legislature could submit the question of calling a convention.

The **Constitution of 1864** was submitted to popular vote. Art. VIII, Sec. 5, provided for a levy on the counties of an annual school tax, "provided that the General Assembly shall not levy any additional school tax upon particular counties unless such county express by popular vote its desire for such tax." Art. X, Sec. 1, provided for a vote of the people in organizing new counties and changing county lines. Amendments were to be adopted after three-fifths passage by one Legislature and majority approval by the people. The Legislature, upon a two-thirds vote could, at any time, order an election for or against a convention. The question was, in any case, to be submitted in 1882, and in each twelfth year thereafter.

The **Constitution of 1867**, the present Constitution of the State, was submitted to the people. It provides in Art. XI, Sec. 4, that, "no debt (exceptions in cases of great urgency), shall be created by the Mayor and City Council of Baltimore; nor shall the credit of the Mayor and City Council of Baltimore be given to, or loaned to, or in aid of any individual, association or corporation, nor shall the Mayor or City Council of Baltimore have the power to involve the city of Baltimore in the construction of works of internal improvement, nor in granting any aid thereto, which shall involve the faith and credit of the city, nor make any appropriation therefor, unless such debt or credit be authorized by an act of the General Assembly of Maryland, and by an ordinance of the Mayor and City Council of Baltimore, submitted to the legal voters of the city of Baltimore at such time and place as may be fixed by said ordinance and approved by a majority of the votes cast at such time and place." The provisions of the preceding Constitution relating to new counties and change of county lines were continued in the new one.

The Constitution can be amended upon three-fifths vote of one Legislature and majority vote of the people, It was made the duty of the Legislature to submit the question of calling a constitutional convention in the year 1887 and every twenty years thereafter.

Statutes. The principle of submitting local questions to a vote of the people has been employed for many years in Maryland. The "Public Local Laws" of the State give many instances of the Referendum in the governments of the towns and cities. In many of them, as Annapolis, Cumberland, Cambridge and Havre de Grace, bonds may not be issued above certain amounts without consulting the people. The limit is $50,000 in Annapolis, $10,000 in the city of Cumberland, $5,000 in Havre de Grace. All the public property of the town of Charlestown is vested in the people and cannot be sold without their consent. In other towns, as Hagerstown, Smithsburg, etc., the city authorities may not purchase or acquire real estate without consulting the people. In Hagerstown the people may elect whether contract shall be made with a water company, and in the town of Oakland no street or alley may be closed without the people so determine. In other localities the voters decide whether or not liquor licenses shall be granted.

By a law of 1884 the people of Baltimore were authorized to elect whether they would subscribe a sum not exceeding $2,000,000 to a railroad company. By a law of 1886 the counties of Dorchester, Wicomico, Talbot and Caroline, were authorized, with the approval of the people, each to subscribe a sum not exceeding $50,000 to a railroad company.

Opinions by the Courts. A law establishing a system of primary schools in those counties which should vote to accept the provisions of the act, was declared constitutional in *Burgess* v. *Pue*, 2 Gill., 11 (see p. 107). The same question again arose in a case between the same parties, 2 Gill., 254, and again the constitutionality of the law was sustained. Another decision was reached in 1866, *Hammond* v. *Haines*, 25 Md., 544. An act of 1864 gave to the qualified voters of the borough of North East the privilege of deciding by ballot whether licenses to sell liquor should be granted within the limits of the borough. The Court said of this law: "It does not belong to that class of laws which contain an express provision for referring it to the vote of the people for their acceptance before it can become a law. The law as it passed the Legislature is complete in itself, requiring no other sanction." In deciding this law to be constitutional the Court said, however, that it did not wish to be understood "as embracing within its views the character of a law which would in a broader or more enlarged sense submit its passage or existence to the popular vote."

The constitutionality of general local option laws was fully affirmed in 1874, *Fell* v. *State*, 42 Md., 71. The question at issue here was the validity of the local option liquor license act of 1874. The Court after stating that there was no doubt as to the propriety of the established rule, *delegatus non potest delegari*, said that the Legislature had the undoubted power to pass a law whose operation should depend upon some contingency as the happening of some particular event, and there was no reason why this contingency might not be the assent of a majority of the legal voters of the district within which the law was designed to take effect. There was a vigorous dissenting opinion asserting the unconstitutionality of all legislation of this class.

MASSACHUSETTS.

Constitution of 1780. A Constitution for Massachusetts was submitted to the people by the Legislature in 1778, but it was rejected. Another, which, with amendments, is still in force in the State, was framed by a convention in 1780. It was ratified by the people at a subsequent election. An article of the Constitution provided that, in order to decide whether the Constitution should be amended or not, the Legislature in the year 1795 should "issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the Constitution in order to amendments, and if it shall appear, by the returns made, that two-thirds of the qualified voters throughout the State who shall assemble and vote in consequence of the said precepts are in favor of such revision or amendments, the General Court shall issue precepts, or direct them to be issued from the secretary's office, to the several towns to elect delegates to meet in convention for the purpose aforesaid."

A number of amendments, framed by a convention which met in 1820–21, were submitted to and ratified by the people in 1822. Among these was one providing for the amendment of the Constitution by the Legislature without the delay and expense of a convention. The method prescribed was passage by a majority vote of the Senate and a two-thirds vote of the House of Representatives of one General Court or Legislature, like passage through the next following General Court and majority approval of the people in their town meetingst An entire new Constitution was submitted to the people in 1853, bu. it was rejected.

Statutes. There is a statute provision in the State for annual elections in the cities and towns upon the question of granting licenses to sell intoxicating drink. The people legislate directly upon their

home affairs in town meetings; also in meetings in villages, school districts, fire districts, watch districts and other local districts. In cities there are representative legislatures, but the people vote upon making public water contracts, subscriptions to railroads, encroachments on public park grounds and some other questions. It is not unusual for the Legislature to pass acts to be accepted or not by vote of the people in their local districts. For instance, in 1882, there was an enactment authorizing any city or town in the State to vote whether it would accept the terms of a law according it the right to lay out public parks within the municipal limits.

Opinions by the Courts. An early case in the Supreme Court was reported in 1826, *Wales* v. *Belcher*, 3 Pick. (Mass.), 508 (see p. 106). The Supreme Court, in 1871, *Commonwealth* v. *Bennett*, 108 Mass., 27, said in a case arising out of a local option liquor law: "It has been argued . . . that these statutes are unconstitutional because they delegate to cities and towns a part of the legislative power. But we can see no ground for such a position. Many successive statutes of the Commonwealth have made the lawfulness of sales of intoxicating liquors to depend upon licenses from the selectmen of towns or commissioners of counties, and such statutes have been held to be constitutional. It is equally within the power of the Legislature to authorize a town by vote of the inhabitants, or a city by vote of the city council, to determine whether the sale of particular kinds of liquors within its limits shall be permitted or prohibited."

MICHIGAN.

Constitution of 1835. The first Constitution of Michigan, was framed and submitted to the people in 1835. In this document the people were not recognized as a direct law-making power, except in the adoption of amendments. Amendments required the majority vote of one Legislature, two-thirds vote of the next and majority approval by the people. The Legislature, at any time, on a two-thirds vote, could submit the question of calling a constitutional convention.

An amendment, ratified at the polls in 1843, provided that, "every law authorizing the borrowing of money or the issuing of State stocks," whereby a debt should be created on the credit of the State, should, prior to taking effect, be submitted to popular vote, exceptions being made for debts incurred in the regular course of State administration, and in suppressing insurrection or defending the State in time of war.

Constitution of 1850. The Constitution of 1850, the present Constitution of the State, was referred to the people, together with a separate proposition, which was rejected, giving negroes the right of

suffrage. The ballots contained the words, "Equal Suffrage to Colored Persons—Yes," or "Equal Suffrage to Colored Persons—No."

A section of this Constitution says, "No general banking law shall have effect until the same shall, after its passage, be submitted to a vote of the electors of the State at a general election, and be approved by a majority of the votes cast thereon at such election." *

The Constitution also provides that no organized county shall be reduced to less than sixteen townships, nor shall county-seats be removed, except upon vote of the people. The supervisors of counties may not borrow or raise by tax more than $1,000 "for constructing or repairing public buildings, highways or bridges," unless authorized to do so by popular vote. A vote of the people is also necessary in cases where cities have attained 20,000 inhabitants and apply for a separate county government.

Amendments are adopted by two-thirds vote of each house of one Legislature and majority ratification by the people. An election on the question of calling a convention was fixed for 1866, and each sixteenth year thereafter.

Statutes. The statutes provide for a Referendum in the counties in the following cases: Repairs to the court-house, jail or public offices which involve a cost of more than $500 a year; borrowing of money or levy of a tax to build highways, bridges, and for other special purposes, where the expense contemplated exceeds $1,000 a year; prohibition of the manufacture and sale of intoxicating liquor (by law of 1889), the people to vote on their ballots, "Should the manufacture of liquors and the liquor traffic be prohibited within the county—Yes," or "Should the manufacture of liquors and the liquor traffic be prohibited within the county—No." The election on this latter subject must be held not oftener than once in two years.

Township affairs are voted on by the people directly, in annual and special town meetings. The statutes make a ballot vote necessary in cases of loans, tax levies for special purposes, marking section corners, restraining cattle, establishing a library, and in deciding whether labor shall be accepted in payment of road tax. The people of school districts likewise legislate for themselves in mass meeting. Villages vote to become incorporated as cities; they vote also to vacate incorporation, to make loans and levy taxes beyond the amount authorized by law, to construct water-works, and to establish a free public library. In cities the council must pass an annual appropriation bill. No further sums may be appropriated unless the people authorize it by direct vote.

* A general banking law was submitted to, and was approved by, the people in 1858. This was repealed, and a new law was referred to the people in 1887. The ballots bore the words, "A General Banking Law—Yes" and "A General Banking Law—No."

Opinions by the Courts. The question as to the constitutionality of this method of making laws reached a discussion in the courts in 1854, *People* v. *Collins*, 3 Mich., 343. A prohibitory liquor law had been passed by the Legislature and referred to the people of the State in 1853. The justices were equally divided regarding its constitutionality. The Court said: "The Constitution vests the power of legislation in a select body of men, and there it must remain until the Constitution itself is changed or abrogated. They have no authority to delegate their powers and exclude themselves from the right to their exercise." In this, both sides of the court were agreed. One side held, however, that the act was not a delegation; that it was a complete expression of the legislative will; and that, like many other acts, it was made to take effect simply on the happening of a future event. On the other hand, the dissenting justices said that the law was not a law when it came from the Legislature, but depended for its force upon the decision of some foreign and extraneous power, and was therefore void.

MINNESOTA.

Constitution of 1857. The first and present Constitution of Minnesota was adopted by vote of the people in 1857. This Constitution provided for a vote of the people in the counties on all laws removing county-seats, and changing county lines. Cities of over 20,000 inhabitants may be organized into separate counties by the Legislature, if the people in such counties by a majority vote approve of such separate organization. The seat of the State government must remain at St. Paul, unless a change is authorized by a vote of the people. Amendments to the Constitution are adopted by majority vote of one Legislature and majority vote of the people. The Legislature on a two-thirds vote may at any time order an election upon the question of calling a convention to revise the Constitution.

An amendment to the Constitution, ratified in 1860, provided that no law "levying a tax or making other provision for the payment of interest or principal" of the Minnesota Railroad bonds should take effect until it was adopted by the people. In 1858 an amendment had been passed authorizing the issue of $5,000,000 of bonds to aid in the construction of certain railroads. The companies defaulted in the performance of the conditions imposed upon them, and the subsequent amendment was designed to protect the State against impulsive action on the part of the Legislature. From time to time various acts were passed by the Legislature and submitted to the people, providing for an adjustment and payment of the indebtedness of the State upon these bonds; first in 1866, then in 1867, 1870 and 1871, some of which

were rejected by the bondholders and others by the people. At last the court, in 1881, *State* v. *Young*, 29 Minn., 474, decided that the amendment was unconstitutional, because it was an impairment of the obligation of contracts, and a settlement was effected by the Legislature without again submitting the question to the people.

Statutes. The statutes of the State make the Referendum obligatory in several additional cases as follows: The people of the counties may vote for or against the construction of steam traction roads, and also on the poor question, whether to employ the town or county system. Towns are to be named only "in accordance with the expressed wish of a majority of the legal voters resident therein." Towns may not contract debts or make expenditures in any one year for an amount greater than the tax assessment for that year, unless it be upon a vote of the people. They may also vote on the liquor license question, and decide whether cattle and domestic animals shall run at large. The people of the towns meet in town meetings, where many local questions are determined by direct vote, such as voting money for roads, bridges and other local enterprises. The people of the school districts also meet in mass assembly to select school sites, levy school taxes, etc. Villages vote on questions of incorporation, annexation of territory, granting of liquor licenses and the dissolution of village government. In cities the people vote for the issue of bonds and levy of taxes in an amount beyond that authorized by law.

Opinions by the Courts. The State Supreme Court gave an opinion on this subject, in 1863, *Roos* v. *State*, 6 Minn., 291. The Legislature of the Territory, in 1853, had passed a prohibitory liquor law which was submitted to the people and ratified by a majority vote. It was declared void by the territorial courts as having been passed by the people and not the Legislature. In this case, *Roos* v. *State*, the opposite position was taken. The direct point in question was the constitutionality of a popular vote on the removal of a county-seat. The Court said: "The purpose of the Constitution was to impose a restriction upon the Legislature in acting upon a certain class of subjects. It was not to deprive that body of any participation in them, whatever, and confer the jurisdiction upon some distinct tribunal. . . . It takes a law to change a county-seat or county-line now just as it did before the Constitution was adopted, and the people have no more power to originate laws now than they ever had, nor does the Constitution in this particular instance confer upon the people any power whatever, over or participation in, the passage of these laws. The law must be passed by the Legislature making the change in the line or the county-seat just as formerly; and it is as perfect a law as any other when it leaves the hands of that body. It is, however, made to take effect upon the

happening of a certain contingency, which contingency is an approbatory vote of the people. . . . It was as much a law prior to the vote of the people as subsequent to that event, its operative force being suspended, merely its vitality being dormant. It is precisely the same case as the passage of a law by the Legislature made to take effect upon the happening of any other event, such as a future day, which is the most usual case."

This opinion was ratified in *State* v. *Cooke*, 24 Minn., 247, when a State law authorizing the people of the city of Rochester to vote upon the question of the granting of liquor licenses was declared constitutional. The Court, however, stated very positively, in *State* v. *Young*, 29 Minn., 474, though the question was not directly before it for decision, that the "legislative duty cannot be delegated or referred to the people, nor to any portion of the people, nor to any person or body."

MISSISSIPPI.

Constitution of 1817. The first Constitution of Mississippi was submitted to the people in 1817. By this instrument, the people were to vote on the question of calling a convention whenever the Legislature by a two-thirds vote should deem constitutional revision necessary.

The **Constitution of 1832** was submitted to the people. There was no change in the method of amendment.

The **Constitution of 1868** was submitted to popular vote. It was at first rejected, but when resubmitted a second time, later in the year, it was accepted. The method of amendment was: Two-thirds vote of one Legislature and majority vote of the people. The Legislature was forbidden to authorize any county, city or town to become a stockholder in or to loan its credit to any company, association or corporation without first obtaining the assent of two-thirds of the qualified voters thereof.

The **Constitution of 1890** was received direct from a convention without being referred to the people. By this Constitution the capital must remain at the city of Jackson unless the people vote for its removal. The relocation of county-seats, the formation of new counties, a change in the boundaries of judicial districts and the consolidation of existing counties, are all made subjects for a vote of the people by the Constitution.

Statutes. Early laws in this State submitted to the people of counties and cities, the question of subscribing stock to railroad companies. The statutes also contain a local option fence law, and certain taxing propositions must be submitted to popular vote. On March 11, 1886, the Legislature passed an act to prohibit liquor selling by local

option in any county of the State. On petition of one-tenth of the voters of any county, the board of supervisors thereof must order an election "For the sale" or "Against the sale" of intoxicating drink.

Opinions by the Courts. In *Strickland* v. *The Mississippi Central R. R. Company*, a case which was decided, though not reported, an act of Legislature passed in 1852, authorizing the boards of police in certain counties, after obtaining the popular assent, to subscribe to railroad stock, was declared constitutional. At the October term, 1859, the question of the constitutionality of such legislation was exhaustively considered in *Alcorn* v. *Hamer* and *Same* v. *Hill*, 38 Miss., 652. These cases reached the Court through a law, approved December 2, 1858, entitled, "An act to aid in repairing and perfecting the levee of the Mississippi river, in the counties of De Soto, Tunica, Coahoma, Bolivar, Washington and Issaquena." It provided for the levy of a tax of ten cents an acre, to be paid annually for five years, in the counties named, but the law was conditional upon a popular vote. The Court said: "The legislative power, to whatever subjects it may be applied, and whatever may be its extent, is vested exclusively in the Senate and House of Representatives by the people, in whom it resides. They have, by the highest and most solemn of compacts, the Constitution, voluntarily relinquished their right to exercise it. . . . To allow the Legislature to associate with them in the exercise of the legislative function another tribunal, or to cast back upon the people their delegated powers, would be tantamount to a subversion of the Constitution by changing the distribution of the powers of the government without the consent of the authority by which it was ordained."

After leading itself up to this point, the Court continued, that, though there was no doubt of the unconstitutionality of an act which was a mere legislative preparation, a plan or project of a law depending for its force and validity upon the vote of the people, there was likewise no doubt of the constitutionality of an act which is complete in itself, even though the execution of some of its provisions depends on the result of a vote of the people. The power to enact laws, includes the right to determine and prescribe the conditions upon which a law may come into operation or be defeated, and this contingency may as well be a vote of the people as any other. On these grounds the law was declared constitutional.

This position was affirmed at the October term, 1875, in *Barnes* v. *Board of Supervisors of Pike County*, 51 Miss., 305. This case arose from an act submitting to the people of Pike county the choice of the permanent location of their seat of justice. The Court said that many county-seats had been selected by this method, and there was no doubt of its constitutionality.

In a decision in 1886, in the case of *Schulherr* v. *Bordeaux*, 64 Miss., 59, the Court said: "On the question of the right to make an act of the Legislature to depend for its operation on a future contingency, argument was exhausted long ago, and the principle established by oft-repeated examples and by adjudication in this State and elsewhere in great numbers, that this may be done without violating the constitution."

MISSOURI.

Constitution of 1820. The first Constitution of Missouri, was submitted to the people in 1820. It contained no grants to the people of direct participation in legislation. A Constitution which was submitted to popular vote in 1846 was rejected.

The **Constitution of 1865** was submitted to the people, together with a convention ordinance, which was voted upon as a separate proposition. The question was, whether certain railroad companies should be taxed to pay back money which the State had previously loaned them. The ballots contained the words, "Shall the railroads pay their bonds?—Yes," and "Shall the railroads pay their bonds?—No." By this Constitution it was provided that no city should be incorporated without the consent of the people thereof, and no county, city or town could take stock in, or loan its credit to, "any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto." The method of amendment was: Majority vote of one Legislature and a majority vote of the people. The Legislature, at any time, could order an election on the question of calling a convention.

Constitution of 1875. The present Constitution of the State was approved at the polls in 1875. It recognized the people as direct law-making factors in the following cases:—

The Legislature may not incur a debt for any one year exceeding the sum of $250,000, unless the proposition be submitted to and ratified by a two-thirds vote of the people. No county-seat can be removed but upon a vote of two-thirds of the qualified electors of the county voting on the question. County boundaries cannot be altered except upon a majority vote of the people of those counties affected by the change. Counties, upon a majority vote, may adopt township organization, and upon popular vote may again abolish it. Any city having a population of more than 100,000 inhabitants may elect a board of thirteen freeholders to frame a charter for its own government. This charter goes into force when submitted to the people and adopted by a four-sevenths vote. The charter may be amended by the legislative authorities of the municipality and a three-fifths vote of the people.

A separate section confers upon the people of St. Louis similar powers in charter-making. Tax rates for school purposes and for the erection of public buildings may be increased by popular vote. No county, city, town, township, school district or other political subdivision of the State, may contract debt exceeding in any year the revenue of that year without the assent of two thirds of the voters thereof. No act of the Legislature "authorizing or creating corporations or associations with banking powers (except banks of deposit or discount), nor amendments thereto, shall go into effect or in any manner be enforced unless the same shall be submitted to a vote of the qualified voters of the State at the general election next succeeding the passage of the same and be approved by a majority of the votes cast at such election." The method of amendment is: Majority vote of one Legislature and majority approval of the people. The Legislature may at any time authorize an election on the convention question.

Statutes. The Legislature, early in the history of the State, recognized the principle of consulting the people concerning certain types of legislation. An act was passed March 1, 1851, authorizing the county of St. Louis to vote on the question of subscribing stock to the Ohio and Mississippi Railroad Company.

A law, approved March 4, 1857, gave the people of St. Louis the right to determine whether beer should be sold on Sunday. It was enacted, "that the corporate authorities of the different cities in the county of St. Louis shall have power, whenever a majority of the legal voters of the respective cities in said county authorize them so to do, to grant permission for the opening of any establishment or establishments within the corporate limits of said cities for the sale of refreshments of any kind (distilled liquors excepted) on any day in the week." An election was held on this question in April, 1858.

An act of 1865 authorized any city, town or village to organize for school purposes, with special privileges, if the people thereof should agree. The ballots were to read, "School Law," or "No School Law." The statutes contain a stock law, which says: "The provisions of this article are hereby suspended in the several counties in this State until a majority of the legal voters of any county, voting at any general or special election, called for that purpose, shall decide to enforce the same in such county." The law provides that the county court may order an election on the petition of one hundred householders, the petition to state what species of animals the people desire to restrain. The ballots must contain the words, "For enforcing the law restraining (here insert the name of the animals) from running at large," and "Against, etc." Five or more adjoining townships may vote on the question of enclosing hogs and sheep.

A local option road law was enacted in 1883. It organized the State into "municipal townships" for road purposes when the people should desire such organization, giving such townships certain financial rights and advantages. A local option liquor law was passed by the Legislature in 1887. The vote on this question in any county, city or town must not be taken oftener than once in four years. Counties may vote to incur debt to build court-houses or jails. The ballots take this form: "Appropriation of $—— for the purpose of ———, Yes" and "Appropriation of $—— for the purpose of ———, No." If the proposition be to raise the money by a tax levy without the issue of bonds, the ballots shall be: "In favor of an indebtedness of $—— for the purpose of building a court-house (or jail) and of an increase of the tax levy of — cents on the one hundred dollars valuation for —— years to pay the same; Yes," or "In favor of, etc.; No." When one hundred tax-paying voters of a city join in a petition asking that an annual tax be levied to establish and maintain a free public library, this tax not to be over one mill per dollar of valuation, and in cities of more than 100,000 population, not over one-fifth of a mill annually, the people shall vote, "For a — mill tax for a free public library," and "Against, etc." In villages and townships the people may also vote on this question. The tax may likewise be discontinued by vote of the people. City limits may be extended, school districts organized, school loans contracted, school taxes increased or a change in district boundary lines effected by vote of the people.

Opinions by the Courts. Laws of this kind, passed conditional upon their acceptance by the people, in several early opinions, were held to be constitutional by the courts. At the request of the Legislature, at the January term, 1874, the Supreme Court judges delivered an opinion concerning the constitutionality of the township organization law. By this law it was left to the option of the counties whether they should organize under the law or not. The Court decided that in such a case no legislative authority was delegated, and therefore the law was not unconstitutional. The policy of the Court was marked by a notable reversal, in 1876, in the case of *Lammert* v. *Lidwell*, 62 Mo., 188, which arose out of a local option stock law.

"It may now be conceded as the established doctrine," said the Court on this occasion, "that statutes creating municipal corporations or imposing liabilities upon municipalities, or authorizing municipalities to incur debt and obligations, or to make improvements, may be referred to the popular vote of the districts immediately affected—that is to say, the people of such districts may decide whether they will accept the incorporation or will assume the burdens. This is the prevailing rule in reference to local measures. But in all these cases the

Legislature had enacted a complete and valid law, according to the prescribed usages governing the passage of laws, and the happening of the contingency or the future event which furnishes the occasion for the exercise of the power gives no additional efficacy to the law itself. It derives its whole vigor and vitality from the exercise of the legislative will, and not from the vote of the people." In the case of this law, the Court said it depended altogether for its effect on the vote of the people, and therefore it was unconstitutional.

In the *State ex. rel. Maggard* v. *Pond*, 93 Mo., 606, a case arising out of a local option liquor law, the Court modified the position which it had taken in *Lammert* v. *Lidwell*. The Court declared this law constitutional, and said: "While the rule that the Legislature is alone invested with the power to make laws, and that it cannot delegate to the people the power to pass a law, does not admit of question or doubt, there is another rule just as firmly and indisputably established, which is that the Legislature may pass a law to take effect or go into operation on the happening of a future event or contingency, and that such contingency may be a vote of the people." It was said that, although the act provided that any county, town or city of the class named might, by a majority vote, adopt the law, it did not refer to them the question of passing the law. The Legislature had already done this, and only called upon them to decide by a vote whether they would accept the provisions of a law, regularly enacted by both Houses of the General Assembly and approved by the Governor.

MONTANA.

Constitution of 1889. The Constitution of Montana was framed by a convention called in accordance with an Act of Congress passed in 1889, and was submitted to the people in October of that year. Art. X, Sec. 2, provides, that at the general election in 1892 the question of the permanent location of the seat of government should be submitted to a vote of the qualified electors of the State. In case no one place received a majority vote, the question should be resubmitted at the next general election, the choice to be between the two places shown to be highest on the list at the first election. Another section specifies that after the seat of government shall have been located it shall not be changed "except by a vote of two-thirds of all the qualified electors of the State voting on that question at a general election."

Art XII, Sec. 9, says: "The rate of taxation of real and personal property for State purposes in any one year shall never exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the State shall amount to one hundred million dollars

($100,000,000) the rate shall not exceed two and one-half (2½) mills on each dollar of valuation; and whenever the taxable property in the State shall amount to three hundred million dollars ($300,000,000) the rate shall not exceed one and one-half (1½) mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall be submitted to the people at a general election, and shall have secured a majority of all the votes cast for and against it at such election."

Art. XIII, Sec. 2, says: "The Legislative Assembly shall not in any manner create any debt . . . which shall singly, or in the aggregate with any existing debt or liability exceed the sum of $100,000, except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election."

It is stated in Sec. 5 of the same article: "No county shall incur any indebtedness or liability for any single purpose to an amount exceeding $10,000 without the approval of a majority of the electors thereof voting at an election to be provided by law."

Sec. 6 of the same article limits the amount of debt which can be contracted by cities, towns, townships or school districts to three per centum of the value of the taxable property therein, the limit to be extended upon vote of the people, in municipal corporations "when such increase is necessary to construct a sewerage system or to procure a supply of water."

Art. XVI, Sec. 2, says: "No county-seat shall be removed unless a majority of the qualified electors of the county, at a general election, on a proposition to remove the county-seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years."

The mode of amendment is: Two-thirds vote of one Legislature and approval by the people. The Legislature, at any time, by a two-thirds vote, can submit to the people the question of calling a convention; whatever alterations or revisions it shall make likewise to be submitted to a vote of the people.

NEBRASKA.

Constitution of 1866. The first Constitution of Nebraska was framed by the territorial Legislature in 1866. It was submitted to the people as provided for by the "Enabling Act," passed by Congress, in 1864. This Constitution said: "The Legislature shall not authorize the borrowing of money or the issuance of State bonds for any sum exceeding in the aggregate $150,000 without submitting a proposition

therefor to a vote of the people for their approval or rejection, except in case of war, to repel invasion or suppress insurrection." The method of amendment was only by convention. The convention question could be submitted at any time by a majority vote of the Legislature.

Constitution of 1875. The present Constitution of the State dates from 1875. It was submitted to the people together with two separate articles, one relating to the seat of government, the other "allowing electors to express their preference for United States Senator." The Constitution specifies that "no county shall be divided or have any part stricken therefrom," nor have any territory added thereto without a vote of the people. Counties may also decide upon popular vote when they shall take up township organization.

Art. IX, Sec. 5, says: "County authorities shall never assess taxes the aggregate of which shall exceed one and a half dollars per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county."

Art. XII, Sec. 2, says: "No city, county, town, precinct, municipality, or other subdivision of the State shall ever make donations to any railroad or other work of internal improvement unless a proposition so to do shall have been first submitted to the qualified electors thereof at an election by authority of law." Such donations must not exceed ten per cent. of the assessed taxable valuation. A city or county may, however, upon a two-thirds vote of the people, increase such indebtedness five per cent. in addition to such ten per cent.

Another section provides: "No general law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town or incorporated village, without first requiring the consent of a majority of the electors thereof."

Amendments may be adopted by a three-fifths vote of one Legislature and majority approval by the people. The Legislature at any time by a three-fifths vote may submit the question of calling a constitutional convention.

Statutes. Besides those forms of the Referendum guaranteed to the counties by the Constitution, such as the change of county lines, taking up of township organization and the levy of taxes beyond $1.50 on $100 of valuation the people are by statute given a vote in the following cases: Granting bounties for the destruction of wolves, wild cats, coyotes or mountain lions, the act to be revoked likewise by popular vote; fixing county-seats and determining when, and to what point, removal shall be made; appropriating county money above $1,500 for the erection of county buildings; appropriating more than two mills of the tax levy of the year to aid in the construction of roads and bridges;

issuing county bonds. On petition of twenty resident freeholders the county board of supervisors may submit the proposition to issue bonds not exceeding $20,000, the proceeds to be applied in defraying the expenses of "boring and prospecting for coal." By law of 1891 the counties were authorized, with the assent of the people, to bond themselves to an amount not exceeding $20,000, to raise money "to purchase grain to be planted and sown for the purpose of raising crops for the year 1891, and for feeding teams used in raising said crops."

The electors of the townships meet in town meetings and have general powers of local legislation. The people of the school districts also legislate in mass meeting. The people in cities vote for bonds to build sewers, water-works, hospitals, parks, gas-works, pavements, electric-lighting plants, etc. In both cities and villages the council must pass one annual appropriation bill. Propositions for any additional expenditure must be submitted to the people. Both cities and villages vote to annex territory. Cities may vote to return to village government, and villages may vote to abolish village government and merge with the township. People residing in a contiguous territory may vote to organize sanitary districts for drainage and other purposes, and, with the majority consent, may issue bonds.

Opinions by the Courts. The Supreme Court has recognized this form of law-making as not inharmonious with the American governmental system. The vote of the people has been regarded as a "condition precedent" to the taking effect of a law, and its constitutionality has not been directly questioned.

NEVADA.

Constitution of 1864. The first and present Constitution of Nevada, framed in 1864, was submitted to the people as required by Congress in the "Enabling Act." The principle of the Referendum was recognized only in cases of altering the Constitution. Amendments may be adopted after majority vote of two successive Legislatures and majority approval by the people. The Legislature may at any time, by a two-thirds vote, submit the question of calling a constitutional convention.

Statutes. The statutes provide for a popular vote in the counties on the question of removal of county-seats. The board of trustees of school districts, whenever they deem it advisable, may call an election and submit the question whether a tax shall be raised "to furnish additional school facilities for the district, or to keep any school or schools in such district open for a longer period than the ordinary funds will allow, or for building an additional school-house or houses, or for any

two or all of these purposes." The ballots at such an election must read, "Tax—Yes," or "Tax—No." A number of questions relating to the local governments are determined by the petition of a majority or larger fraction of the electors. For instance, an act to provide policemen in unincorporated cities, towns and villages only goes into effect on petition of a majority of the qualified electors of such a city, town or village.

Opinions by the Courts. In 1869, in *Gibson* v. *Mason*, 5 Nev., 283, the Supreme Court said that the Constitution vested the "legislative authority of the State" in "a Senate and Assembly, which shall be designated the Legislature of the State of Nevada." The Legislature is given, the Court continued, "all the law-making power which could possibly be granted by the people. If not, where is it lodged? Certainly not in either the judicial or executive departments; and nothing is clearer than that it is not retained by the people themselves, for they possess no power of legislation whatever. An act of the Legislature made dependent upon their votes or approval would be utterly void; and so it has frequently been held. It is quite clear that the Legislature is, within the sphere of legislation, the exponent of the popular will, endowed with all the power, in this respect, which the people themselves possessed at the time of the adoption of the Constitution."

NEW HAMPSHIRE.

Constitution of 1776. On the fifth day of January, 1776, a temporary Constitution, which was not approved by the people, was adopted by a convention or "congress," assembled at Exeter. This was the first written Constitution adopted by any of the States now constituting the American Union.

Constitution of 1784. This document gave place in 1784 to a new Constitution. In the meantime a convention which met at Concord in 1778 had framed a Constitution. It was submitted to the people in their town meetings in 1779, and by them rejected. A new convention was called, which met in 1781. It proposed another Constitution which was likewise submitted to the people, this time for approval or amendments. The amendments proposed were so numerous that the convention reassembled and did not finish its labors until 1783. It was again submitted to the town meetings, and, being ratified, went into effect in 1784. This Constitution provided for the calling of a convention at the end of seven years. It further provided: "No alteration shall be made in this Constitution before the same shall be laid before the towns and unincorporated places and approved by two-thirds of the qualified voters present and voting upon the question."

Constitution of 1792. Another Constitution, and with various amendments still in force within the State, was submitted to and adopted by the people in 1792. It provides that at the expiration of every seven years the question shall be voted on in the town meetings whether a convention to revise the Constitution shall be called or not. If one is called provision is made, as in the Constitution of 1784, that all proposed alterations shall be "laid before the towns and unincorporated places, and approved by two-thirds of the qualified voters present and voting on the subject." The Constitution by this means has been several times amended, the last convention for such a purpose having met in 1889.

Statutes. Questions of local legislation are determined by the people, acting directly by mass meeting in their towns, villages and school districts. It has been very customary for the Legislature to pass acts to take effect in such towns as may vote to adopt them.

Opinions by the Courts. The question of the constitutionality of legislation which is dependent upon a vote of the people came up in the Superior Court in 1855, *State* v. *Noyes*, 10 Foster (N. H.), 279, the case arising from a State law "to suppress bowling alleys" in towns which might vote to do so at a legally-called town meeting. It was contended that the act was void because the Legislature had delegated power to the people. The Court disposed of this phase of the case as follows: "The case does not call for the discussion of the question of the constitutionality of submitting general laws to the vote of the people and making their enactment dependent upon the popular vote. Many laws have been so presented to the people and acted upon by them, and it is not at once apparent that there can be any sound objection to the enactment of laws to take effect upon the occurrence of future events such as the Legislature may prescribe. Laws framed to take effect upon conditions dependent upon the pleasure of parties to be affected by them are common everywhere."

This question was again reviewed by the Court in 1881, *State* v. *Hayes*, 61 N. H., 264. An act to provide for minority representation in corporations was passed by the Legislature in 1879, the act to be submitted to the people at the regular biennial election in November 1880. A majority vote was cast in favor of the law. The Governor proclaimed its adoption, but the question of constitutionality was raised in the courts. After an extended explanation and copious citations, the law was decided to be unconstitutional. While the principle of local government authorized a grant of limited powers of local legislation to municipalities, the power of general State legislation could not be delegated by the Senate and House of Representatives, in whom it was

vested by the Constitution. The Court said that the law was a device for exonerating the Legislature from responsibility, and that it was plainly intended to be a delegation of legislative power.

NEW JERSEY.

Constitution of 1776. The first Constitution of New Jersey, framed by a convention which met in 1776, was not submitted to the people.

The **Constitution of 1844,** and, with amendments, the present Constitution of the State, was submitted to the people. Art. IV, Sec. 6, limits the Legislature in its power to create debts as follows: "The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall, singly or in the aggregate, with any previous debts or liabilities, at any time exceed $100,000, except for purposes of war or to repel invasion," unless at a general election such law "shall have been submitted to the people and have received the sanction of a majority of all the votes cast for and against it at such election." Amendments may be adopted by a majority vote of two successive Legislatures and majority approval of the people.

Statutes. It is very usual for the Legislature to pass laws for the government of local divisions of the State, which are made contingent upon their acceptance by the people thereof. In the sessions of 1884, 1885, 1886 and 1887 the Legislature passed at least seventeen laws of this class as follows:—

SESSION OF 1884.

"An act to enable incorporated towns to construct water-works for the extinguishment of fires and supplying the inhabitants thereof with pure and wholesome water;" not to be a law in any town until accepted by the electors thereof at an election at which they should vote by ballot, "For the adoption for this town of the provisions of 'an act to enable towns to supply the inhabitants thereof with pure and wholesome water,'" or "Against, etc."—

"An act to authorize the establishment of free public libraries in the cities of this State;" inoperative until assented to by a majority vote of the people as above.

An act to enforce the payment of taxes in cities of this State, the people to vote, "Act to collect taxes accepted," or "Act to collect taxes rejected."

SESSION OF 1885.

An act providing for changes in the government of localities governed by commissioners; the people to vote "For this act and its amendments" or "Against, etc."

An act to provide for boards of education in the cities of the State, upon which the people were to vote, "Board of education act accepted" and "Board of education act rejected."

An act concerning cities, authorizing increased exercise of the taxing power.

An act authorizing boards of education in cities to levy an additional school tax.

An act to remove the fire and police departments in cities of the State from political control, and place them in charge of commissioners, upon which the people were to vote, "Fire and police commission act accepted," and "Fire and police commission act rejected."

SESSION OF 1886.

An act to enable cities and other municipalities to create a paid fire department.

An act increasing the pay of city officers and policemen.

An act authorizing the building of sewers in cities.

An act concerning cities, providing for changes in the form of government, terms of office, salaries, etc., upon which the people were to vote, simply, "Act accepted," or "Act rejected."

SESSION OF 1887.

An act giving power to municipal corporations to make water contracts, when the people were to vote, "For water bill" or "Against water bill."

A supplementary act to enable incorporated towns to construct water-works.

An act to pension police officers and policemen in cities, when the ballots were to read: "Police pension accepted," or "Police pension rejected."

An act regulating the pay of officers and men in paid fire departments.

An act to establish free public libraries.

In 1888 the Legislature enacted a local option liquor law, applying to counties, the people to vote, upon petition of one-tenth of the legal voters, "For sale of intoxicating liquor," or "Against, etc." In 1889 this law was repealed and a "high license" act took its place. This provided that one-fifth of the voters of a township, town, borough or city, on application to the county judge by a petition, could name the license fee they desired, whereupon the question should be submitted to popular vote in the district making such petition. The ballots were to read: "For $—— license fee" and "Against $—— license fee."

Certain questions are also left to popular vote in townships and school districts, where the people vote upon them in mass meeting. The people of townships vote thus directly on many questions of public revenue and expenditure, the place of holding the township meeting, the purchase and disposal of public property, the running at large of cattle and other stock, erection of a poor-house, etc.

By law of 1876 the chosen freeholders of counties could submit the question whether there should be a "public county road board." By law of 1886 they could submit the question whether there should be built at the county expense a public road extending through the county from one boundary to another. Boroughs, towns, etc., may be incorporated only after the people vote for such a change of government, and the proposition to divide wards in municipal corporations must be approved by the people. Voters in boroughs, by the law of 1882, may designate on their ballots at the election for mayor and councilmen the amount of money to be raised in any one year for borough purposes; also to similarly designate the amount to be raised for working and improving the streets. In incorporated towns the people may vote whether bonds shall be issued for the purchase of steam fire engines, and by a recent law the people in wards of cities, towns and townships may vote whether a public hall shall be purchased for the use of the people of the district. The people in municipal corporations must also vote upon propositions to issue bonds.

Opinions of the Courts. The method of making laws by referring them to a vote of the people came up for review in the courts in 1854, *City of Paterson* v. *Society for Establishing Useful Manufactures*, 4 Zab., 385. The Legislature, by an act of 1851, had submitted the question to the people of the town of Paterson whether they would be incorporated as a city or not. The Court said: "Whether a statute is rendered unconstitutional by the fact that its operation is made to depend upon the will of the people expressed through the ballot box is a question which has recently given rise to much discussion and to a decided diversity of judicial opinion. . . . Much as the authorities differ in their conclusions, they all concur in the great principles by which the question is to be settled. It is conceded as indisputable—

"(1) That, as well by the fundamental theory of a representative democracy as by the express provision of the Constitutions of the States of the Union, legislation cannot be exercised directly by the people.

"(2) That the legislative power cannot be delegated; that it can be exercised only by the functionaries and in the mode designated and prescribed by the Constitution.

"(3) That a law enacted by any other authority, or in any other mode than that prescribed by the Constitution is void. . . .

"But the question that arises upon this statute is simply whether a charter granted by the Legislature to a municipal corporation may constitutionally be submitted to the corporators for their acceptance before it goes into operation, and whether its going into effect may be made to depend upon their acceptance or rejection. The question submitted by the act to the inhabitants of the district was submitted to them, not as a part of the sovereign people, but simply as corporators. Nor was the question upon the expediency of the statute or of any particular provision of the charter, but simply whether they would accept the charter tendered to them by the Legislature. Their vote was an act of acceptance, not of legislation. . . . Before imposing the burdens of a city charter upon a people the Legislature not only may but ought to require the assent of the corporators. It is designed as a benefit, but it brings heavy burdens which ought not to be imposed upon a people without their assent."

The Court said, in 1856, *Morgan* v. *Monmouth Plank Road Co.*, 2 Dutch. (N. J.), 99, as to a road law, which was not to take effect until approved by a majority of the voters of a township: "This is not a delegation of the law-making power by the Legislature to the people. It is simply the grant of a power to an incorporated company to convert a common public road into a turnpike upon condition that they obtain the consent of a majority of those supposed to be most immediately interested in the use of it. The legislative power over the whole subject of highways and internal improvements has usually been delegated, to some extent, to subordinate authorities, . . . and it has never been supposed that this course of legislation was in violation of the well-settled doctrine that the legislative or law-making power could not be delegated to the people, but must be exercised exclusively by the legislative department of the government."

In 1872, in *State* v. *Court of Common Pleas of Morris County*, 36 N. J., 72, a township local option liquor law was declared to be constitutional. The Court said: "The inhabitants of the several townships in the State are incorporated by a general law. They have, heretofore, without question, exercised many powers through a direct vote of the people. They determine how the poor shall be kept, how much money shall be raised for roads, and how much, if any, for school purposes, and I know of no reason why they may not be vested with the same powers which are or could be granted to municipal corporations, including the one which has given rise to this contest."

A recent review of the question was given by the Court, in 1888, *Paul* v. *Gloucester County*, 50 N. J., 585, arising out of a law providing for a vote in each county, on the application of one-tenth of the legal voters, to determine whether or not any intoxicating liquors should be

sold within the county. The Court found the law to be constitutional, but the vote was eight to seven, and there was a vigorous dissenting opinion. Acts conferring various powers upon cities, to be accepted or not, as the people may by vote elect, have been declared constitutional by the courts. Some late cases of this kind are 51 N. J., 62; *Id.* 454; 52 N. J., 188; *Id.* 398.

NEW YORK.

Constitution of 1777. The first Constitution of the State of New York was framed in 1777. It was not submitted to the people. Neither did it make any provision for consultation with the people even in the matter of constitutional amendments. Several amendments, framed by a convention which met in Albany in 1801, went into effect without popular ratification.

The **Constitution of 1821** was submitted to the people. This Constitution provided for its own amendment by majority passage by one Legislature, two-thirds passage by the next succeeding Legislature and majority approval of the people.

The **Constitution of 1846,** still in force within the State, was likewise submitted to the people. The question of equal suffrage for negroes was submitted as a separate proposition, but it was rejected by a large majority. By the terms of Art. VIII propositions to contract State debts, "singly or in the aggregate," exceeding in amount $1,000,000, except "to repel invasion, suppress insurrection or defend the State in time of war," must be submitted to the people by the Legislature. Amendments may be adopted after majority passage by two Legislatures and majority approval of the people. At the general election in 1866 and "in each twentieth year thereafter, and also at such time as the Legislature may by law provide," the question shall be submitted, "Shall there be a convention to revise the Constitution and amend the same?"

A new Constitution, framed by a convention in 1867, was submitted to the people, to be voted on in parts, in 1869, but was rejected with the exception of one article. By this article provision was made for submitting to the electors of the State, at a general election in 1873, two questions to be voted upon on separate ballots, as follows: *First*, "Shall the offices of Chief Judge and Associate Judge of the Court of Appeals and of Justice of the Supreme Court be hereafter filled by appointment?" *Second*, "Shall the offices of the judges mentioned in Sections 12 and 15 of Art. VI of the Constitution be hereafter filled by

appointment?" (These were judges in the cities of New York, Brooklyn and Buffalo, and county judges.) Both propositions were decided in the negative.

Statutes. The general statutes of the State provide for a vote of the people in counties, when it is proposed to issue county obligations exceeding ten per cent. of the assessed valuation of the county real estate, when the question is as to the location of, or relocation of any county building or county office, and when it is proposed to contract funded debt.

In cities, the people by general law, vote to borrow money for building bridges, for the issue of bonds to meet funded indebtedness, and other questions, as the special charters and the amendments thereto granted by the Legislature, may provide. In villages, the trustees must submit many questions to popular vote; in fact, almost all questions involving "extraordinary expenditure" for sewers, electric lights, libraries, water systems and other forms of local improvement. The people of villages also vote upon incorporation, and after incorporation upon the question of the dissolution of corporate government. The people of towns and school districts, do much legislation by direct vote in mass meeting, especially upon subjects involving the expenditure of public money. In school districts sites are selected in school district meetings, and in towns the people vote what their highway system shall be, whether the road tax must be paid in money or whether it can be "worked out;" also, if a town hall shall be erected, a stone crusher purchased, etc., etc. By a law of 1869, counties and towns, by vote of the people thereof, could erect public monuments "in memory of the soldiers of such town or county, or in commemoration of any public person or event."

Opinions by the Courts. An act, known as the "Free School Law," which passed the Legislature, March 26, 1849, was claimed to be unconstitutional, because it contained a provision for its own submission to the people, the law to become operative on the first day of January, 1850, if a majority of all the votes cast in the State be in favor of the law, and null and void in case of it not securing such majority. Sec. 10 of the law declared, "The electors shall determine by ballot, at the annual election to be held in November next, whether this act shall or shall not become a law." This law was three times passed upon by the District Supreme Courts before reaching the Court of Appeals. It was declared unconstitutional in the latter court, in 1853, *Barto* v. *Himrod*, 4 Seld., N. Y., 483 (see p. 112).

In 1858, in *Bank of Rome* v. *Village of Rome*, 18 N. Y., 38, the Court of Appeals declared to be constitutional a law authorizing municipal corporations to submit to electors, who were taxpayers, the question

of subscribing money to aid in the construction of railroads. The Court held that this was not a delegation of legislative power within the scope of the case of *Barto* v. *Himrod*. A distinction was made between acts relating to the whole State and those relating to local communities. The case under review was said to be, in substance, "only a submission to a vote of the parties interested of the question whether or not they chose that the municipal corporation should subscribe to the railroad."

A similar law was declared to be constitutional in *Starin* v. *Town of Genoa*, 23 N. Y., 439, and *Gould* v. *Town of Sterling*, *Id.*, 456. In the latter case the Court said: "It was not submitted to the people of the town in any form whether the act, or any portion of it should take effect. All that was submitted to them was the fundamental question whether it was expedient to avail themselves of the power which the statute conferred."

In 1863, *Bank of Chenango* v. *Brown*, 26 N. Y., 467, a case came up for decision arising out of a general act for the incorporation of villages, which provided that before it should go into effect in any village it should be accepted by a vote of the inhabitants thereof. The Court found it constitutional, and said: "It is a material distinction between the cases [this case and *Barto* v. *Himrod*] that the people of a particular municipality or local body are not the constituents of the Legislature. They are not the people of the State of New York, who have irrevocably committed their power of legislation to the Legislature by a delegation which does not permit that Legislature to remand any legislative question to their constituency. A city or a town, or a village, is a separate recognized local body, which, without exercising legislative power, may signify, if permitted, its assent or dissent to any grant or withdrawal of powers or privileges. The vote of the whole people of the State upon a question of the expediency of a general statute may be essentially an act of legislation. The vote of a local constituency is an assent or dissent to an act of grant or deprivation done by the Legislature, but affecting themselves."

This opinion was affirmed in *Clarke* v. *City of Rochester*, 28 N. Y., 605, in which case it was a question of the constitutionality of a law, submitting to the inhabitants of Rochester a proposition to subscribe stock to a railroad company. The Court here said: "While general statutes must be enacted by the Legislature, it is plain the power to make local regulations having the force of law in limited localities may be committed to other bodies representing the people in their local divisions, or to the people of those districts themselves. Our whole system of local government in cities, villages, counties and towns depends upon that distinction. The practice has existed from the foundation of the State, and has always been considered a prominent feature in the

American system of government. . . . I do not say that it can be submitted to the electors of a city or village to determine what power its local legislature shall possess, but only that these bodies may be made the depositories of such powers of local government as the Legislature may see fit to prescribe, and the exercise of which is not repugnant to any of the general arrangements of the Constitution."

In a later case the Court upheld a provision in a village charter providing for the submission of the question of license or no license, *Village of Gloversville* v. *Howell*, 70 N. Y., 287.

NORTH CAROLINA.

Constitution of 1776. The first Constitution of North Carolina, framed in 1776, was not submitted to the people, and contained no recognition of their right to direct consultation in the making of laws. A number of amendments proposed by a convention in 1835, were submitted to popular vote. These amendments contained a provision authorizing constitutional change upon initiation of the Legislature. This could be done by three-fifths adoption by one Legislature, two-thirds adoption by the next, and majority approval of the people. Two ordinances, one repealing the ordinance of secession, and the other prohibiting slavery, were referred to the people in 1865, and were adopted.

Constitution of 1868. A new Constitution submitted in 1866 was rejected. Another convention was called, which framed the Constitution of 1868. It was submitted to the people. Art. V, Sec. 5, of this instrument said: "The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or of railroads in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State and be approved by a majority of those who shall vote thereon."

Art. VII, Sec. 7, said: "No county, city, town or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein."

Amendments were to be adopted as by the last Constitution: Three-fifths vote of one Legislature, two-thirds vote of the next, and a majority vote of the people.

Constitution of 1876. The Constitution of 1868 was amended and again submitted to the people in 1876. Both the sections given above as parts of the Constitution of 1868, providing for the submission

of questions relating to the contraction of debt in the State and in the municipalities were continued in the amended Constitution of 1876. The process of amendment was simplified, three-fifths passage by a single Legislature, followed by majority approval of the people, being stated as sufficient to accomplish adoption. The Legislature at any time by a two-third votes may submit the question of "Convention" or "No convention."

Statutes. The statutes provide for a vote in counties, townships or districts on the question of allowing live stock to run at large, the election to be held, though not oftener than once in any one year, upon written application of one-fifth of the qualified electors. The proposition must be stated on the ballots, "Stock law," or "No stock law." Upon petition of one-fourth of the qualified voters of any county, town or township there must be submitted to the people therein on the first Monday in May of any year, the question whether liquor shall be sold or not; the ballots to contain the words, "Prohibition" or "License." Townships, cities or towns having 2,000 inhabitants may vote on the establishment of graded schools and the levy of a tax therefor. School districts may levy a special tax to assist in the support of white or colored schools upon direct affirmative vote of the white or colored voters of the district, as the case may be.

Opinions by the Courts. The Supreme Court, in *Manly* v. *City of Raleigh*, 4 Jones' Eq., 370, a case decided in 1859, declared that the Legislature could pass laws depending on a vote of the people. It reviewed *Barto* v. *Himrod* (N. Y.), and, notwithstanding, said: "This decision, and the reasoning offered in support of it, fail to satisfy us that the Legislature has *not the power* to pass a law dependent upon a vote of the people or the acceptance of a corporation. It is certain the Legislature has power to pass a law to ascertain these facts, and may afterwards make a law in conformity thereto. . . . It is not denied that a valid statute may be passed to take effect upon the happening of an uncertain future event upon which the Legislature in effect declares the expediency of the law depends, and when it is provided that a law shall not take effect unless a majority of the people vote for it or it is accepted by a corporation, the provision is, in effect, a declaration that, in the opinion of the Legislature, the law is not expedient unless it be so voted for or accepted. All legislative power is vested in the General Assembly, restricted only by the Constitution. There is no prohibition in the Constitution against this mode of legislation." This view has been sustained by the Court several times, as in 1882, *Cain* v. *Commissioners*, 86 N. C., 8, a case arising out of a "Fence Law." The Court decided that this was not a transfer of legislative power to the people, it being simply a law to take effect upon "the happening of a

contingent event." Also, *Newsom* v. *Earnheart*, 86 N. C., 391, in which the Court said that, "certainly the power to pass laws, operating within a limited locality has been too long exercised by the General Assembly to be now called into question, and it is well settled that its operation at all may be made to depend upon the will of the electors within its bounds, expressed at the ballot box."

NORTH DAKOTA.

Constitution of 1889. The Constitution of North Dakota was adopted by popular vote in 1889. An article prohibiting the liquor traffic was submitted as a separate proposition. Art. V., Sec. 122, says: "The Legislative Assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion, to all citizens of mature age and sound mind, not convicted of crime, without regard to sex; but no law extending or restricting the right of suffrage shall be in force until adopted by a majority of the electors of the State voting at a general election." A change in county boundaries is made the subject for a vote of the people. Counties may take up township organization or discontinue it again upon vote of the people.

Art. VIII, Sec. 147, says: "The Legislative Assembly shall make provision for the establishment and maintenance of a system of public schools, which shall be open to all children of the State of North Dakota, and free from sectional control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota."

Art. XII, Sec. 185, says: "Neither the State nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association, nor shall the State engage in any work of internal improvement unless authorized by a two-thirds vote of the people."

The method of amendment is: Majority vote of two successive Legislatures and a majority vote of the people.

OHIO.

Constitution of 1802. This Constitution was not submitted to the people, and it contained no recognition of the Referendum except in its method of amendment, which was only by convention. The proposition for the calling of a convention could be submitted to the people whenever the General Assembly, by a two-thirds vote, should deem it necessary.

The **Constitution of 1851**, the present Constitution of the State, was submitted to the people. A section prohibiting, within the State, the granting of licenses for the sale of liquor was submitted as a separate proposition. This Constitution provides that "all laws creating new counties, changing county lines, or removing county-seats," shall be submitted to popular vote before going into effect. Another section provides as follows: "No act of the General Assembly authorizing associations with banking powers shall take effect until it shall be submitted to the people at the general election next succeeding the passage thereof, and be approved by a majority of all the electors voting at such election."* Amendments are adopted after three-fifths passage by each house of one Legislature and majority ratification by the people. Two-thirds of each house agreeing, the Legislature may at any time submit the question of calling a convention. This question must be submitted in any case once every twenty years. The first election was fixed for 1871.

Statutes. The statutes of the State contain many examples of the Referendum. In addition to questions of organization, change of boundaries and removal of the seats of justice, the people in counties vote on a number of tax and bond questions. "The county commissioners shall not levy any tax or appropriate any money for the purpose of building public county buildings, purchasing sites therefor or lands for infirmary purposes or for building any bridge, except in case of casualty, the expenses of which will exceed $10,000, without first submitting [such propositions] to the voters of the county." The county commissioners, when public interest may to them seem to demand it, or upon petition of the tax-payers, may submit the question of establishing a children's home, and the issue of county bonds to provide funds for the purchase of a site and the erection of a suitable building. Commissioners of counties through which the national road passes, when consent of Congress is secured, may submit the question whether it shall be purchased and converted into a free turnpike. The commissioners may also submit the question whether a tax, not exceeding one-half mill on the dollar, shall be levied upon the taxable property of the county to erect a monument within the county in memory of those who died or were killed during the Civil War.

Townships and the smaller municipal corporations may likewise issue bonds or levy taxes for special purposes, such as erecting offices or infirmaries, constructing bridges, vaults or cisterns, purchasing sites for improvements, purchasing fire engines, hose and apparatus, building, improving or freeing a turnpike, borrowing money to cover a

*The State Supreme Court in *Dearborn* v. *Bank*, 42 O. S., 617, decided that this restriction applied only to banks of issue.

deficiency arising by defalcation or other cause, or to pay bond claim or indebtedness or for making any improvement of a local character, if the question is first submitted to and approved by a vote of the people. Township trustees may submit the question of "Cemetery" or "No cemetery." They may, on petition, if a village of more than 1,000 inhabitants is situated in the township, submit the question of establishing and levying a tax for a public library. They must submit questions relating to the removal, enlargement or improvement of the town hall and the construction of free turnpikes. Real estate and buildings belonging to the township can only be sold upon a vote of the people. School lands cannot be sold except with the popular consent. The trustees may levy a tax to purchase a hearse and build a funeral vault for the use of the township, if the people approve, the propositions to be voted on separately as follows: "Tax for hearse—Yes;" "Tax for hearse—No." "Tax for vault—Yes;" "Tax for vault—No."

In 1888 a law was passed giving the townships the right to vote "For the sale" or "Against the sale" of liquor, the elections to be held not oftener than once in two years; the question to be submitted by the trustees upon petition of one-fourth of the qualified electors of the township. Election precincts within the township may be consolidated by vote of the people. In the school districts the people may elect whether they shall organize under the State law. They must also vote upon the purchase of school sites, the erection of buildings or any question which involves the expenditure of a greater sum of money than the law authorizes, and which contemplates either a tax levy or a bond issue. Upon a vote of the people, two or more school districts may unite for the erection and maintenance of a high school. The annexation of one municipal corporation to another can only be accomplished after popular vote. The municipal corporations of the State are arranged in grades, and the people vote upon the question of advancing or reducing the grade. Cities vote upon issuing bonds to build waterworks and upon other municipal bonding questions.

Opinions by the Courts. It was very usual, earlier in the history of railroad development, for the Legislature to pass laws authorizing counties and other local subdivisions of the State to subscribe to the capital stock of railroad companies, the subscription being conditioned upon the consent of the people. One of these cases reached the State Supreme Court at the March term, 1852, *C. W. & Z. R. R. Co.* v. *Clinton County*, 1 O. S. 77. The Court here gave a very complete review of this kind of legislation, and in vigorous terms established the policy of the State on this important question. "That the General Assembly cannot surrender any portion of the legislative authority with which it is invested, or authorize its exercise by any other person

or body," the Court said, "is a proposition too clear for argument, and is denied by no one. . . . The people, in whom it resided, have voluntarily relinquished its exercise, and have positively ordained that it shall be vested in the General Assembly. It can only be reclaimed by them by an amendment or abolition of the Constitution, for which they alone are competent." But while this is plain, the Court thought it impossible that laws might not be passed requiring "the intervening assent of other persons," or containing provisions which would prevent their taking effect "only upon the performance of conditions expressed in the law." Such a law, the Court continued, is "perfect, final and decisive in all its parts, and the discretion given only relates to its execution. It may be employed or not employed; if employed, it rules throughout; if not employed, it still remains the law, ready to be applied whenever the preliminary condition is performed. The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

The Court, however, drew a distinction between this case and the Delaware case, *Rice* v. *Foster*, and other cases involving the constitutionality of local option liquor laws, and expressed its opinion that such laws would not be constitutional.*

A reversal of judgment in regard to this latter feature of the subject came in December, 1889, in *Gordon* v. *The State*, 46 O. S., 607. Here the question before the Court was the constitutionality of a township local option liquor law. The Court said, concerning its being a delegation of legislative power, while "it is a settled maxim that when the people, in their sovereign capacity, have, by the Constitution, conferred the law-making power upon the Legislature, that department cannot delegate such power to any other body;" yet, "in the exercise of the duties devolving upon the legislative branch of the State government, it is manifest that discretion and judgment are required not only in determining the subject-matter of legislation, but not infrequently in ordering the conditions or contingencies upon which laws are to be carried into effect. . . . In requiring such proceedings prior to the enforcement of a law the Legislature need not be prevented from keeping within the strict line of its authority. . . . The doctrine is generally accepted that it is within the scope of the legislative power to enact laws which shall not take effect until the happening of some particular event or in some contingency thereafter to arise, or upon the performance of some specified condition. May not the execution

* See also 8 O. S., 564.

of a law depend upon the condition of a popular vote as well as upon any other fair and reasonable contingency?" The Court concluded that it might, and upheld the law as constitutional.

OREGON.

Constitution of 1857. The first, and present, Constitution of Oregon, framed in 1857, was submitted to the people along with two separate propositions, the people, when they voted for or against the Constitution, being asked, "Do you vote for slavery in Oregon—Yes or No?" and also, "Do you vote for free negroes in Oregon—Yes or No?" It was provided that the question of the selection of a permanent seat of State government should be submitted to the people by the Legislative Assembly, at its first session after the adoption of the Constitution. The Constitution further required that no removal of the capital should be made within twenty years from the time of establishment. Amendments are adopted after majority vote of two Legislatures and majority ratification of the people.

Statutes. Towns, cities or counties may vote on the levy of an annual tax to establish a fund "to aid in the construction or repair of any public highway or river improvement." Counties may determine, also, on popular vote whether or not swine shall be allowed to run at large. School taxes are levied and loans are authorized by the people in district mass meetings.

Opinions by the Courts. The Supreme Court, in *David* v. *Portland Water Committee*, 14 Oregon, 98, in a case not directly bearing upon, yet allied to, the question as to the relative rights of the people and the Legislature in law-making, said: "The people of this State possessed originally all legislative power, subject to the restrictions contained in the Constitution of the United States, and they have invested the Legislative Assembly with that power to the fullest extent, except so far as they expressly inhibited its exercise [in the Constitution]. The question in such cases is not as to the extent of power that has been delegated by the people to the Legislative Assembly, but as to the limitations they have imposed upon that body."

PENNSYLVANIA.

Constitutions of 1776 and 1790. The first two Constitutions of Pennsylvania, framed by conventions which met in Philadelphia in 1776 and 1790, were not submitted to the people, nor did they contain any examples of the Referendum.

The **Constitution of 1838** was ratified by direct popular vote. It provided a means for its own amendment; such propositions before

adoption to have majority passage by two successive Legislatures and majority approval by the people. An amendment, approved in 1857, provided for a popular vote in any county in case of proposals to alter its boundaries and cut off over one-tenth of its population.

The **Constitution of 1873,** the present Constitution of the State, was submitted to the people. Art. III, Sec. 27, says: "No law changing the location of the capital of the State shall be valid until the same shall have been submitted to the qualified electors of the Commonwealth at a general election and ratified and approved by them."

Art. IX, Sec. 8, says: "The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as herein provided, shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt, or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property, without the assent of the electors thereof at a public election, in such manner as shall be provided by law."

Cities may be chartered whenever a majority of the electors of any town or borough, having a population of at least 10,000, vote to be so incorporated. No township, ward, district or borough shall elect more than two justices of the peace or aldermen without the popular consent in such township, ward, district or borough. The method of amendment is: Majority vote of two Legislatures and majority approval by the people.

Statutes. The general statutes furnish several other cases of law-making by popular vote in the minor political divisions of the State. In counties the people may vote—to select sites for almshouses, when the question is submitted by the county court; to accept the provisions of a poor law which passed the Legislature in 1877; to repeal the provisions of an old fence law; to form a new county; to locate the county-seat; to accept the provisions of a law of 1878, called the "sheep law," establishing a fund by the levy of a dog tax to pay for the loss of sheep. In cities, councils may purchase land for park purposes after securing the popular assent. In city wards when division is proposed the question must be submitted to the people. The people of boroughs may vote to become incorporated under a city government, and to build or purchase water-works. By an act passed in 1842, the people of townships could vote to accept, or not, provisions authorizing a subscription to the stock of turnpike companies. There is popular vote in townships now on the following questions: Consolidation or division of townships, formation of a new township, completion of uncompleted public or State roads, increase or decrease in the number of supervisors.

Opinions by the Courts. The first review of legislation of this class in the State Supreme Court is reported in 6 Barr, 507. This is the case of *Parker* v. *Commonwealth*, which has been liberally cited from by the courts of many States ever since. The opinion was delivered in November, 1847. The case arose out of the law of 1846, giving the people of boroughs, wards and townships in certain counties the right to vote at annual elections "For the sale of liquors" or "Against the sale of liquors." The Court discussed the theory of constitutional government, and reviewed and considered laws of a similar kind which had been earlier passed by the Legislature of the State. It insisted then upon a strict construction of the Constitution, and said: "Mindful of the ancient institutions of the country, and following the example set by the Federal Constitution, the people of Pennsylvania, when ordaining and establishing a fundamental law for the government of the Commonwealth, decreed that the legislative power shall be vested in a General Assembly, to consist of a Senate and House of Representatives, to be elected at stated periods by the citizens of the respective counties. They thus solemnly and emphatically divested themselves of all right, directly, to make or declare the law, or to interfere with the ordinary legislation of the State, otherwise than in the manner pointed out in Art. IX, Sec. 20, which declares 'the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.' . . . To exercise the power of making laws delegated to the General Assembly, is not so much the privilege of that body as it is its duty, whenever the good of the community calls for legislative action. No man is bound, under the Constitution, to accept the office of a legislator, but he who does so accept, cannot, rightfully, avoid the obligations it imposes, or evade the constitutional responsibilities incident to it. . . . It is a duty which cannot be transferred by the representative; no, not even to the people themselves, for they have forbidden it by the solemn expression of their will that the legislative power shall be vested in the General Assembly; much less can it be relinquished to a portion of the people, who cannot even claim to be the exclusive depositories of that part of the sovereignty retained by the whole community. An attempt to do so would be not only to disregard the constitutional inhibition, but tend directly to impress upon the body of the State those social diseases that have always resulted in the death of republics, and to avoid which the scheme of a representative democracy was devised and is to be fostered."

The law under review was said to entirely depend for its vitality upon an affirmative popular vote, that being neither "mandatory or

obligatory" when it left the Legislature, it plainly could be nothing else than a delegation of legislative power, and the law was, therefore, unconstitutional. The Court recognized such a thing as a conditional law but did not regard this one as belonging to that class.

The Court the next year, *Commonwealth* v. *Judges*, 8 Barr, 391, the same justice delivering the opinion, was called upon to decide as to the constitutionality of a special law giving to the qualified voters of two townships a choice whether they should continue as one township or as separate townships. This the Court said was a constitutional proceeding, and explained that the decision in *Parker* v. *Commonwealth* "settled nothing more than that the General Assembly of the Commonwealth could not delegate to the people a power to enact laws by the exercise of the ballot affecting the property and binding the political and social rights of the citizens. But the erection of a township, or the creation of a new district for merely municipal purposes or convenience in the transaction of the public business is in no degree similar to the exercise of law-making; the one being an exercise of sovereignty, the other in its very nature a subordinate function." The opinion stated that similar powers had been conferred by the Legislature on other bodies. "If the Legislature can authorize the courts to decide questions of this character, they can also authorize the people primarily to do so. If the power can be given to a selected few, it may also be delegated to all the inhabitants of a district, unless positively prohibted."

A similar decision followed in 1849, *Commonwealth* v. *Painter*, 10 Barr, 214. The case arose from an act of Legislature passed in 1847, authorizing a vote of the people on the question of removing the county-seat of Delaware county. The law was pronounced to be constitutional.

Another case, *Moers* v. *City of Reading*, is reported in 21 Penn., 188. It arose from a law passed by the Legislature in 1853, authorizing the corporate authorities of the city of Reading after getting the consent of the people at an election, to subscribe stock to the Lebanon Valley Railroad Company. The Court here said: "It is argued that this is not an exercise of legislative power by the Assembly, but a mere delegation of it to the people of Reading. We cannot see it in that light. Half the statutes on our books are in the alternative, depending on the discretion of some person or persons to whom is confided the duty of determining whether the proper occasion exists for executing them. But it cannot be said that the exercise of such a discretion is the making of the law." This view was further affirmed in *Smith* v. *McCarthy*, 56 Penn., 359, in the case of a law passed by the Legislature in 1867, annexing territory to the city of Pittsburgh as a result of a popular vote. The Court held the law to be constitutional.

The most important opinion in the group came in 1873. It was delivered by Justice Agnew in the case of *Locke's Appeal*, 72 Penn., 491, and resulted in an open reversal of *Parker* v. *Commonwealth*. It arose out of a special law of Assembly authorizing the people in a certain ward of Philadelphia to determine whether liquor should be sold therein. The Court said: "The law is simply contingent upon the determination of the fact whether licenses are needed, or are desired, in this ward. And why shall not the Legislature take the sense of the people? Is it not the right of the Legislature to seek information of the condition of a locality or of the public sentiment there? The Constitution grants the power to legislate, but it does not confer knowledge. The very trust implies that the power should be exercised wisely and judiciously. Are not public sentiment and local circumstances just subjects of inquiry? A judicious exercise of power in one place may not be so in another. Public sentiment or local condition may make the law unwise, inapt or inoperative in some places and otherwise elsewhere. Instead of being contrary to, it is consistent with, the genius of our free institutions to take the public sense in many instances, that the legislators may faithfully represent the people, and promote their welfare. So long, therefore, as the Legislature only calls to its aid the means of ascertaining the ability or expediency of a measure, and does not delegate the power to make the law itself, it is acting within the sphere of its just powers. It is argued that *Parker* v. *Commonwealth*, 6 Barr, 507, decided the question before us. That case was overruled soon after it was decided, not in express terms it is true, but its foundation was undermined when it was held that laws could constitutionally be made dependent on a popular vote for their operation."

The Court said, in continuance: "Take the case of granting a license to keep an inn or sell liquor. The judge determines whether the license is necessary, and, if not necessary, the law says to the applicant, 'No license.' The law takes effect just as the judge determines, yet who says it is the court that legislates? What is the difference in essence whether the necessity for places for the sale of liquors be determined by the people or the court? Each in its place is but an instrumentality of the law. . . . The true distinction, I conceive, is this: The Legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. To deny this would be to stop the wheels of government."

The opinion concluded: "I have not thought it necessary to refer to the decisions in other States, for the plain reason that our own decisions since *Parker* v. *Commonwealth* rule the case, while that case

was the forerunner of the decisions in all the other States (except Delaware) and with its fall they have lost their chief prop and support."

RHODE ISLAND.

Constitution of 1842. The State of Rhode Island continued to be governed by the provisions of the old charter, granted to the colony in 1663 by King Charles II, until 1842. In that year a convention met and framed the present Constitution of the State. It was submitted to the people. Art. IV, Sec. 13, of this instrument says: "The General Assembly shall have no power hereafter without the express consent of the people to incur State debts to an amount exceeding $50,000, except in time of war or in case of insurrection or invasion." The Constitution can be amended by a majority vote of two successive Legislatures and three-fifths approval by the people.

Statutes. The town-meeting system is employed in the enactment of local legislation. Mass meetings of the people are held likewise in school districts for determining questions of local school administration. The people in cities vote on some questions involving the imposition of taxes and expenditure of public money. The Legislature has also passed laws allowing the people of Providence and other cities to vote whether a tax should be levied for the establishment and support of a public library, to decide whether licenses should be granted for the sale of intoxicating liquors, etc.

Opinions by the Courts. The Supreme Court, in 1854, *State* v. *Copeland*, 3 R. I., 33, touched upon the question of the constitutionality of such legislation. The case arose from a liquor law giving the right of repeal to the people of the towns. The point was made that this was a delegation by the Legislature of its law-making power. The Court, while recognizing that the Constitution had vested "in the General Assembly alone, composed of the two Houses, the power of enacting laws," and that such power had been "confided to them as a high trust," not to be delegated, dismissed the case without further expressing its opinion. The Court argued that the vote, having not been to repeal the law, the question of constitutionality did not arise.

SOUTH CAROLINA.

Early Constitutions. Neither the Constitutions of 1776 nor 1778, nor was the Constitution of 1790, submitted to the people. The latter provided for its own amendment by two-thirds passage through two successive Legislatures, without a vote of the people. The Constitution of 1865 was likewise not submitted to the people. There were no provisions for a Referendum, not even in the adoption of amendments.

The **Constitution of 1868,** the present Constitution of the State, was ratified by popular vote. The people must be consulted as to the calling of a constitutional convention whenever the Legislature, by a two-thirds vote, may submit the question. The process of amendment by Legislature also includes a vote of the people. Amendments may be submitted after a two-thirds vote of both branches of the Legislature. If approved by a majority popular vote the amendment returns to the Legislature to be again passed by a two-thirds vote of that body, in which event it becomes a valid part of the Constitution. An amendment thus adopted in 1873 provides: "To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt or obligation, either by loan of the credit of the State, by guarantee, endorsement, or otherwise, except for ordinary and current business of the State, without first submitting the question as to the creation of any such new debt, guarantee, endorsement or loan of its credit to the people of this State at a general State election, and, unless two-thirds of the qualified voters of this State, voting on the question, shall be in favor of a further debt, guarantee, endorsement, or loan of its credit, none such shall be created or made."

Statutes. The statutes of the State authorize county commissioners to borrow money for certain purposes after the question is submitted to the people and approved by a two-thirds vote. The Legislature has passed special laws requiring a vote of the people in the relocation of county-seats, the erection of poor-houses, etc. A liquor law, adopted in 1882, authorized the municipal authorities in incorporated cities, towns or villages to submit the question of "license" or "no license," upon the petition of one-third of the voters of such local district. The law of 1892 permits county dispensaries for liquors, upon the option of the people.

SOUTH DAKOTA.

Constitution of 1889. The Constitution of South Dakota was framed by a convention which met in 1889, and it was submitted to the people, together with three separate propositions, one providing for the prohibition of the liquor traffic, another for minority representation in the Legislature, and the third for the temporary location of the State capital.

Art. VII, Sec. 2, says: "The Legislature shall, at its first session after the admission of the State into the Union, subject to a vote of the electors of the State the following question to be voted upon at the next general election held thereafter, namely: Shall the word 'male'

be stricken from the article of the Constitution relating to elections and the right of suffrage. If a majority of the votes cast upon that question are in favor of striking out said word 'male,' it shall be stricken out, and there shall, thereafter, be no distinction between males and females in the exercise of the right of suffrage at any election in this State."

Sections of Art. IX provide for a vote of the people in the counties on the questions of change in county boundaries and the location and relocation of county-seats. Art. XX provided for a vote of the people of the State upon the question of the permanent location of the seat of government. In case there should be no choice at the first election a subsequent election was to be held from the two places highest on the list. The mode of amendment is: Majority vote of one Legislature and majority approval by the people. The Legislature, whenever it chooses, can by a two-thirds vote submit the question of calling a constitutional convention.

TENNESSEE.

Constitution of 1796. The first Constitution of Tennessee was framed by a convention which met in 1796. It was not submitted to the people, and by its terms they were not granted a direct vote on any question except the calling of a convention. This question could be submitted at a general election at any time by a two-thirds vote of the Legislature, ; approval of the people consisted in the affirmative vote of "a majority of all the citizens of the State voting for representatives." There was no other method of constitutional amendment.

The **Constitution of 1834** was submitted to the people. Art. X, Sec. 4, contained the following provision: "No part of a county shall be taken to form a new county, or a part thereof, without the consent of a majority of the qualified voters in such part taken off." Single constitutional amendments could be adopted by the majority vote of one Legislature, a two-thirds vote of the next, and a majority vote of the people. Certain amendments and constitutional declarations framed by a convention which met in 1865, abolishing slavery and restoring the State to its former standing in the Union, were submitted to the people.

Constitution of 1870. The present Constitution of the State, framed in 1870, was adopted by direct vote of the people. It provides for a popular vote in counties, cities or towns, when the question is to loan credit or subscribe stock to companies or corporations. The assent of three-fourths of those voting on such propositions is necessary to effect passage. The organization of new counties, change of county

lines and the relocation of county-seats, are also made subjects for popular vote The Constitution may be amended after majority vote of one Legislature, two-thirds vote of the next and majority approval by the people.

Statutes. The statutes provide, in addition, for a popular vote in counties on the question of bond issues to construct levees to prevent river overflows, the ballots to read, "Levee" or "No Levee." The people of towns and cities may vote to incorporate and to extend or contract the municipal territory; also to levy a special school tax. The county courts may submit the question in school districts of an additional levy to prolong the school term.

Opinions by the Courts. The State Supreme Court discussed the constitutional side of this custom of referring laws to popular vote at the December term, 1854, *Railroad Company* v. *Davidson County*, 1 Sneed, 640. The case arose from the Internal Improvement Act of 1852, by which counties were authorized, upon a vote of the people, to subscribe stock to railroad companies. The Court said: "The question of the constitutionality of a general act of the Legislature which is made in terms to depend for its vitality . . . upon a vote of the people in its favor has been very much agitated in the last few years, and in the courts of our sister States conflicting decisions have been made upon it. . . . The writer of this opinion would say for himself that he is not able to see anything in the constitution which would invalidate an act of the Legislature on account of such a condition. It is easy to see many objections to it on the score of expediency; that it would be troublesome to the people; might be resorted to by the members for the purpose of avoiding responsibility to their constituents; protract the enactment of proper laws and unnecessarily agitate the people. And, on the other hand, it might save them from hasty, crude and unacceptable legislation; yet that does not prove anything upon the question of constitutionality. . . . It would seem that in a popular government if any condition could be tolerated under the constitution it would be this; and that in making any great change in the policy of a State it would not be incompatible with our institutions to suspend the same until the sanction of those upon whom it was to operate should be obtained, to the distinct measure proposed, as well after it has been matured by the Legislature by a vote of the people as before by instructions. It is true the power to make laws has been surrendered by the people and vested in the Legislature, so that no law can be made by or emanate from them; but this does not prove that it would be an infringement of the constitution for their representatives to call for and defer to their opinions, on the subject of a new law fully matured by them in all its parts, before it shall go into effect."

TEXAS.

Constitution of 1845. The first Constitution of the State of Texas was submitted to the people in 1845. At the same election the people expressed themselves for and against annexation to the United States. Art. III, Sec. 35 of this Constitution provided: "In order to settle permanently the seat of government, an election shall be held throughout the State at the usual places of holding elections, on the first Monday in March, one thousand eight hundred and fifty, which shall be conducted according to law; at which time the people shall vote for such place as they may see proper for the seat of government. The returns of said election to be transmitted to the government by the first Monday in June; if either place voted for shall have a majority of the whole number of votes cast, then, the same shall be the permanent seat of government until the year one thousand eight hundred and seventy, unless the State shall sooner be divided. But in case neither place voted for shall have the majority of the whole number of votes given in, then, the governor shall issue his proclamation for an election to be held in the same manner on the first Monday in October (1850) between the two places having the highest number of votes at the first election. The election shall be conducted in the same manner as the first, and the returns made to the governor, and the place having the highest number of votes shall be the seat of government for the time herein before provided." The Constitution could be amended by two-thirds vote of one Legislature, followed by a majority vote of the people, and a two-thirds vote of the next succeeding Legislature. The Ordinance of Secession of 1861 was submitted to popular vote.

The **Constitution of 1866** was voted on by the people. This instrument declared the city of Austin "to be the seat of government of the State until removed by an election of the people." The method of amendment was the same as that prescribed in the Constitution of 1845.

The **Constitution of 1868** was submitted to the people. Another election was authorized "to settle permanently the seat of government." Art. V, Sec. 6, provided for the appointment of judges by the governor, and authorized a vote of the people at the first general election after July 4, 1876, as to whether the system of election of judges of Supreme and District Courts formerly in vogue in the State should be returned to. Art. XII, Sec. 32, said: "The inferior courts of the several counties in this State shall have the power, upon a vote of two-thirds of the qualified voters of the respective counties, to assess and provide for the collection of a tax upon the taxable property to aid in the construction of internal improvements; provided that said tax shall never exceed

2 per cent. upon the value of such property." There was no change in the method of adopting constitutional amendments.

The **Constitution of 1876,** still in force in the State, was approved by the people. Art. VII, Sec. 10, says: "The Legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this State and styled "The University of Texas."*

Art. VII, Sec. 14, says: "The Legislature shall also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the State, to be located by a vote of the people."

The change of county lines and removal of county-seats are also made subjects for popular vote. Art. XI, Sec. 7, declares: "All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of two-thirds of the tax-payers therein (to be ascertained as may be provided by law) to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof." Another section authorizes the Legislature to constitute any city or town "a separate and independent school district;" a special school tax to be levied therein upon the vote of two-thirds of the tax-payers.

Art. XVI, Sec. 20, says: "The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, justice's precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the

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*Accordingly, the Legislature passed a law in 1881, which provided as follows: "There shall be established in this State, at such locality as may be determined by a vote of the people, an institution of learning, which shall be called and known as the University of Texas. The medical department of the university shall be located, if so determined, by a vote of the people at a different point from the university proper, and as a branch thereof; and the question of the location of said department shall be submitted to the people, and voted on separately from the proposition for the location of the main university." The election was set for the first Tuesday of September in 1881. The law further provided, "All localities put in nomination for the location of the university shall be forwarded to the governor, at least forty days anterior to the holding of said election, and the governor shall embrace in his proclamation ordering said election the names of said localities, provided that any citizen may vote for any locality not named in said proclamation. The locality receiving the largest number of votes shall be declared elected, and the university shall be established at such locality, provided that the vote cast for said locality shall amount to one-third of the votes cast, but if no place shall receive one-third of the entire vote cast, another election shall be ordered within ninety days of the first election, between the two places receiving the highest number of votes, and the one receiving the highest number at said second election shall be declared to be selected by the people as the location of the University of Texas."

As a result of this Referendum, the University of Texas was located at the city of Austin. The medical department of the university was located at the city of Galveston.

prescribed limits." Sec. 23 of the same article says: "The Legislature may pass laws for the regulation of live stock, . . . provided that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby, and approved by them before it shall go into effect."

The mode of amendment is: Ttwo-thirds vote of one Legislature and majority approval by the people.

Statutes. In obedience to the requirements of the Constitution the Legislature has passed a local option liquor law authorizing the commissioners' court of any county, either upon its own motion or upon petition of the people, to order an election in the county or any justice's precinct, town or city, to determine whether or not intoxicating drink shall be sold therein. The election in any such district must not be held oftener than once in two years. The Legislature has also enacted a local option stock and fence law, the county court, upon petition of fifty freeholders in any county, or twenty freeholders in any subdivision of a county, to submit the question whether "hogs, sheep or goats shall be permitted to run at large."

Towns and villages may vote for incorporation, for amendments to their charters, and for abolition of the corporate franchises. Cities and towns may vote upon the questions of annexation or withdrawal of municipal territory. They may vote to organize themselves into free school districts, and to levy a tax not exceeding one-half of one per cent. *ad valorem* for school purposes. School districts in the counties may, upon popular vote, levy a tax not to exceed in any year 20 cents on the $100 of property valuation within the district. At least two years elapsing, subsequent to levying the tax on itself, a district may at any time vote to abrogate it, or increase or diminish it.

Opinions by the Courts. The question as to the constitutionality of this class of legislation was discussed by the Supreme Court in 1856, *State* v. *Swisher*, 17 Texas, 441. The Legislature had passed a county local option liquor law in February, 1854. The Court declared the law to be unconstitutional, and said: "The mode in which acts of the Legislature are to become laws is distinctly pointed out by our Constitution. After an act has passed both Houses of the Legislature, it must be signed by the Speaker of the House and President of the Senate. It must then receive the approval of the Governor. It is then a law. But, should the Governor veto it and send it back, it can only become a law by being passed again by both Houses by a constitutional majority. There is no authority for asking the approval of the voters at the primary election in the different counties. It only requires the votes of their representatives in a legislative capacity. But, besides the fact that the Constitution does not provide

for such reference to the voters to give validity to the acts of the Legislature, we regard it as repugnant to the principles of the representative government formed by our Constitution. Under our Constitution the principle of law-making is that laws are made by the people, not directly, but by and through their chosen representatives. By the act under consideration this principle is subverted and the law is proposed to be made at last by the popular vote of the people, leading inevitably to what was intended to be avoided—confusion and great popular excitement in the enactment of laws."

Several times this opinion has been explained away and overruled. In *San Antonio* v. *Jones*, 28 Texas, 32, a law submitting to the people of the city whether it should subscribe for railroad stock was declared to be constitutional. In *Werner* v. *City of Galveston*, 72 Texas, 22, the Court said: "It is well settled that the Legislature cannot delegate its authority to make laws by submitting the question of their enactment to the popular vote. . . . But it does not follow from this that the Legislature has no authority to confer a power upon a municipal corporation and authorize its acceptance or rejection by the municipality according to the will of the voters."

The subject was further reviewed in *Johnson* v. *Martin*, 75 Texas, 33, when it was said, that the privilege of the electors of a district to be affected by a law to say whether they will accept its provisions, the law giving them the right to accept or reject it, is now generally permitted and regarded as constitutional. Such a law was justified upon the ground that it takes effect upon the "happening of a subsequent event." A local option liquor law passed in 1876 was thoroughly reviewed at the term of 1883 by the Court of Appeals, 14 Texas Court of Appeals, 505. The rule was then stated to be, that although the Legislature could not delegate the power to make laws, it could enact a law to delegate the power to determine some fact or state of things upon which the validity of the law may depend, which fact or state of things may be a vote of the people.

VERMONT.

Early Constitutions. The first Constitutions of Vermont, framed in 1777 and 1786 before the admission of the State to the Union, were drafted after the model of the Pennsylvania Constitution of 1776. They were not submitted to the people, and contained no examples of the Referendum, amendments being made by convention which was to be called by a "Council of Censors" whenever the latter body might deem constitutional revision necessary.

Constitution of 1796. Another Constitution, framed in 1793, went into force in 1796, also without a vote of the people. This Constitution,

with amendments, is still the organic law of Vermont. The method of amendment by Council of Censors and convention continued until 1870. In that year an amendment was adopted providing, that in 1880, and every tenth year thereafter, after a two-thirds vote of the Senate and a majority vote of the House of one Legislature, followed by a majority vote of both Houses of the next succeeding Legislature, proposals might be submitted for constitutional change to "a direct vote of the freemen of the State," such proposals as received "a majority of the votes of the freemen voting thereon" to become a part of the Constitution.

Statutes. The town-meeting system prevails throughout the State, and the people vote directly on nearly all matters of local concern. Legislation is by mass meeting, likewise, in villages and school districts.

Opinions by the Courts. Vermont furnishes in its Supreme Court Reports an early case relating to the constitutionality of this class of legislation. *Bancroft* v. *Dumas*, decided in 1849, and reported in 21 Vt., 456, arose out of the State liquor license law of 1846. The law in question provided for an annual vote of the people of the counties throughout the State on the license question. The Court said: "It is objected to the validity of this law, that its vitality is made to depend upon the will of the people, expressed at the ballot-box, and hence it is urged that it is not a law enacted by the Legislature. . . . The granting of licenses is made to depend upon the expressed will of the people. Can this feature of the statute invalidate the law? Is a law to be adjudged invalid because it is conformable to the public will? It is in accordance with the theory of our government that *all our laws* should be made in conformity to the wishes of the people. Surely, then, it can be no objection to a law that it is approved by the people. We believe that it has never been doubted that it is competent for the Legislature to constitute some tribunal or body of men to designate proper persons for innkeepers and retailers of ardent spirits. Such was the character of all our early laws relating to licensing of innkeepers by authorizing the selectmen and civil authority to approbate suitable persons, and restricting the county courts to the licensing of such as should be approbated; and we are not aware that the constitutionality of these laws was ever questioned. And at one period, during the continuance of the license law of 1838, the power of determining whether licenses should be granted was vested in the selectmen and civil authority of the several towns. If the Legislature could legally and constitutionally submit the question whether licenses should be granted to the determination of a portion of the people, could they not with equal, if not greater, propriety submit it to the decision of the whole people?"

The Delaware case of *Rice* v. *Foster*, and the Pennsylvania case of *Parker* v. *Commonwealth*, were reversed and their conclusions disagreed with. The Court continued: "Laws are often passed, and, by the terms of the statute, made to take effect upon the happening of some event which is expected to occur; and we are not aware that such laws for that reason have been regarded as invalid."

This view was affirmed in 1854, *State* v. *John Parker*, 26 Vt., 35. The "Maine Liquor Law" was passed by the Vermont Legislature in 1852, and was submitted to the people. The Court here said: "It is admitted on all hands that the Legislature may enact laws, the operation or suspension of which shall be made to depend upon a contingency. This could not be questioned with any show of reason or sound logic. It has been practiced in all free States for hundreds of years and no one has been lynx-eyed enough to discover, or certainly bold enough to declare, that such legislation was on that account void or irregular. And it is, in my judgment, a singular fact that this remarkable discovery should first be made in the free representative democracies of America; and in regard to taking the sense of the same people upon the expediency of legislation where the legislators are confessedly the mere agents and instruments of the people to express their sovereign and superior will, to save the necessity of assembling the people in mass; and when from the very nature of the case the representative is in honor and good faith bound to conform his action to the will and desire of his constituents. . . . In regard to these great moral, social and economical reforms can it be doubted that the question of the preparation of the public mind to sustain them firmly and quietly lies at the very foundation of all hopeful legislation on the subject? . . . It seems to me that the distinction attempted between the contingency of a popular vote and other future uncertainties is without all just foundation in sound policy or sound reasoning."

VIRGINIA.

The **Constitution of 1776** was not submitted to the people, and it contained no examples of the Referendum.

The **Constitution of 1830** was ratified by direct popular vote, but gave no recognition of the rights of the people, either in the adoption of amendments or the passage of laws.

The **Constitution of 1850,** which was likewise submitted to the people, in Art. IV, Sec. 5, provided for an election (see p. 62–3) upon the question of legislative apportionment. An Ordinance of Secession, passed in 1861, was submitted to the ratification or rejection of the people.

The **Constitution of 1864** was not submitted to popular vote, nor did it furnish any instance of the Referendum.

The **Constitution of 1870,** though framed by a convention which met in 1867–68, was not submitted to the people until July 6, 1869 (under the authority of an act of Congress approved April 10, 1869), when clauses relating to the test-oath and to disfranchisement, which were separately submitted, were rejected and the remainder of the Constitution was ratified. This Constitution, which is the present Constitution of the State, provided for its own amendment as follows: Majority vote of two Legislatures and majority approval by the people. Another section says: "At the general election to be held in the year 1888 and in each twentieth year thereafter, and also at such time as the General Assembly may by law provide, the question, 'Shall there be a convention to revise the constitution and amend the same?' shall be decided by the electors qualified to vote for members of the General Assembly."

Statutes. The Code of the State contains a local option law which authorizes a poll of counties, corporations or magisterial districts, on petition of one-fourth the qualified voters thereof, upon the question of granting liquor licenses. An election on such a question cannot be held oftener than once in two years in the same district. The ballots must read, "For licensing the sale of intoxicating liquors" or "Against, etc." The people of the districts affected must be consulted as to the organization of new counties. Counties, cities and towns, on a three-fifths vote of the people, may subscribe to the capital stock of companies for internal improvement. The board of education in counties may take the sense of voters in counties or school districts on certain questions concerning the public school administration.

Opinions by the Courts. The Court of Appeals, in *Goddin* v. *Crump*, 8 Leigh (Va.), 20, in 1837, declared constitutional a law submitting to the people of Richmond the question of subscribing stock to a canal company (see p. 106). The subject was further reviewed by the Court, in 1855, in *Bull* v. *Read*, reported in 13 Gratt. (Va.), 78. A statute had been passed providing for the establishment of a system of free schools in a particular district of a county, the act not to go into effect until the people of the district should approve it at an election held for that purpose. The Court here said: "It will be conceded that the Legislature may provide that an act shall not take effect until some future day named, or until the happening of some particular event or in some contingency thereafter to arise, or upon the performance of some specified conditions. [Here the Court cited a number of cases in which such laws had been passed both by the State and Federal Governments.] Now if the Legislature may make the operation of its act depend on

some contingency thereafter to happen or may prescribe conditions, it must be for them to judge in what contingency or upon what condition the act shall take effect. They must have the power to prescribe any they may think proper, and if the condition be that a vote of approval shall first be given by the people affected by the proposed measure, it is difficult to see why it may not be as good and valid as any other condition whatever. . . . To say in such a case that the act is made by the voters and not by the Legislature, is to disregard all proper distinctions and involves an utter confusion of ideas upon this subject."

This position was further affirmed in *Savage* v. *Commonwealth*, 84 Va., 619, when was brought into question the constitutionality of the local option liquor law of 1885–6. The point was made that the act delegated a portion of the legislative power, which by the Constitution had been vested in the General Assembly. The Court denied this, and said: "The act is complete in itself, and merely prescribes conditions upon which the sale of intoxicating liquors may be licensed, or prohibited altogether. In other words, it prescribes a police regulation, and leaves it to a popular vote to determine not whether it shall be lawful or unlawful to sell intoxicating liquors, but whether license shall be granted or not. This, undoubtedly, it is as competent for the Legislature to do as to leave it to the county and corporation courts to determine, whether or not licenses shall be granted, or to confer upon a municipal corporation the power to regulate the sale of liquors within its own limits, or to adopt other like police regulations for its government. The case is not distinguishable from *Bull* v. *Read* 13 Gratt., 78. . . . The question has often arisen in the courts of other States, and while the decisions on the subject are not entirely uniform, the great weight of authority is unquestionably in favor of the validity of such statutes."

WASHINGTON.

Constitution of 1889. The Constitution of the State of Washington was submitted to the people in 1889, together with three separate propositions, to enfranchise women, to prohibit the liquor business and to permanently locate the State capital.

By Article VIII the State may not contract debts, which singly, or in the aggregate, shall exceed $400,000, except "to repel invasion, suppress insurrection or to defend the State in war," unless such law "shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election."

Another section says: "No county, city, town, school district or other municipal corporation shall, for any purpose, become indebted in any manner to an amount exceeding one and one-half per centum of

the taxable property in such county, city, town, school district or other municipal corporation without the assent of three-fifths of the voters therein, voting at an election to be held for that purpose, nor in cases requiring such assent, shall the total indebtedness, at any time, exceed five per centum on the value of the taxable property therein." It is provided, however, that any city or town may, with like assent of the people, become indebted "to a larger amount, but not exceeding five per centum additional for supplying such city or town with water, artificial light and sewers, when the works for supplying such city or town with water, light and sewers shall be owned and controlled by the municipality."

Art. XI, Sec. 2, says, that no county-seat shall be removed unless the people of the county approve the proposition by a three-fifths vote; and Sec. 4, of the same article, prescribes a majority vote of the people in counties, previous to taking up township organization. Cities and towns may become organized under general laws when the electors thereof so determine. Any city containing a population of 20,000 or more may frame its own charter by electing a board of fifteen freeholders; the charter so framed to be submitted to the people, and approved by a majority vote before acquiring validity. Amendments to such charters must, in the same manner, be approved by a vote of the people.

The seat of government was to be located by popular vote at the election held to ratify or reject the Constitution. In case no place received a majority, another vote was to be taken at the next succeeding general election, choice to be made among the three places which had been highest on the list at the former election. If there was still no choice, a third election was to be held to choose between the two places which had received the highest number of votes at the second election. "When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed except by a vote of two-thirds of all the qualified electors of the State voting on that question at a general election at which the question of the location of the seat of government shall have been submitted by the Legislature."

Mode of amendment: Two-thirds vote of one Legislature and majority vote of the people. The Legislature at any time by a two-thirds vote can submit to the people the question of calling a convention, any Constitution adopted thereby to be submitted to the people.

WEST VIRGINIA.

Constitution of 1861. The first Constitution of West Virginia was framed in 1861 by delegates from the forty-eight western counties

of Virginia, whose people were unwilling to follow the rest of the State into the war against the Union. It was submitted to popular vote in those counties in 1862. Congress later imposed the adoption of an amendment relative to slavery as a condition upon which the new State should be admitted to the Union. The amendment was submitted to and accepted by the people at an election in 1863. Certain direct rights in law-making were given by this Constitution to the voters of the townships assembled in stated or special meetings. Amendments were to take effect after majority passage by two successive Legislatures and majority approval by the people. The Legislature could at any time submit the question of calling a constitutional convention.

Constitution of 1872. The present Constitution of the State, was submitted to the people in 1872. A proposition restricting the holding of office to "white citizens" was separately submitted, but it was defeated. This Constitution provides in Art. VI, Sec. 11 that "additional territory may be admitted into and become part of this State, with the consent of the Legislature and a majority of the qualified voters of the State voting on the question."

Art. VI, Sec. 50, says: "The Legislature may provide for submitting to a vote of the people, at the general election to be held in 1876, or at any general election thereafter, a plan or scheme of proportional representation in the Senate of this State; and if a majority of the votes cast at such election be in favor of the plan submitted to them, the Legislature shall, at its session succeeding such election, rearrange the senatorial districts in accordance with the plan so approved by the people."

On the application of any county by Art. VIII, Sec. 29 the Legislature may alter the form and character of the county court, and substitute therefor, after securing the assent of the people of the county, a new tribunal. New counties are not to be formed unless upon the consent of a majority of the voters residing within the boundaries of the proposed new district. County authorities, Art. XI, Sec. 7, may not assess taxes in any one year, "the aggregate of which shall exceed ninety-five cents per hundred dollars valuation," except in certain specified cases, "unless such assessment, with all questions involving the increase of such aggregate shall have been submitted to the vote of the people of the county and have received three-fifths of all the votes cast for and against it."

Art. XI, Sec. 8, says: "No county, city, school district or municipal corporation . . . may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, . . . unless all questions connected with the same

shall have been first submitted to a vote of the people and have received three-fifths of all the votes cast for and against the same."

The people may vote on the question of forming "independent free school districts." Amendments are adopted after two-thirds passage by one Legislature and majority ratification by the people. The Legislature may at any time, on majority vote, submit the question of calling a constitutional convention.

Statutes. The statutes make use of the Referendum in a number of cases. The Legislature has passed three different "alternate road laws," the first in 1872–3, another in 1881, and a third in 1891. Any county may by popular vote accept one of these laws instead of the regular law. The "alternate" law may be discontinued likewise by popular vote. An act of Legislature passed in 1885, enclosing stock—"cattle, mules, horses, sheep, hogs, goats or geese"—was not to go into force in any county until approved by the people thereof, voting "For stock law" and "Against stock law." Another law which the people of the counties may adopt or not as they choose, relates to the running at large of bulls over one year old, buck sheep over four months old and boars over two months old. A general State law for the taxing of dogs in any one of forty-six counties is not to take effect until voted upon and adopted by the people of those counties. Cities, towns and villages may vote on questions of incorporation and change of corporate limits. The issue of bonds in municipal corporations and "all questions connected with the same" must be submitted to the people. School districts may vote "For school levy" or "Against school levy." A vote "for" enacts two sections of the State school law. The people of any school district may also vote whether there shall be more than four months' school in the year within the district; and, if so, they must state on their ballots how many months school shall be kept. There are some tax questions in townships which are submitted to the people.

WISCONSIN.

Constitution of 1848. The first Constitution framed for Wisconsin, and under which Congress had agreed to admit the State to the Union, was referred to the people in 1846 and rejected. Another, which was submitted in 1848, was accepted, and is, with amendments, still in force. This Constitution, after fixing the qualifications for electors, provides "that the Legislature may, at any time, extend by law the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election."*

*At an election held in November, 1848, the people voted to extend the right of suffrage to negroes and persons of African descent. The same question had been submitted to the people in 1847, while Wisconsin was still a Territory. A law was referred to and adopted by the people in 1885, extending the suffrage to women in elections pertaining to school matters.

Other sections of the Constitution deny all power to the Legislature "to create, authorize or incorporate, by any general or special law, any bank or banking power or privilege, or any institution or corporation having any banking power or privilege whatever," except in the following manner: "The Legislature may submit to the voters, at any general election, the question of 'Bank' or 'No bank,' and if, at any such election, a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the Legislature shall have power to grant bank charters or to pass a general banking law with such restrictions and under such regulations as they may deem expedient and proper for the security of the billholders, provided that no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election and been approved by a majority of the votes cast on that subject at such election."*

The Constitution also provided against the removal of county-seats or the division of counties containing 900 square miles of territory or less without the approval of the people. Constitutional amendments must have majority passage through two successive Legislatures and majority approval by the people. The Legislature, by a majority vote may, at any time, submit the question of calling a constitutional convention.

Statutes. The State statutes contain many examples of the Referendum. In general, in all cases when the county board of supervisors, town board of supervisors, common council of any city or village board of any village is not especially authorized by law to borrow money, the question must be submitted to the people. Propositions to subscribe money to railroad companies in counties, towns, villages or cities must be voted on by the people. Town affairs are regulated in annual and special town meetings, when the electors themselves determine upon the erection or repair of bridges, the improvement of roads, restraining of stock, establishment of a town library, raising of money to build a town hall, or the purchase of cemetery grounds; and enact all forms of local legislation. The people of school districts also do business in mass meeting, select school sites, lay taxes, decide in favor of or against free text-books, make loans, etc.

*The Supreme Court, in *Bank* v. *Hastings*, 12 Wis., 47, stated this provision of the Constitution to be "a reservation to the people themselves of all legislative power upon the subject of banks and banking. . . . The reservation is absolute and unqualified, and carries with it the authority to prescribe what the law shall be in all respects." The people having voted "Bank," a general law was passed by the Legislature and adopted by the people, as provided by the Constitution, at the general election held in 1852. Several acts amending this general law have at various times submitted to popular vote.

Any town, incorporated village, city or school district possessing the qualifications prescribed by law may vote upon the proposition to establish a high school. Villages vote upon the questions of incorporation and dissolution of government, annexation or change of boundaries; also whether the offices of clerk and street commissioner, or either, shall become elective or be subject to appointment by the board of trustees, and whether either the office of police justice or constable shall be discontinued.

The people in cities vote "For a city charter" or "Against a city charter," and upon the question of change of municipal boundaries. Towns, cities and villages may, upon popular vote, build monuments to soldiers of the war or eminent public men, and may decide in like manner the amount to be paid therein for retail liquor licenses. This vote must be taken at special elections called upon petition, such an election not to be held oftener than once in three years. In the case when the sum to be paid was before fixed at $100, the people may vote whether it shall be increased to either $250 or $400. When the sum was $200, the people may choose between $350 or $500. In such elections the ballots take this form: "To be paid for license $——." When ten per cent. of the qualified electors of any town, village or city ask to vote on the question an election shall be held to altogether prohibit the sale and traffic in liquors.

Opinions by the Courts. This system of making laws was reviewed by the Court in *State* v. *O'Neill*, 24 Wis., 149. The Legislature had passed an act establishing a Board of Public Works in Milwaukee, which, however, was to be null and void unless approved by the people at an election held in April, 1869. It was contended that this law was not enacted by the will of the Legislature, but that the latter had merely proposed it, and referred it to the people of Milwaukee. The Court said that the act was "what is termed in the books a conditional one, and was to take effect or go into operation upon a contingency provided in the law itself. It is a complete enactment in itself; contains an entire and perfect declaration of the legislative will; requires nothing to perfect it as a law; while it is only left to the people to be affected by it to determine whether they will avail themselves of its provisions." In *Smith* v. *City of Janesville*, 26 Wis., 291, the Court said: "No one doubts the general power of the Legislature to make such regulations and conditions as it pleases with regard to the taking effect or operation of laws. They may be absolute or conditional and contingent, and, if the latter, they may take effect on the happening of any event which is future and uncertain."

WYOMING.

Constitution of 1889. The Constitution of Wyoming was framed by a convention which met at Cheyenne in 1889, before the State was yet admitted to the Union. It was submitted to the people in accordance with a proclamation by the Governor. Art. VII, Sec. 23, says: "The Legislature shall have no power to change or to locate the seat of government, the State university, insane asylum, or State penitentiary, but may, after the expiration of ten years after the adoption of this Constitution, provide by law for submitting the question of the permanent locations thereof, respectively, to the qualified electors of the State at some general election, and a majority of all votes upon said question cast at said election shall be necessary to determine the location thereof." Until the ten years had elapsed the locations were fixed by the Constitution. It is further provided: "The Legislature shall not locate any other public institutions except under general laws and by vote of the people."

Art. XII, Sec. 2, says: "No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition shall vote in favor of the division." Section 4 of the same article says: "The Legislature shall provide by general law for a system of township organization and government, which may be adopted by any county whenever a majority of the citizens thereof voting at a general election shall so determine." Art. XIII, Sec. 2, says: "No municipal corporation shall be organized without the consent of the majority of the electors residing within the district to be so incorporated."

Art. XVI, Sec. 2, says: "No debt in excess of the taxes for the current year shall in any manner be created in the State of Wyoming, unless the proposition to create such debt shall have been submitted to a vote of the people and by them approved, except to suppress insurrection or to provide for the public defense." Sec. 4 of the same article says: "No debt in excess of the taxes for the current year shall in any manner be created by any county or subdivision thereof in the State of Wyoming, unless the proposition to create such debt shall have been submitted to a vote of the people thereof and by them approved." Sec. 6 of the same article provides: "The State shall not engage in any work of internal improvement unless authorized by a two-thirds vote of the people."

The mode of amendment is: Two-thirds vote of one Legislature and majority approval by the people. The Legislature, at any time, by a two-thirds vote can order an election on the question of calling a convention. Any Constitution framed by such a convention must be submitted to popular vote.

INDEX.

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